ELIGIBILITY DETERMINATIONS IN PUBLIC ASSISTANCE: SELECTED PROBLEMS AND PROPOSALS FOR REFORM IN PENNSYLVANIA

Lord, I even go to the welfare store and they even turn old Brownie down.

—Brownie McGhee, “Brownie’s Blues”

When we degrade welfare recipients, we are eroding the very values we seek to preserve. But it is not merely enlightened self interest, but justice, that demands a new design for social welfare.

Professor Charles Reich

I. INTRODUCTION

It is commonly acknowledged that the welfare programs in this country fail to meet standards worthy of a wealthy and liberal people.

While some of these failings are due to insufficient legislative attention, defects in welfare administration are retarding realization of the potential presently provided for by statute.

Nowhere is this more apparent than in welfare agency determinations of eligibility for public assistance. Many procedures are tied to existing substantive provisions, such as the requirement of contribution from relatives, and large-scale procedural reform will only come as a result of substantive legislative changes. Hoshino, Simplification of the Means Test and Its Consequences 5 (1966) (unpublished manuscript on file with the author).

It is a premise of this Comment, however, that much can be done within the existing legislative framework to alter administrative procedures. This is so because, in large part, current methods are “simply matters of tradition, habit or accepted practice.” Id. at 7.
Destitute and impoverished citizens whom legislatures seemingly would intend to be the beneficiaries of welfare statutes are often denied aid because they are unable to prove completely their qualifications for assistance. Many such problems, which are common throughout the United States, plague Pennsylvania. It is hoped that the subsequent proposals to alleviate some of Pennsylvania's difficulties will have broader application.

One basic cause of administrative difficulty is the mechanism for determining eligibility for welfare assistance: the "means" test. This test defines "need" as the difference between the sum required to maintain an adequate budget and the applicant's available resources and calls for an evaluation of the "need" of every applicant. Such exhaustive attention to applications has adverse consequences for the entire program, resulting in problems of economy of operation, effective service, uniformity of treatment, administrative discretion and governmental intervention in the lives of recipients.

A second cause of difficulties is found in the federal-state structure of the system. As part of the Social Security program, the federal government, through the Secretary of Health, Education and Welfare, makes funds available to states which in turn administer assistance to defined categories of needy people. States choosing to participate in the program must submit plans to the Secretary conforming to requirements established by the public assistance titles of the Social Security Act of 1935, 49 Stat. 620, as amended, 42 U.S.C. §§ 301-1394 (1964), as amended, 42 U.S.C. §§ 424a-1396d (Supp. I, 1965).

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5 Administrative procedures of welfare agencies have drawn the attention of writers in legal and social work circles. For the former, see, e.g., Handler, Controlling Official Behavior in Welfare Administration, 54 CALIF. L. REV. 479 (1966); Reich, Individual Rights and Social Welfare: The Emerging Issues, 74 YALE L.J. 1245, 1252-53 (1965); Sparer, Social Welfare Law Testing, 12 PRAC. L. 479 (Apr. 1966).


7 For interdisciplinary efforts see U.S. DEP'T OF HEALTH, EDUC. & WELFARE, REPORT OF THE ADVISORY COUNCIL ON PUBLIC WELFARE (1966), particularly chapters III and VII.

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7 See Winston, Eligibility Review of Aid to Families with Dependent Children, in SOCIAL WORK PRACTICE, 1964, at 28, 37.

8 See Wilson, supra note 5, at 257; Mandelker, The Need Test in General Assistance, 41 VA. L. REV. 893, 925 (1955).


Security Act. The act gives considerable leeway to states in substantive areas of eligibility determination, such as defining "need." Even greater freedom has been granted to the states to establish the procedural methods of welfare administration.

Third, administrative agencies have had to function without the aid of extensive criteria for decision-making. This is especially significant because agencies have been required to make important policy decisions. For example, Pennsylvania's Public Assistance Act expresses its "intent" as follows:

It is hereby declared to be the legislative intent that the purpose of this act is to promote the welfare and happiness of all the people of the Commonwealth, by providing public assistance to all its needy and distressed; that assistance shall be administered promptly and humanely with due regard to the preservation of family life, and without discrimination on account of race, religion or political affiliation; and that assistance shall be administered in such a way and manner as to encourage self-respect, self-dependency, and the desire to be a good citizen and useful to society.

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15 One of these, the requirement of verification of all income and property, is central to this Comment. The Bureau of Public Assistance in 1936 recommended to the Social Security Board that the Ohio Old Age Assistance Plan be approved only on condition that:
   The present inadequate system of investigation of eligibility . . . be replaced by a system which will effectively ascertain the financial and social circumstances of an applicant. This should include home visits to the applicant, to his relatives (both those who are legally responsible and those not legally responsible), verification of all income and property, and the utilization of social service exchanges and other community resources.
16 For an enlightening discussion of early Social Security Board policy decisions on eligibility determinations see HASAN, supra, ch. vii.
Although this statement expresses values which might be incorporated into administrative policies, it provides few guidelines for the establishment of a full range of administrative rules.\(^\text{18}\)

In sketching some of the causes of the problems to be discussed, one should mention finally the pervasive force of public opinion in shaping administrative action. Such opinion commonly reflects the view that public assistance should be offered as if it were another form of "old-fashioned charity" \(^\text{10}\) and that aid should be granted in a punitive and deterrent setting.\(^\text{20}\) This attitude not only impresses legislators and policy-makers but, perhaps more importantly, influences the actions of the lower level administrators, caseworkers and unit supervisors who wield the greatest power over the recipient.

II. ELIGIBILITY DETERMINATIONS: PROBLEMS AND PROPOSALS

The major principles of state welfare administration were revised in 1967 by the Pennsylvania Department of Public Welfare,\(^\text{21}\) in an effort to ameliorate present problems. The manual now states explicitly that "eligibility for public assistance is based on statutory entitlement." \(^\text{22}\) This declaration refutes the idea that welfare is a privilege which requires potential recipients to be morally deserving of the state's gratuity.\(^\text{23}\) The second new section announces that public assistance is to be administered "in an atmosphere of trust, confidence, and respect" and that the staff is to act "with sensitive and responsive awareness to the effects of human deprivation and need" with a "commitment to the . . . intent of public assistance laws, policies, and regulations." \(^\text{24}\) A third change provides that "each person must be informed of the availability of and receive the fullest amount of financial


\(^{19}\) Winston, supra note 7, at 37.

\(^{20}\) Hoshino, supra note 4, at 7. For the particular hostility against Aid to Families with Dependent Children (AFDC) clients see Bell, supra note 3, chs. IV-VI; Karr-Lucas, Decisions About People In Need 288 (1957).


\(^{22}\) Pa. Manual § 1234 (1967). Other changes in this section, such as reliance on the client as the primary source of information, were prompted by the new federal regulations. See Bureau of Family Services, U.S. Dep't of Health, Educ. & Welfare, Handbook Transmittal No. 77, pt. IV, §§ 2200-30 (March 18, 1966) [hereinafter cited as Federal Handbook Transmittal No. 77].

\(^{23}\) For a discussion of the problems surrounding treatment of government benefits as entitlements and as privileges, see generally Reich, The New Property, 73 YALE L.J. 733 (1964); tenBroeck & Wilson, supra note 10; Note, Charity versus Social Insurance in Unemployment Compensation Laws, 73 YALE L.J. 357 (1963).

\(^{24}\) Pa. Manual § 1231 (1967). One cannot conclude that the prior absence of this language demonstrated contrary attitudes in the administration of welfare, but it is clear that workers attempting to establish a climate of trust and respect would have found little support for their methods in the state department's expression of general principles.
assistance, medical assistance, and other social services that he needs and is entitled to.”

Fourth, the old section on client responsibility has been modified to give the client freedom of action. There is particular emphasis in the current manual on the client's participation and independence in initiating and terminating the eligibility process. These four principles are designed to discipline an administrative system which allows wide discretion to those distributing public assistance. The present system is based on two operational assumptions: the necessity of verifying “need” in each case and the placement of the burden of verification upon the applicant. Although these proof and verification requirements might be justified by administrative necessity, they are likely to be enforced in ways which run directly counter to the intent of public assistance laws.

25 Id. §1233 (1967). Compare id. §1233 (1966). The danger that recipients may not be receiving the full amount to which they are entitled under law may be the result of heavy caseloads, the punitive attitudes of some workers and the recipients' ignorance of welfare regulations.

26 See, e.g., id. §1234(a) (1951):

The Department deals with an applicant as a responsible individual. It holds him to initial and continuing establishment of financial need. He is required to sign documents attesting to his acceptance of this responsibility and his relationship to the agency demands the same responsibility of him as does a contract with any other party.

27 Id. §1236 (1967):

A client has the right to self-direction and to make his own decisions. This includes his right and freedom to use the assistance payment he receives in such a way as, in his judgment, will best serve his interests.

28 Id. §1250 (1951):

After conditions of eligibility are explained, the client decides whether or not to continue the application process to try to establish eligibility. ... It is he who can produce the information needed to make possible a determination of his eligibility, and who makes the decision to furnish that information or to withdraw his application.

29 Pa. Manual §3320 (1952). The welfare department gives applicants a list of at least twenty-five documents considered helpful in proving eligibility and advises that “if you can bring all these papers and information with you, we will be able to tell you sooner whether you are eligible for assistance.” Pa. Dep't of Public Welfare, Pub. Assistance Form 11F (Oct. 1966).

A. Denials and Deterrences

Eligibility determinations, both at the time of intake or at the time of redetermination, often result in the denial of public assistance to eligible persons and applicants.31 For instance, between June, 1964 and June, 1965, 49.5 per cent or 1,954 of the applications for assistance were rejected by the Philadelphia County Board of Assistance.32 Two thirds of these rejections were classified as either “voluntary withdrawal or failure to keep appointment, reason for withdrawal or failure unknown” or not “furnishing information to establish initial or continuing eligibility.”33 Although it is difficult to test the validity of these reasons from the individual case records, it is clear that these characterizations can mask a worker’s abuse of discretion, negligence or inefficiency.34 Indeed, a Cook County, Illinois study found that a substantial number of similar reasons given by workers for denying assistance were either questionable or invalid under state policy.35 Similarly, the Greenleigh study of Philadelphia County found that “decisions to deny assistance are often questionable.”36

31 One study concluded, in part, that the department “disregards state policy in denying ADC assistance to some needy eligible families, in removing some families from ADC roles when they are clearly eligible. . . .” GREENLEIGH ASSOCIATES, INC., FACTS, FALLACIES & FUTURE: A STUDY OF THE AID TO DEPENDENT CHILDREN PROGRAM OF COOK COUNTY, ILLINOIS 55 (1960) [hereinafter cited as GREENLEIGH ASSOCIATES, COOK COUNTY].

32 Div. of Quality Control, Pa. Dep’t of Pub. Welfare, A Comparative Analysis of Rejected Applications for Assistance in March, 1966 in Allegheny and Philadelphia Counties 2, 14 (1966) [hereinafter cited as Quality Control Report]. During the same period 31% of 769 applications were rejected in Allegheny County. Id. at 2. In explaining the differences, the report points to differences in caseworkers’ attitudes toward applicants and in the approach to the agency’s policies and procedures. Allegheny County tends to focus on the “intent” of the policy while Philadelphia County tends to focus on the literal interpretation of the policy. Id. at 14.

A Greenleigh Associates study of Philadelphia County suggests that there may be an understatement in the Philadelphia rate of rejections caused by a procedure “of not completing the Application for Assistance Form PA-1 until the decision about eligibility is made, and then only completing it when the decision is to authorize assistance.” This practice, which ignores the policy of completing application forms during the initial intake interview, see Pa. Manual §§ 3511-14 (1964), 3511.2-33 (1950), 3561 (1961), “may result in rejections that do not appear in the agency’s statistical reports.” GREENLEIGH ASSOCIATES, INC., A STUDY OF THE MANAGEMENT AND ADMINISTRATION OF THE PHILADELPHIA COUNTY BOARD OF ASSISTANCE 94 (1967) [hereinafter cited as GREENLEIGH ASSOCIATES, PHILA. COUNTY].

33 Quality Control Report, app. III.

34 This is not the case with other reasons for non-authorization such as income from employment, Social Security benefits or cash on hand, which the case record can support with positive documentation.

35 GREENLEIGH ASSOCIATES, COOK COUNTY 56-57.

36 GREENLEIGH ASSOCIATES, PHILA. COUNTY 62.
1. Delays

Although the necessity for promptly granting public assistance is recognized in the Social Security Act's state plan requirements and in Pennsylvania's Public Assistance Act, obstacles are built into the present application process. To request assistance, the applicant must first make an appointment for an intake interview at a future date, usually within five working days. At this scheduled interview, the intake worker explains the eligibility requirements and how to meet them. Because the burdens of proof are often especially heavy for the destitute and jobless, the time required to verify need may be extended unnecessarily.

The state regulations advise the county offices:

Generally, the facts necessary for determining eligibility should be assembled within ten work-days from the date on which the County Office received the person's request for assistance. The maximum lapse of time between the date of application and the receipt of the first assistance payment (or other dispo-
sition of the application) is thirty days, unless a delay is caused by circumstances under the applicant’s control or by an administrative emergency. . . . 41

Although this provision places pressure on intake workers to make final determinations within thirty days, it does not necessarily reduce delays. 42 The worker often responds to the pressure by allocating the major burden of proof to the applicant. Faced with such a barrier, the applicant frequently becomes discouraged and withdraws “voluntarily”; if not, the intake worker will often find a reason to “non-authorize” the application. 43 In the latter situation, the client is simply told to apply again. 44

In concluding that the present standards for promptness are clearly insufficient, the federal Advisory Council on Public Welfare suggested that the institution of a declaration system “offers an effective solution to the problem.” 45 This reform will be considered in this Comment, but steps short of this may be taken to fulfill the purposes of the Social Security Act and the Pennsylvania Public Assistance Act.

One such step is an immediate instruction to intake workers to employ the presumptive eligibility provisions of section 3626 of

41 Pa. Manual § 3511.34 (1957). Since the burden largely rests with the applicant to assemble the necessary facts, it would appear that a delay in presenting these facts would be viewed in many cases as “... caused by circumstances under the applicant's control. . . .”

42 The Quality Control Study showed that more than 90% of the determinations were made within 30 days. Quality Control Report 5. A federal study, noting the high rate of decisions made within the thirty-day limit in one agency, which appeared to be Philadelphia, stated that:

Questionable administrative practices, however, were observed in this agency and related by reviewers to the stress placed on disposition within the time standard. These were denials at application interview because of insufficient information, the denial of applications followed by early and repetitive re-applications, denials of assistance because of “loss of contact” and the use of “one-time grants” after which the case is closed.

BUREAU OF FAMILY SERVICES, supra note 40, at 25. One-time grants are non-recurring checks disbursed by the county under circumstances similar to emergency grants. See Pa. Manual §§ 3623 (1966), 3633 (1961). These grants have been used in Philadelphia “to punish and get rid of unemployed men” when the intake worker makes the judgment that the unemployed person has not made an adequate search for work or where his explanation of his status is unacceptable. See GREENLEIGH ASSOCIATES, PHILA. COUNTY 62, 94. There appears to be no basis in the regulations for issuing one-time grants in such situations. See Pa. Manual § 3623 (1966).

43 Interview With Mrs. Tucker, supra note 39.

44 Interview With Mr. O. T., Unit Supervisor, Philadelphia County Board of Assistance, February 10, 1967.

45 U.S. DEP’T OF HEALTH, EDUC. & WELFARE, REPORT OF THE ADVISORY COUNCIL ON PUBLIC WELFARE 70 (1966). The Council added that “simplification of eligibility requirements, of routines of applications and procedures for determining eligibility, and adequate funds to meet emergency needs are essential ingredients in the just administration of assistance.” Ibid.

In 1962 Congress had ordered the Secretary of Health, Education & Welfare to appoint the Advisory Council on Public Welfare to review the administration of public assistance and child welfare services programs and to make recommendations to improve the programs. Social Security Act § 1114, 76 Stat. 190 (1962), 42 U.S.C. § 1314 (1964); see H.R. REP. No. 1414, 87th Cong., 2d Sess. 25 (1962).
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The manual, \(^{46}\) which are now either ignored by or unknown to many workers. A further step might be to enlarge the number and kinds of facts for which verification could be made after authorization, in the three month period described in section 3626. Under the current presumptive eligibility regulation, delayed verifications are allowed only for age, permanent and total disability \(^{48}\) or blindness and a parent’s mental or physical incapacity. \(^{49}\) The section might be broadened to include delayed verification of work-related and veterans benefits, household composition, contributions from legally responsible relatives, establishment of paternity and residence. Expanded use of presumptions would remove the pressure on the intake worker to “nonauthorize” applications when difficulties of proof arise. It might also eliminate delays going beyond thirty days, especially those which the agency might otherwise justify under section 3511.34 as delays “caused by circumstances under the applicant’s control.”

Another facet of the problem concerns the granting of assistance after the application has been authorized. Although the statutory requirements refer to promptness in the furnishing and administering of assistance, the Pennsylvania regulations establish time standards only for disposition of the application. \(^{50}\) Furthermore, no specific standards are set for later agency action when a change in the recipient’s circumstances requires an adjustment in the grant or provision of services. \(^{51}\)

The Department should fill this gap in the regulations by revising section 3512.2 on partial redeterminations to state that the client’s requests for increased aid be promptly reviewed and acted upon. Also, a specific standard of reasonable time should be included in the revised

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\(^{47}\) See note 40 supra.


\(^{49}\) Id. at § 3122.43.

\(^{50}\) See note 41 supra and accompanying text.

\(^{51}\) The regulations do require, however, that “prompt action must be taken to review pertinent eligibility factors” when a change in the client’s circumstances is reported to the agency. Pa. Manual § 3512.2 (1963). This does not speak to the change in circumstances of one who remains eligible and needs increased assistance or services.

Federal rules establish a thirty-day limitation, but only in regard to changes requiring a decrease in assistance or a finding of ineligibility. Federal Handbook, pt. IV, §2232 (1963). A proposed change will alter the language to require such redeterminations within thirty days when such circumstances “may affect the amount of assistance to which he is entitled or may make him ineligible.” This will apply the thirty-day requirement to cases where increases in assistance may be warranted. See Federal Handbook Transmittal No. 77.

It has been asserted that unnecessary delays exist in the Philadelphia agency in fulfilling recipients’ needs for medical equipment, supplies, drugs, ambulance services, special diets and transportation allowances for regular medical care. GREENLEIGH ASSOCIATES, PHILA. COUNTY 76. The study gives as an illustration a pregnant woman’s request for Ace bandages to inhibit leg-swelling and potential phlebitis. Although the request was submitted early in the client’s pregnancy, it was not authorized until well after her delivery. \textit{Ibid.}

A unit supervisor has related that delays of over a month often ensue after a recipient has requested a special diet allowance. Interview With Mr. O. T., \textit{supra} note 44.
section—preferably fifteen days from request to agency action. Explicit provision should be made for “fair hearing” appeal by the applicant if action is not taken within 15 days of his request.

2. Unnecessary Verifications

The determination process often causes unnecessary hardship and creates the potential for “nonauthorizations” when the agency requires verifications which are not directly relevant to eligibility requirements. One such practice is to require applicants for Aid to Families with Dependent Children ( AFDC) to locate the absent father of a child and to bring him to the district office for an intake interview. Often this ignites animosity, or even physical violence between the parents. Many applications are rejected because the absent parent refuses to cooperate.

A short time period is suggested because this partial redetermination should involve checking only one or two factors. Many changes, such as the approaching birth of a child, will be ones for which the worker has notice.

The Greenleigh report on Philadelphia County also made a number of recommendations to cut down delays: modifying the appointment system; abandoning the clearance of all requests with the agency’s master file; establishing neighborhood intake centers; shifting control over authorization of medical supplies from the state to the county boards. Greenleigh Associates, Phila. County 93-96.

The Social Security Act usually requires states to grant an opportunity for appeal where a claim for aid is “denied or is not acted upon with reasonable promptness as defined in the state plan.” E.g., § 402(a) (4), 49 Stat. 627 (1935), as amended, 42 U.S.C. § 602(a) (4) (1964). But see Federal Handbook, pt. IV, § 6200(3)(a) (1965), which requires that states allow hearings “in relation to any agency action or failure to act on his claim with reasonable promptness...” (Emphasis added.)

The Pennsylvania statute is in accord with the Social Security Act requirement, although it does not specify that appeals may be had on the basis of unreasonable delay. Pa. Stat. Ann. tit. 62, § 2507(e) (Supp. 1966) (appeal from decision “refusing or discontinuing his assistance, in whole or in part, ...”). One could argue that an unreasonable delay constitutes a refusal within the meaning of the statute.

State regulations appear to provide wide latitude for “fair hearing” review by interpreting the state law as giving rise to an appeal upon refusal or discontinuance or with any other action or failure to act with respect to assistance. The letter and intent of the Law and of the Department’s regulations and policies aim at equitable and considerate treatment of all applicants and recipients. The fair hearing is an additional safeguard for such treatment.

Pa. Manual § 3590 (1960). Under this provision, abusive and demeaning actions of county employees might be the basis for an appeal to the State Department.

Two state agencies have held that it is not within their power to rule upon the legality of state regulations at a fair hearing. Memorandum of Decision, Request of Miss Dorothy Reed, Case No. 92-C-74675, Conn. State Welfare Dep’t (Aug. 22, 1966); Decision in Regard to Appeal for Fair Hearing in the Case of Mrs. Ovelia Robinson, Newark, N.J., Case No. EC-9475 (April 4, 1966), both cases cited in Note, Federal Judicial Review of State Welfare Practices, 67 Colum. L. Rev. 84, 92 n.56 (1967). But see Federal Handbook, pt. IV, § 6331 (1965); “The claimant may question the agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if he is aggrieved by their application to his situation.”


See Pa. Manual § 3237.11 (1963): The client, as a condition of eligibility for assistance is required to provide sufficient information about each LRR [legally responsible relative] to permit a determination of the LRR's ability to provide support. (Emphasis added.) See also id. § 3237.12 (1963) (information about the LRR's
A similar problem arises in connection with state regulations stipulating that the parent who does not make the application "should, if possible and advisable, have some part in the decision on going through with an application for assistance." In the case where parents are not living together, "some part" is defined as "clarifying [the] absent parent's role in support and care of the child." Apparently no attempt is made to ascertain whether it is in fact "advisable" to require the presence of the absent parent. Nor is an attempt made to see if the father can "take part in the decision", either by telephone, through the mails or at a separate interview, without appearing at the interview with the mother.

"Past management" is another area where the prescribed form of verification is burdensome. According to the regulations, the intake interviewer should elicit from the applicant "how he has managed in the past, and what changes in his circumstances have led him to request assistance." The rule adds the caveat that "past management, like the other factors, is discussed to increase understanding of the person's present situation, and not to get a detailed and exhaustive accounting," but in practice, "past management" review often becomes an unnecessary barrier to authorizations. This is particularly true in cases where a boyfriend has contributed voluntarily to the applicant's maintenance.

Variations in the application of state policies concerning contributions from relatives were also found: "Philadelphia County placed with the applicant more than twice as many requirements regarding relative information than did Allegheny County. This is a significant difference." The rule recognizes that sometimes a detailed study is necessary: "If it appears that the person had a sizable resource, it is necessary to find out how much, if any, of the resource still exists."

An example of this difficulty was noted in the Quality Control Report:

Mr. and Mrs. P. applied for ADCU for their family of three. Mr. P. had been unemployed for three months, following his layoff in Boston, and savings of $1,100 were exhausted. Mr. P. explained expenditure of these savings by outlining the family's transportation costs to Philadelphia, living expenses for the family, and court order payments Mr. P. made for his four other children. The application was rejected on the same day as the initial interview on the basis of "voluntary withdrawal." Mr. P. could not account for past management. The caseworker "advised Mr. P. that we cannot help him unless he is able to verify the expenditure. This is the only way we can determine that he has none left. Mr. P. became angry and said he would withdraw his application and get the money somehow."
is asked to bring the contributor to the district office. This often creates or exacerbates hostility between the applicant and the contributor and sometimes causes suspension of the friend's voluntary payments.

"Past management" review may also be abused by painstaking investigation of the applicant's budget. This is a two-edged sword. If the applicant has been "spending more" than the grant she would receive under public assistance, or if the applicant claims that her expenditures have been extremely low, the worker questions the credibility of the claim. The Greenleigh study in Philadelphia relates that

the applicant is often subjected to long, drawn-out interrogation and demands for documentation of past expenditures and financial management. Such documentation of past expenditures is unrealistic. It is the rare person who can account accurately and minutely for how his monthly, or even weekly salary has been spent, let alone other monies.

Finally, the applicant's receipt of aid is unnecessarily delayed by requiring all verifications before the authorization of aid; many verifications could well be postponed to a period after the authorization. Most workers, for example, take an applicant's word as to the amount of Social Security benefits received and verify the statement after authorization of assistance, but do not extend this trust to other verifications.

A new state-plan requirement of the Department of Health, Education and Welfare is relevant to the unnecessary verification problem and should be clarified in the Pennsylvania Manual:

Verification of conditions of eligibility will be limited to what is reasonably necessary to assure that expenditures under the program will be legal.

Under this provision, the Pennsylvania department should prevent workers from making a detailed analysis and verification of "past management" at the intake stage. The prime focus of public assistance is a concern with current need; "past management" has been shown to be an inaccurate indicator of present need and, therefore, is not "rea-

62 Interview With Mrs. Tucker, supra note 39.
63 Ibid.
64 Ibid.
65 Greenleigh Associates, Phila. County 62-63. The report cites this as a practice which leads to delays and causes withdrawals. Id. at 62.
66 See notes 46-49 supra and accompanying text.
67 Interview With Mrs. Tucker, supra note 39.
68 Federal Handbook Transmittal No. 77, pt. IV, §2220(5)(c). The recent Pennsylvania revision included the following statement: "Verification is limited to what is reasonably necessary to assure eligibility." Pa. Manual §1234 (April 1, 1967).
sonably necessary." Thus, the agency should forbid intake workers from discussing, or requiring proof of, "past management" unless the client has acknowledged the recent receipt of a sizeable resource. After assistance has been authorized, however, the caseworker should be permitted to make inquiries into "past management" in order to offer help in present money management, home maintenance or strengthening of family life.

The mandatory appearance at the interview of "absent" fathers or contributing boyfriends should likewise be prohibited by the "reasonable necessity" provision. Since alternative means are available for contacting and "clarifying the role" of the man who is a legally responsible relative or source of income, there is little necessity in requiring his presence at the interview.

3. Difficulties of Proof

The verification burden which the applicant must fulfill is often heavy and sometimes impossible. State regulations do envisage the case where "it may be impossible to secure valid proof beyond the applicant's statement on certain eligibility factors" and advise that in such situations "the [worker] must then make a decision based on his judgment of all the available evidence, i.e., the person's credibility, and the validity of other supporting or conflicting evidence." Before this judgment need be made, however, the worker must determine that it is impossible to secure further proof. The regulation does not suggest when the prior condition of impossibility is met. This is a crucial omission since the worker who stubbornly believes that proof is possible never must "make a decision based on his judgment of all the available evidence."

As a general rule the state regulations should incorporate the concept that an applicant or recipient will not be required to exert more than a reasonable effort to provide necessary proof. In practice,
this would require a cut-off point beyond which the caseworker could not make eligibility contingent on client cooperation. The intake worker should consider the importance of preserving individual dignity, as well as the applicant’s ability to secure evidence; when there are alternative means of verification, the worker must choose the one which will minimize the burden on the client. This, of course, is a determination which can be made only after consulting with the client.

The new rule would eliminate unfair verification burdens in several situations. For example, it will eliminate verification problems for the transient seeking general assistance, who cannot reasonably be expected to provide full residence verifications. More frequent difficulties arise with eligibility requirements such as “need” or “parent’s absence from the home” in an AFDC case. One observer describes the problem:

[M]uch that is of greatest importance in determining eligibility for assistance cannot be established through real evidence. The facts that are most needed are usually of a negative nature: i.e. the applicant is not working; he has no income; he is unable to work; he has no savings; or he has no legally responsible relatives.

Under a less stringent verification rule, instead of always requiring the presence of a putative father, a worker could resort to alternative ways of verifying the fact that the father does not intend to support the child.

Providing sufficient information about a legally responsible relative (particularly a father) often causes verification problems for AFDC applicants when they are required to report details about


74 Cf. note 72 supra and accompanying text.

76 Providing sufficient information about a legally responsible relative (particularly a father) often causes verification problems for AFDC applicants when they are required to report details about

Proof of one year’s residency is often satisfied by rent receipts or through collateral contact; it is a serious obstacle for transients or highly mobile people. Interview With Mrs. Charlotte Glass, former caseworker, Pa. Dep’t of Pub. Welfare, February 14, 1967. For instance, Mr. P. claimed he had been sleeping on benches at the Pennsylvania Railroad station. The intake worker, seeking proof of residence and past maintenance, advised the applicant that he would have to ask the railroad security guards to contact the department to verify his claim. Interview With Mr. O. T., supra note 44. Faced with this task Mr. P. well might “voluntarily withdraw” his application or “fail to keep an appointment.” Similarly, it would not be surprising if Mr. P. did not “furnish the information to establish eligibility” because the guards refused to acknowledge the presence of “regular boarders” while they were on duty. See text accompanying notes 31-36 supra.

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a deserting spouse or the father of an illegitimate child. When an applicant cannot supply the name of a father, the agency usually presumes she is withholding information and will not authorize assistance. Application of a "reasonable effort" rule is necessary here. In the case of AFDC mothers, the worker should recognize that the applicant should not have to provide the address of a spouse who has deserted the family. And in some cases the agency should recognize that the woman who has been intimate with a number of men, might not be able to pinpoint the night of conception and, therefore, could not reasonably be expected to provide the name of the father of a child born out-of-wedlock.

The "less burdensome verification" rule should also apply when a worker is considering collateral contacts as sources for verification, where such proof could also be provided by the recipient. Use of the rule would prevent possible embarrassment and needless invasion of privacy; for example, instead of seeking verification of employment data from the employer, the client first should be asked to supply the proof. The client may already have evidence, such as pay stubs, in his possession; even if he has not retained the record, the client can ask his employer for a statement of past income.

4. Vagueness of Eligibility Conditions: Defining "Available Resources"

Part of the difficulty in satisfying the "means test" stems from the vagueness of the eligibility factors. Such vagueness greatly enlarges the amount of unreviewable discretion to be exercised by the worker. This is apparent when we consider the agency's all-important evaluation of "available resources."

79 Interview With Mrs. Tucker, supra note 39. In one not unusual case, an applicant could not provide the department or the Domestic Relations Court with the father's address. The court refused to entertain the support action, and the welfare department delayed authorizing assistance. Interview With Mrs. M. N., supra note 55.

A recent federal study of public assistance programs in six large cities, including Philadelphia, illustrated how "too much responsibility may be placed on the applicant to establish his own eligibility" by noting that some checks are withheld because the agency was not satisfied with efforts the woman was making to locate her husband from whom she was separated or until an applicant located and got the putitive [sic] father into the office for interview. Operation Big Crty, supra note 40, at 21-22.

80 Interview With Mrs. Tucker, supra note 39.

81 See notes 120-43 infra and accompanying text.

82 In these circumstances, use of the "less burdensome verification" test is mandated by the new federal rules requiring states to rely upon the client as the primary source of information. Federal Handbook Transmittal No. 77, pt. IV, § 2250(5)(a).

83 Since vagueness will result in lack of uniform application of eligibility requirements, causing denial of assistance to some applicants who would otherwise meet the standard level of need, a serious question is raised concerning the state plan's conformity with the Social Security Act's requirement that the plan "be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them." Section 402(a)(1), 49 Stat. 627 (1935), as amended, 42 U.S.C. § 602(a)(1) (1964).
It is a basic premise of public assistance that aid is intended only as a supplement to the individual’s resources. A resource is defined as “that which a person has, can resort to, or make available for his particular or total support, or from which assistance can be recovered.” “Available resources” thus include “legally responsible relatives” as well as “friends” who are assumed to be helpful sources of income. Although one regulation states that “resources” must be “real and not imaginary” and that the amount which the agency will set-off against the assistance grant must not be “arbitrarily or unrealistically set,” little guidance is provided for the worker, who, for example, suspects that a boyfriend can contribute or has contributed to the recipient’s needs. Thus, when some workers see gifts in the home, like furniture or appliances, they may reduce the recipient’s check or even discontinue the check, to force her to resort to the “available resources.”

The worker apparently makes no inquiry to determine whether the suspected resources are “available” in the sense that the contributor is willing to give regularly and reliably. Nor is the worker required

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85 Id. § 3230.1 (1965). Included in the definition are “non-money resources, such as commodities, shelter or maintenance, as well as income (money resources), and personal and real property.” Ibid. Federal regulations stipulate that “the State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability.” Federal Handbook, pt. IV, § 3120 (1964).

86 Relatives designated in the support law are known as “legally responsible relatives.” Pa. Manual § 3237 (1963). The Pennsylvania Support Law provides: The husband, wife, child, (except as hereinafter provided), father and mother of every indigent person whether a public charge or not, shall, if of sufficient financial ability, care for and maintain, or financially assist, such indigent person at such rate as the court of the county, where such indigent person resides shall order or direct. . . . PA. STAT. ANN. tit. 62, § 1973(a) (Supp. 1966). State regulations set down various requirements for seeking support and for amounts to be contributed by the relative. See Pa. Manual §§ 3237.1-13 (1963), 3237.131-15 (1958), 3237.16-3 (1967).

87 The state regulations provide that the income of the applicant includes “the income of the spouse/parent . . . .” Id. § 3234.61 (1967). This would appear to be consistent with the support law’s requirements. But the same regulations define “spouse” as “the legally married person (including common-law), and the man and woman maintaining a home together as a husband and wife usually do . . . .” Ibid. (Emphasis added.) Although the department may not be able to maintain that the second species of “spouse” is a legally responsible relative, it does consider his income “available.”

The regulation raises a number of problems. Foremost is the vagueness of the phrase “maintaining a home together as a husband and wife usually do.” The definition of “available” is also unclear in these circumstances, although it generally connotes access to an untapped resource.

This section is Pennsylvania’s version of what is known as the “man-in-the-house rule.” The rule has many variations among the states, but usually with the same effect: the denial of AFDC in the presence of a “substitute father,” “substitute parent,” or as in Pennsylvania “spouse/parent.” For a description of this protean rule and recommendations for litigating its validity, see Sparer, Social Welfare Law Testia, 12 PAc. LAW. 14, 15-17 (Apr. 1966).


89 Interview With Mrs. C. D., AFDC Recipient, February 11, 1967.
to ascertain whether it is in the best interest of the recipient to compel her to resort to the “available” contributor for financial support.\textsuperscript{90} Such investigation seemingly is required by the stipulation in the manual that “resources” must not be “arbitrarily or unrealistically set.” \textsuperscript{91}

A new regulation defining resources can build upon the policy underlying existing exceptions. Currently, a recipient does not have to resort to credit or accept an offer of shelter and maintenance.\textsuperscript{92} Besides conserving whatever chances a client has for future self-dependency, the exceptions also prevent further inroads into the self-respect and independence of the recipient by not requiring him to accept charity. The new regulation, therefore, might provide that where the use of an “available resource” would adversely affect the recipient’s self-respect, dignity or independence, public assistance should not be conditioned upon its use. The safeguard should also apply when insistence upon contributions would destroy a relationship between the recipient and the donor.

A further problem occurs when the agency assumes that court-ordered support payments are being received by the recipient, when, in fact, they have been terminated or paid on an irregular basis.\textsuperscript{93} A recent revision of section 3237.16 recognized one facet of this problem: “The amount of a court order is considered available income unless the court order is not being paid or is being paid irregularly. When it is being paid irregularly, the amount of income considered available is the amount paid.” \textsuperscript{94}

\textsuperscript{90} The regulations attempt to avoid requiring the recipient to seek charity or to go into debt, thereby allowing him as much as possible to maintain his independence and self-respect. Thus, “eligibility for assistance is not affected. . . .” by [the recipient’s] refusal to avail himself of an offer of shelter or maintenance.” Pa. Manual § 3230.2 (1965). Neither must the recipient resort to credit as a resource. \textsuperscript{91} Id. § 3230.1 (1965). The regulations, however, fail to provide a general test for availability of resources from another individual and, perhaps more important, do not delineate the client’s responsibility for fulfilling his obligation of resorting to the resource.

The rules do require, as a condition of eligibility, that the recipient begin court action for support against a legally responsible relative. \textsuperscript{92} Id. § 3237.11 (1963).

\textsuperscript{93} A recent Handbook Transmittal recognized this problem:

In reviewing actual practice, it has been found that most support payments in AFDC are irregular. For families whose incomes are limited, an interruption or fluctuation in support payments can result in severe hardship to the family.


\textsuperscript{94} Pa. Manual § 3237.16 (1967). This change was undoubtedly prompted by Handbook Transmittal No. 86. A new regulation, effective July 1, 1967, requires state plans to assure that “a regular amount of income is available monthly to meet the determined needs of the mother and children whether or not the [court-ordered] support payments are received regularly, and that the agency will not delay or reduce public assistance payments on the basis of assumed support which is not actually available.” Federal Handbook, pt. IV, § 3131(II) (1966). See also id. § 3124 (1966).
An analogous situation occurs when the amount considered "available" is not in fact received. The current definition of "resources" states only that the worker must consider the "actual amount of income that an individual has" but does not address itself to whether the funds will continue to be available. The partial solution covering non-payment of court-ordered support still leaves to be corrected areas where outside payments are contingent upon the reliability of a third party. One solution might be to require all sources of income which may be paid irregularly or which may be considered unreliable to be paid directly to the welfare agency, thereby assuring the client of a constant level of assistance. A second alternative is to amend the regulations to encourage greater sensitivity to future fluctuation of resources.

5. Inadequate Assistance to Help Prove Eligibility

The assistance given by the agency to the applicant in proving his eligibility is particularly important because the applicant generally is unfamiliar with the administrative rules and procedures. Insufficient help undoubtedly increases the number of eligible persons who are denied welfare.

The Department of Public Welfare looks upon proving eligibility as a joint task of applicant and worker, but specifies that the applicant

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95 Congress has addressed itself to a similar problem by requiring states participating in the Title XIX medical assistance program to: "[P]rovide for taking into account only such income and resources as are . . . available to the applicant or recipient . . ." Social Security Act §1902, 79 Stat. 346 (1965), 42 U.S.C. § 1396a (a) (17) (B) (Supp. I, 1965). Legislative history indicates that the purpose of the requirement is to prevent states from "assum[ing] the availability of income which may not, in fact, be available. . . ." S. Rep. No. 404, 89th Cong., 1st Sess. 78 (1965).


97 Federal regulations now suggest that court-ordered support payments be paid directly to the agency. Federal Handbook, pt. IV, § 3124 (1965).

A new regulation in Handbook Transmittal No. 86 recognizes the difficulty of maintaining a regular flow of support payments directly from a court or other parent. For example, "Many of the AFDC mothers . . . do not have the 'know-how' to follow through and most courts cannot assure prompt action when payments are delinquent." Federal Handbook, pt. IV, § 3124 (1966). Thus when an agency does employ the direct payment method it "must assure that public assistance payments are adjusted promptly and regularly when there is any interruption of support payments." Ibid.

98 The Greenleigh study found that the department in Cook County did not provide "the help as required by Illinois law to most applicants in establishing their proof of eligibility . . . ." GREENLEIGH ASSOCIATES, COOK COUNTY 55.

99 Pa. Manual § 3511.33 (1950); see LYEDECKER, op. cit. supra note 77, at 256: "Although the burden of proving need may rest with the presumptively needy person . . . the major responsibility still rests with the public assistance worker. As the representative of the agency, he knows the services that the
is "the person primarily responsible for providing the necessary information and proof." The regulations advise intake workers to establish "plans" with the applicant to secure verified proof. In such planning the worker

must evaluate the applicant’s capacity for helping to establish eligibility and must set forth clearly who will be responsible for getting each piece of further information and proof required. The [employee’s] help must be available to the applicant at any point where it seems to be needed, and the applicant should be informed of this service.

Available statistics, however, cast doubt upon the efficacy of this provision. The Quality Control study of Allegheny and Philadelphia Counties concluded that, "The case records indicated minimal participation by the interviewer in helping the applicant to meet the requirements." The Greenleigh Associates study of Chicago found that,

agency can provide and the conditions under which they are available; furthermore, he is the only one who can suggest ways in which these conditions can be verified or fulfilled. He primarily is responsible for the direction the investigation takes.

101 Ibid.
102 Quality Control Report 10. Of the 100 rejected applications reviewed in both Allegheny and Philadelphia Counties, the study found that "in Allegheny County the interviewers participated 4 times and in Philadelphia County the interviewers participated 5 times. They participated 'partially' even fewer times in both counties." Ibid.

Heavy workloads may contribute to such difficulties. Interview With Mrs. Tucker, supra note 39. In most cases where specific burdens of demonstrating eligibility were imposed on applicants who were later rejected, "there was no entry in the record as to whether the applicant received a written statement listing the requirements." Quality Control Report 8.

Another problem of agency assistance concerns the adequacy of information received by applicants concerning the disposition of their claim. State regulations make written notice to the applicant or recipient "mandatory" and clearly anticipate oral explanation of the actions. Pa. Manual § 3567 (1954). The usual 3" × 8½" form, number 162, includes a check list of determinations, a blank space for individual reasons and the offer to elaborate upon the form and explain appeal rights. Pa. Dep't of Public Welfare, Public Assistance Form 162 (1966). The Quality Control study, however, found that in 80% of the cases reviewed in Allegheny and Philadelphia Counties there was no indication that the applicant had received a written determination. Quality Control Report 10. The Quality Control statistics might conceal the possibility, however, that 162 forms were mailed, but not noted by the worker, or that clients were informed orally. See also Briar, Welfare From Below: Recipients’ Views of the Public Welfare System, 54 CALIF. L. REV. 370, 379 (1966) (60% of recipients interviewed were not informed of right to appeal).

In any event, even when Form 162 is received, the information conveyed by the 3" × 8½" card is of questionable sufficiency. Compare the notice language of Form 162 with Pa. Dep't of Public Welfare, What You Should Know About Applying For Public Assistance in Pennsylvania, Informational Leaflet No. 2 (1966). Inadequate notice on Form 162 and the infrequency with which this form is mailed to clients, raise a question as to whether the state is conforming with the federal requirement that every claimant is informed in writing at the time of application and at the time of any agency action affecting his claim, of his right to a fair hearing and of the method by which he may obtain a hearing.

Federal Handbook, pt. IV, § 6200(3)(b) (1965). See also id. § 6332 (1965). It has been asserted that aggrieved welfare recipients in Philadelphia have been discouraged from using the appeal process. GREENLEIGH ASSOCIATES, PHILA. COUNTY 77.
in spite of a Cook County requirement of employee aid, assistance was not provided to "most" of the AFDC applicants studied.103

The new federal regulations for state plan requirements emphasize the agency's duty to obtain necessary information when the client cannot.104 Language in the Pennsylvania application processing section105 should be supplemented to require the close supervision and direct participation of the intake worker when the applicant appears unable to comply promptly.106 In addition, it is suggested that the Pennsylvania department supplement its staff of intake workers with personnel whose sole job would be to provide help to applicants having difficulty proving their eligibility. This group could be comprised of individuals who are current or past recipients of welfare.107 Such a program would bridge the communications gap between applicants and intake workers, and provide constructive jobs to many who want to work.108

6. Erroneous Determinations

Faulty determinations arise from the inadequacies of agency workers as well as from defects in state regulations. Caseworkers are often inexperienced and without formal training in public assistance.109 Their job demands the ability to investigate social behavior and to evaluate real and circumstantial evidence. But as one writer noted:

One of the questions that baffled [a group of young public assistance workers] dealt with what they had learned about social evidence and its relation to the determination of eligibility. . . . [A]s to any understanding of the nature of evidence, per se, or of the probative value of different kinds of evidence they were completely ignorant.110

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103 Greenleigh Associates, Cook County 55.
106 In order to minimize the hardship suffered by applicants, promptness is an integral policy of the Public Assistance Act. In some cases where the applicant eventually could procure the required information, the aid of the agency may significantly shorten the determination period. The need for quick assistance overrides the value of self-help which is sometimes advocated.
107 See Pearl and Reissman, New Careers for the Poor: The Nonprofessional in Human Service (1965). For a description of a current program in which the poor are hired to serve as liaison between schools in their neighborhoods, see Div. of Pupil Personnel & Counseling, School Dist. of Philadelphia, The School-Community Coordinator Service (no date).
108 It is possible that inquiries by such assistants will decrease the high percentage of rejections in Philadelphia County due to "voluntary withdrawal or failure to keep appointment" and especially reduce the number of instances where the agency did not know the reason for the withdrawal. Quality Control data revealed that agencies did not know the reason in Allegheny County for 61%, and in Philadelphia County for 86%, of the code 63 (withdrawal or failures to keep appointment—reason unknown) terminations. Quality Control Report 4 (100 case sample examined in each county).
110 Leyendecker, op. cit. supra note 77, at 251. The lack of expertise among workers may explain a number of faulty determinations made by workers in Phila-
In addition to making faulty evaluations from observable data, workers sometimes neglect to verify adequately the resources which they assume the recipient possesses.\(^1\)

The best protection against errors is an experienced staff which has been properly trained and supervised. To a large extent this protection is a function of personnel and supervisory procedures,\(^2\) the discussion of which is beyond the scope of this Comment. The proposals which follow are intended to guard against abuses by a less-than-perfect staff.

One protective technique would be improvement of the "fair hearing" procedure. The major defect of the present system is the deprivation of assistance while a determination is being appealed. The present recipient who is threatened by a cutback has already demonstrated that he is entitled to assistance; therefore, he would seem to have a greater right to economic assistance during the hearing period than the mere applicant, who has not yet established his eligibility. One device to protect the current recipient would be prior notice of a proposed decrease and of the availability of a hearing.\(^3\) The written notification should detail the reasons for discontinuance of aid and the facts which led to the decision. If the recipient indicates a desire for a hearing, the proposed decrease should be stayed until after the hearing. These provisions would lessen the "bite" of the current "fair hearing" procedure which permits delay of up to sixty days for the holding of the hearing and thirty days more for remedial action by the local district office.\(^4\) Such delays should not be countenanced when the very means of survival are at stake.

The client whose application has been delayed or denied also requires protection in the "fair hearing" process. The first need is for adequate notice.\(^5\) A written communication should clearly state the fact of denial, the reasons for denial and the availability of appeal

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\(^5\) This would require revision of Form 162. See note 102 supra.
as a matter of right, not merely as a possibility. Secondly, the time of the hearing should be accelerated. This is perhaps more urgent for the rejected applicant than for the present recipient, since the applicant may have had no means of support for a longer time than one who has been receiving assistance until the denial.

Compensation for the period of appeal is the most effective method of minimizing hardship. One scheme might make assistance retroactive for the period since initial denial. This has the advantage of compensating only those who qualify, but the prospect of retroactive relief is of little benefit during the appeal period. The alternative is to furnish some assistance from the time appeal has been filed until final determination. This will better protect those actually in need, but may offer unwarranted payments to ineligible persons. If such broad relief is impractical, the state might consider assisting only those who have demonstrated need, but have been denied aid because of an alleged deficiency unconnected with need, such as age or residence.

B. Violations of Personal Values: Dignity, Self-Respect, Privacy

Eligibility determinations may be carried out in ways which violate those personal values which are commonly considered to warrant society's full protection and respect. It perhaps is because public assistance recipients are particularly vulnerable to such abuse that the Pennsylvania Legislature mandated that welfare be administered "humanely" and in such manner as to "encourage self-respect" among recipients.

Current practices, however, raise questions about the Department of Public Welfare's implementation of this legislative intention.

1. Collateral Contacts and Neighborhood Investigations

Contacts with persons other than the client are often a means of verifying eligibility. Although such contacts are sometimes indis-

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116 This change would be in accordance with the federal regulations, which require informing the client "of his right to a fair hearing and of the method by which he may obtain a hearing." Federal Handbook, pt. IV, § 6200(3) (b) (1965). The notice could also be published in Spanish to meet the needs of Puerto Rican clients. Cf. Federal Handbook Transmittal No. 77, pt. IV, § 2230(5) (a).

117 Such revision might clarify how an appeal is initiated. For example, the notice might inform the client of the availability of free legal counsel at a neighborhood legal services office. Currently, part of the Pennsylvania caseworker's responsibility after the client has requested a hearing is to tell him that "he may have legal counsel or other representative at the hearing. . . ." Pa. Manual § 3591 (1966). Also see Federal Handbook, pt. IV, § 6200(3) (e) (1965) ("claimant will be given . . . information that he has the right to be represented by legal counsel").

118 In Cook County, ADC recipients supported themselves for an average of fifteen months after the occurrence of the precipitating crisis before they applied. GREENLEIGH ASSOCIATES, COOK COUNTY 11.


120 Complete redeterminations are made "no less frequently" than every three months for ADC-CU cases (where needy children live in the home of an unemployed
pensable, the state has realized that a policy recognizing the applicant as the "primary source" of information will better safeguard his self-esteem and privacy. "The agency relies on the client (and public records) as the primary source of information, consulting other sources only when necessary and only with the specific consent of the client." 121

Under current regulations, therefore, a collateral contact is made only in the following circumstances:

a) The client has made every reasonable effort to obtain the facts, but without success.

b) The facts obtained by the client need clarification and the [worker] is convinced that direct contact with the source of information, rather than again through the client, would produce better results.

c) The worker [suspects] the client has either falsified or knowingly withheld essential information and wants to verify his convictions.

d) It is known that the required facts cannot be obtained directly by the client. 122

The "primary source" policy apparently envisions collateral contacts as a subordinate element in the eligibility process, and emphasizes respect for the client's choice not to consent to collateral inquiry. However, the consent which is requested is a "blanket" consent; once given at the application stage, it condones all future collateral contacts which the agency may make. 123 Except for a narrow class of cases, 124 there is no provision for seeking consent for contacts made after authorization

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121 Id. § 1234 (1967). New federal regulations now "require" states to follow this policy. Federal Handbook Transmittal No. 77, § 2220(5)(a).


123 The consent provision is printed on the application form which the applicant signs. It reads:

I agree to assist in securing any further information necessary to determine my eligibility for assistance, and hereby authorize any duly accredited representative of the Department of Public Welfare to secure any information that may be desired concerning my resources, including old-age, disability, and survivor's age and benefit information.


124 Specific consent is sought only when an outside agency requires it. Interview With Mrs. Tucker, supra note 39. See Pa. Manual § 3325.21 (1952) (signed authorization from mother required to get information concerning birth of out-of-wedlock child).

Some unit supervisors in the district offices do urge caseworkers to seek the recipient's consent for "neighborhood investigations" of the client. Interview With Mrs. Glass, supra note 75.
of aid. Furthermore, present regulations allow agency insistence on consent, forcing the client to acquiesce or withdraw voluntarily. 125

Moreover, the supposed exceptions to the primary source policy are so broad as to become the rule. Workers have wide discretion in determining inadequacy of the "reasonable effort" made by the applicant, and in ascertaining which collateral contacts are so necessary as to compel consent at the price of "voluntary" withdrawal. On this practical level, the worker, willing to ignore the primary source principle, has the freedom to make virtually automatic use of collateral contacts. 128 Such indiscriminate use of collateral contacts has three major disadvantages:

1. When workers undertake "neighborhood investigations," contact a neighbor or receive anonymous complaints, the information received will not always be reliable. 127 For example, a month after Mrs. M. began receiving AFDC, a woman on her block called the agency, informing them that a man was living with her. After visiting Mrs. M., the worker concluded that the informant had lied. 128

2. The wide use of collateral contacts has deleterious effects on the community where recipients reside. Bonds between neighbors are "greatly weakened" and a climate of suspicion is generated by informers. 129 Similarly, the use of collaterals harms the principle of confidentiality in the relationship between agency and client. 130 This

125 The regulations stipulate that
  When the evidence an applicant supplies is inadequate as proof, or is incomplete, inconsistent, or indeterminate in view of other evidence, the caseworker informs the applicant that additional evidence is required. Together the caseworker and applicant plan and agree on acceptable sources for further evidence. If agreement cannot be reached, and the evidence is essential for determining eligibility, the applicant must decide whether he wishes to accept the plan for getting further evidence. The caseworker explains that if he does not accept it, he is ineligible.

126 Interview With Mrs. Glass, supra note 75.

127 The social work profession has found that opinions of people in the community are often incomplete, erroneous or biased. LEYENDECKER, op. cit. supra note 77, at 253. The author notes, however, that verifications provided by employers, clinics, landlords and merchants (to verify debts), "may be useful." Ibid. And one former caseworker has stated that "once you know the neighborhood, collateral contacts there are helpful." Interview With Mrs. Glass, supra note 75.

128 Interview With Mrs. D. M., AFDC Recipient, February 11, 1967. Partial redeterminations must be promptly made when "[t]he agency learns of changes [in a client's circumstances] from a responsible source." Pa. Manual § 3512.2(b) (1963). One may question whether the agency ever seeks to establish the responsibility of an informer, since these redeterminations almost always follow anonymous complaints. Interview With Mr. O. T., supra note 44.


helps create feelings of distrust and fear which severely inhibit the effectiveness of the caseworker.\textsuperscript{131}

(3) Finally, this use of collaterals may tend to perpetuate in modern dress the Poor Law requirement of "badging the poor."\textsuperscript{132} The trend today has generally been away from the idea of requiring a visible and constant identification of the public assistance recipient.\textsuperscript{133} Yet indiscriminate use of collaterals signals to many people who have daily contacts with the recipient that the latter is "on welfare," and subsequently triggers the biases and discourteous treatment to which recipients are subject.

It was suggested earlier that collateral contacts be made only where the client has been given the option of providing the information himself.\textsuperscript{134} This safeguard, however, might be insufficient to meet the evils resulting from widespread reliance upon "collaterals," particularly the "neighborhood investigation."

The new Federal Handbook rules require a major change in the use of "collaterals" by interpreting the recognition of the client as the "primary source" to mean:

The agency should take no steps in the exploration of eligibility to which the applicant does not agree, including contact with collateral sources. When information is sought from collateral sources, there should be clear interpretation of what information is desired, why it is needed, and how it will be used. Agencies should not rely on a "blanket" consent for outside contacts, but should obtain a specific consent for each contact, whether with social agencies, doctors, hospitals, and similar sources, or with relatives or other individuals. The consent should cover the purpose of the contact as well as the individual or agency to be consulted.\textsuperscript{135}

It is clear that the Pennsylvania blanket consent procedure should be abolished. To replace it, the agency should provide the necessary mechanism for seeking and confirming the client's consent to specific agency actions. The forms requesting collateral verifications should

\textsuperscript{131} Prof. Setleis notes that clients will withhold information which "may be helpful in identifying and articulating those needs for which resources are available in the community or the agency." Setleis, supra note 129, at 6. See Bentrup, \textit{What's Wrong With the Means Test?}, 23 \textit{Pub. Welfare} 235, 241 (1965): "Angry, hostile, frustrated clients cannot respond productively to the ministrations of the social worker who has also had to be something of a detective."

\textsuperscript{132} See 3 Pa. Stat. at L. 1712-24, ch. 237, § 2, at 224 (1896) (requiring paupers to wear a large "P" together with the first letter of the place where they resided on the shirt-sleeve; letters could be in either red or blue cloth).

\textsuperscript{133} See, e.g., Federal Handbook, pt. IV, §§ 5100-10 (1955), 5120-42 (1947); Leyendecker, \textit{op. cit. supra} note 77, at 175-78.

\textsuperscript{134} See note 82 supra and accompanying text.

\textsuperscript{135} Federal Handbook Transmittal No. 77, pt. IV, § 2230(5)(c).
indicate whether the client’s consent was granted and how it was communicated to the worker.\footnote{138}

The consent requirement would be meaningless if a refusal to consent would result in “voluntary withdrawal” or “failure to furnish information.” Language in manual section 3511.33ii, requiring the client to make this Hobson’s choice, must be revised to allow the client to refuse, without being faced with denial of assistance. But because verification through collateral contacts, either at the application stage or afterwards, is sometimes a necessity for the proper administration of welfare, the question of when to bypass the consent requirement remains. The answer provided by the Federal Handbook is inadequate. These rules allow an agency action contrary to required practices in “specific situations where there is special need to use other procedures.”\footnote{137} The restriction to “specific situations” implies that the exceptions are not to become methods of verification applicable to most cases. The interpretive ruling, however, does not define what constitutes “special need,” even though reasons for the use of the contrary practice must be given.\footnote{138} Fred H. Steininger, Director of the Bureau of Family Services, allegedly stated that the exceptions provision was “to cover those situations where the client would not give consent, but suspicions had to be investigated without consent”\footnote{139} if fraud seemed likely.\footnote{140}

It is unarguable that refusal of permission by the client should not prevent a collateral investigation into fraud. Yet even with Mr. Steininger’s gloss, the regulations in the Federal Handbook are too indefinite to reconcile the use of occasional “collaterals” with the personal rights guaranteed by the Handbook.\footnote{141} It is suggested, therefore, that consent must be \textit{sought} for a collateral contact whether fraud is suspected or not. In seeking the client’s consent the worker should be required to inform the client that he has a right to refuse to give his consent; the worker must be certain that the client understands that he has that right. Second, the mere refusal of consent should not be grounds for “suspicions” that fraud may be present; such grounds would provoke unconsented investigations in situations


\footnote{137} Federal Handbook Transmittal No. 77, pt. IV, § 2230(5)(c). The section further provides:

\begin{quote}
If other procedures are followed in a specific situation, the case record must specify the reason why they were needed, and the specific procedures followed, which must be consistent with IV-2220, item I, and IV-2230, item I [sections requiring respect for the client’s individual rights, privacy and personal dignity].
\end{quote}

\footnote{138} \textit{Ibid.}


\footnote{140} \textit{Id.} at 27343. In reply to a recent inquiry concerning proposed clarification, Mr. Steininger stated that, “No changes have been made in the policy.” Letter From Fred M. Steininger, Director, Bureau of Family Services, U.S. Dep’t of Health, Educ. & Welfare, March 6, 1967, on file in Biddle Law Library, University of Pennsylvania.

\footnote{141} Federal Handbook Transmittal No. 77, pt. IV, § 2220(1).
where honest recipients are legitimately asserting their rights. Third, nonconsensual "collaterals" may be considered only where the refusal is made in the face of conflicting evidence or in a context casting reasonable doubt upon the veracity of the client's statements. As checks upon the worker's adherence to these procedures, the agency should require: (1) the approval of the worker's supervisor for the rare nonconsensual investigation, and (2) a recital in the case record of a) the facts leading to the decision to employ the procedure, and b) "the specific procedures followed." 142

2. Home Visits

Home visits by caseworkers are also occasions for government intrusions into the recipient's privacy.143 There is, however, no stated requirement for a home visit either in the regulations or in legislation; the practice is largely one of accepted administrative practice.144

Intake workers processing applicants rarely make home visits; the first visit is usually made by the unit caseworker in a period after assistance is authorized. Caseworkers are under no compulsion to give notice before each visit, although a prior appointment is recommended as "an efficient way to make sure that the client will be home at the time of the visit." 145 The advantages of surprise visits are clearly set forth in the Manual:

142 See id. § 2230(5) (c).

143 One may question whether day-time visits are a real threat to the privacy of recipients. In a half-dozen interviews with recipients, this writer found that complaints did not concern the visiting procedures per se, such as unannounced visits, but concerned rather the conduct, attitudes and verbal statements of the worker while visiting. One recipient, for example, "wouldn't mind Saturday visits if the worker would only treat me all right." Interview With Mrs. D. M., supra note 128.

This qualified acquiescence can perhaps be explained as a phenomenon of lower class living styles in which there is often little chance for privacy and where individuals are conditioned to accept trespasses upon personal values, especially from government agencies.

One professor of social work has theorized that welfare recipients conceive of themselves as suppliants rather than as citizens possessing certain rights, and that this view is reinforced by the welfare agency. Briar, Welfare From Below: Recipients' Views of the Public Welfare System, 54 CALIF. L. REV. 370 (1966). After interviewing ninety-two recipients, Prof. Briar found that of those who said there was a law permitting the recipient to refuse night entry to a worker who did not have a search warrant, a substantial number also said that the recipient did not have a right to invoke the law. Id. at 382. Of those stating that the recipient had the right to refuse the night entry, a typical response was, "All people have the right not to let someone enter their home if they don't want them to. But in the case of the social worker, one ought to let her in." Ibid.

144 See note 15 supra. The only state agency rule on the subject assumes the existence of and necessity for the practice. Pa. Manual § 3567.2 (1960) (appointment for home visit).

Federal rules require as a part of state plans only that eligibility determinations include at least one interview with the client. Federal Handbook, pt. IV, §§ 2231 (1) (c), (2) (b) (1963). The new rules interpret this requirement as necessitating "a personal interview, preferably in the individual's home." Federal Handbook Transmittal No. 77, § 2230(5) (b).

There are occasions when advance notices of home visits are not desirable. This is true when the presence or absence of any person in the home at the time of visit would be an indication of eligibility or ineligibility. When a caseworker has any reason to believe that an applicant or recipient who claims unemployment may actually be working, or that a person who has applied or is receiving assistance is not actually in the home, or when there is some question as to the people who are actually members of the shelter group, etc., home visits should be made unannounced.\(^{146}\)

The rules also lack any provision requiring workers to seek the consent of the recipient to enter his dwelling. Refusals are quite rare even though it is unclear what the consequences of such a refusal would be.\(^{147}\)

There is nothing in the rules governing the time during which the caseworker may interview the client at home. In practice though, virtually all visits are made during working hours—8:30 a.m. to 5:00 p.m.—and there is a working policy of not making visits at other times.\(^{148}\) Nor are there any regulations concerning the scope of the worker's inspections or observations at the client's residence. Practices differ widely. Some workers "will frequently ask to see the whole house," but many will "not make any inspection of a room other than the room where the client is being interviewed."\(^{149}\)

As with other eligibility practices, one may seriously question the desirability of the procedure currently in use. Some members of the social work profession doubt the necessity of home visits for eligibility determinations and for offering services to recipients.\(^{150}\) At

\(^{146}\) *Ibid.* The absence of an affirmative policy requiring notice, or even a recommended policy based upon the value of privacy and the low threshold of suspicion and ubiquitous coverage of this provision, lead one to conclude that most home visits in Philadelphia are made without prior notice. An experienced supervisor confirms this conclusion. Interview With Mrs. Tucker, *supra* note 39. Whether advance notice will be given is usually a function of efficient case-load planning or of the recognition of the value of privacy.

\(^{147}\) It would appear that the agency would have grounds for discontinuing assistance based upon the "code reason" that the recipient failed to furnish information necessary to establish initial or continued eligibility. Pa. Manual § 3610, app. II (1966). See also id. § 3321 (1952) (verification process).


\(^{149}\) Interview With Mrs. Glass, *supra* note 75. Apparently workers are cautioned during training that "you are a guest in the client's home." Interview With Mr. Winston, *supra* note 148. "No one is trained to do a rigorous search when in the home." Interview With Mrs. Tucker, *supra* note 39.

\(^{150}\) One critic considers home visits largely irrelevant to the determination of eligibility while acknowledging the counter-argument of possible fraud by recipients. He further believes that home visits have little justification as a concomitant of offering services, citing the practices of social service agencies which have found such visits time-consuming and unnecessary. Interview With George Hoshino, Associate Professor, University of Pennsylvania School of Social Work, in Philadelphia, Pa., December 14, 1966. An experienced social worker maintains that "nothing
the very least, the home visit process lacks the state-imposed restrictions necessary to protect the client from the caseworker's discretion.

Establishing satisfactory rules for conducting home visits is complicated by the conflict between the undefined purposes of these visits and the desire to protect individual privacy. Because the "midnight welfare raid" is apparently not employed in Pennsylvania, this discussion will focus on the periodic, day-time visits made by agency case-workers.

The recent revision of the federal regulations in Handbook Transmittal No. 77, focusing on protection of privacy, provides:

States must especially guard against violations in such areas as entering a home by force, or without permission, or under false pretenses, making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, or papers, to seek clues to possible deception.

This provision, however, neglects two important safeguards of privacy: a) prior notice and b) right of entry only after effective consent.

Prior notice of a visit should be viewed as a norm of decency to which our society should subscribe. It is a courtesy which allows residents to prepare themselves and their homes properly, and prevents inconvenience. Prior notice is particularly necessary in the welfare area, because the worker expects the person visited to be prepared to offer information and documentation and to be amenable to serious conversation. Establishing a practice of giving notice prior to visiting is consistent with state legislative policies requiring humane administration of assistance and the preservation of the applicant's self-respect, and with the policies underlying Handbook Transmittal No. 77.

comes out of surprise visits" and adds that "we believe an applicant enough to authorize assistance in the office." Interview With Mrs. Tucker, supra note 39. Yet another former caseworker states that "you can do a much better job in determining eligibility" through the unannounced visit; she believes home visits are more conducive than office interviews for communicating with the recipient. Interview With Mrs. Glass, supra note 75. See also the new federal interpretation, supra note 144.


162 Federal Handbook Transmittal No. 77, § 2230.1.

163 All visits made by the Division of Quality Control office in Philadelphia are made only through prior appointments. Interview With Mrs. Tucker, supra note 39.

The New York City Department of Welfare, which until recently operated on the basis of discretionary prior notice, has changed its practice to require prior appointments for home visits. Address by Morton Rogers, Special Assistant to the N.Y.C. Comm'r of Welfare, Law Students Civil Rights Research Council Conference on Welfare Law, in New York City, March 17, 1967. Implementing the new policy apparently has been somewhat difficult because of the intransigence of lower level administrators. Address by Carl Rachlin, Esq., Law Students Civil Rights Research Council Conference on Welfare Law, supra.


165 Federal Handbook Transmittal No. 77, §§ 2220(1), 2230(1).
Implementing a standard form of prior notice should not be difficult. Postage-paid mailing cards can be sent out to clients informing them of the date and time of the proposed visit and of any special purposes, such as seeing certain documents or observing the children. The card should also have space for the client to give an alternate time or date. If the card is not sent back to the agency, it may be presumed that the client has consented to the visit (although this cannot constitute sufficient consent for entry into the home).

The Supreme Court's recent decision in *Camara v. Municipal Court* \(^{156}\) should substantially guarantee recipients' right to freedom from unwanted entries. *Camara* overruled *Frank v. Maryland* \(^{157}\) "to the extent that it sanctioned . . . warrantless inspections." \(^{158}\) *Camara* came before the court on an appeal from a conviction for refusing to allow a fire inspector to make an inspection without a warrant. In reversing the conviction, the majority rejected a fourth amendment distinction between criminal and civil searches:

> [O]ne governing principle, justified by history and by current experience has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.\(^{159}\)

The Court's rationale in demanding warrants for routine inspections of the physical condition of private property would seem to be fully applicable to home visits by welfare workers:

> [W]e cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security.\(^{160}\)

Thus, it would seem that when county office workers, \(^{161}\) "special investigators," \(^{162}\) members of the Location and Resources unit \(^{163}\) and

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\(^{156}\) 387 U.S. 523 (1967).

\(^{157}\) 359 U.S. 360 (1959) (Frankfurter, J.).

\(^{158}\) 387 U.S. at 528.

\(^{159}\) Id. at 528-29.

\(^{160}\) Id. at 530-31.


\(^{162}\) See text accompanying notes 169-70 infra.

\(^{163}\) See text accompanying notes 171-74 infra.
auditors want to make an unconsented search, they must obtain a warrant from a magistrate by showing "probable cause." Having guaranteed the privacy of welfare recipients by establishing the warrant requirement, it seems clear that the courts should not permit eligibility for welfare payments to be conditioned on an applicant's consent to a warrantless search. The consent under these circumstances would scarcely be voluntary; and in any event, the recipient's fourth amendment right to privacy cannot be limited by its waiver being made a condition of receiving a benefit which the state has chosen to confer.

There may be situations, however, where a welfare applicant may consent without coercion, real or implied, to a warrantless visit to his home. To ensure that consent is indeed voluntary and satisfies constitutional standards, the following procedure is suggested. When the worker arrives at the door he should be required to identify himself properly, state the purpose of the visit and inform the resident of the right to refuse entry. He should emphasize that the refusal will be honored, and that the refusal will not affect his eligibility as long as he agrees to an interview elsewhere or another suitable mode of communication. The worker should only enter the home after he is sure that the client has understood this right and has knowingly consented to the visit. In the event that the client refuses to agree to another interview or method of communication, the agency, after informing the client of his obligations, may find him ineligible for assistance.

3. Special Investigations

Abusive investigatory procedures may also result from the use of "special investigators," "location" units, or field auditors of the

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164 See text accompanying notes 175-78 infra.
165 This reasoning was utilized by the California Supreme Court in a pre-Camara decision, Parrish v. Civil Service Comm'n, 66 Cal. 2d 253, 57 Cal. Rptr. 623, 425 P.2d 223 (1967). The persons subjected to the instant operation [of mass welfare searches] confronted far more than the amorphous threat of official displeasure which necessarily attends any such request. The request for entry by persons whom the beneficiaries knew to possess virtually unlimited power over their very livelihood posed a threat which was far more certain, immediate, and substantial. These circumstances nullify the legal effectiveness of the apparent consent secured by the Alameda County searchers.
167 The Department could provide caseworkers with a home visit consent form from which the worker could read the declaration of the recipient's rights. The form could contain a place for the client's signature for each visit made. This latter procedure could also be viewed as an administrative check upon the worker to assure that he has completed the scheduled visit. For an analysis of the problem of consent to searches and suggestions for applying the waiver and warning requirements of recent Court pronouncements, see Note, Consent Searches: A Reappraisal After Miranda v. Arizona, 67 Colum. L. Rev. 130 (1967).
168 There may be a problem if the recipient is willing to comply with out-of-home procedures to determine eligibility, but refuses to allow services to be provided through a home visit. The Pennsylvania Manual provides for this eventuality: "The rights of a person eligible for financial assistance are in no way affected by the client's decision to accept or reject other services provided by the agency." Pa. Manual § 3714.1 (1967).
State Department of the Auditor General. Two state regulations allow for the employment of "special investigators" to locate an absent parent or a legally responsible relative. Although the utility of such investigators has been questioned, it is not certain that they have fallen into total disuse.

A special "support" unit with a total staff of nineteen employees was established in Pennsylvania in 1952 and operated in six counties to locate and secure support from missing fathers. It was reported that this support unit "complicated agency administration, and . . . engaged in some activities which were properly the responsibility of the police and the courts." Although such units disappeared for a while, they seem to have been revived recently as the "location and resources" unit.

The Auditor General's Bureau of Public Assistance is apparently making extensive use of the field audit. In Philadelphia for example

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169 Id. §§ 3122.422, 3237.12 (1963).
170 A state administrator acknowledges that we have at different times experimented with [special investigators] on the State Staff for use by the counties on special cases. This we found not to be too practical since the need for the special services was limited and the results did not seem to warrant their continuance.


172 Id. at 19.
174 This Unit acts as a clearing house on all location requests concerning public assistance cases and clears the various State Departments concerning employment, address, and criminal record. In addition, this Unit clears with other States when the fugitive father has left this State. At the present time, information is exchanged with thirty-five other states that also have location services.

Letter From Michael Posmoga, supra note 170.

Mr. Posmoga expresses the hope that "much more can be done in strengthening the location machinery. . . . by establishing special staff units in our metropolitan offices. . . ." Ibid.

175 The Department's authority derives from the State Fiscal Code: The Department of the Auditor General shall have the power, and its duty shall be, to audit the accounts and records of every person, association, corporation, and public agency, receiving an appropriation of money, payable out of any fund in the State Treasury, or entitled to receive any portion of any State tax for any purpose whatsoever, as far as may be necessary to satisfy the department that the money received was expended or is being expended for no purpose other than that for which it was paid. . . .

PA. STAT. ANN. tit. 72, § 403 (1949). (Emphasis added.) The section has been held to allow the department to undertake field visits to "public assistance money recipients." Letter of Edgar R. Casper, Deputy Attorney General, to Max Rosenn, Secretary of Public Welfare, March 22, 1967, on file in the Biddle Law Library, University of Pennsylvania.

The above statute does not mandate home visits, but gives discretion to the department to determine the necessity of this method of investigation. Pennsylvania
approximately 30 per cent of a district's AFDC cases were audited by this Bureau;\(^\text{176}\) home visits are an integral part of this investigation. There is also some evidence that the home visits involved in this process are made without prior notice and proper identification.\(^\text{177}\) Moreover, the Greenleigh Associates study led to the conclusion that

the work of the Auditor General is negative and duplicative. This 'audit' represents a heavy and useless burden and has a negative impact on staff and recipients. Errors turned up by this big operation are minor, of negligible significance, and little dollar value.\(^\text{178}\)

III. A Proposal for Major Reform: The Declaration System

Changes in the language of the state regulations may not control workers' discretion sufficiently to prevent unjustified denials and demeaning treatment.\(^\text{179}\) Therefore, amelioration of the welfare problems discussed may require more extreme procedural reform. One possibility is the institution of a declaration or affidavit system whereby eligibility determinations will rely solely on information presented at an interview with the worker.\(^\text{180}\)

Under this system, the applicant or recipient would complete a form requesting the facts needed to determine eligibility. He would then testify to their veracity. Further investigation would be prohibited unless there were apparent inconsistencies on the face of the declaration or unless the declaration were incomplete. To detect and deter fraud and to encourage accuracy, a random sample of cases would be continually subjected to the full investigative process. These investigation procedures would contain the same safeguards elaborated earlier in this Comment. Thus, the Department of Public Welfare would

is unique in having an outside agency undertake such a detailed auditing of its public assistance operation. \textit{Greenleigh Associates, Phila. County 66.}


The Department of Public Welfare may well lack jurisdiction to regulate the activities of these auditors. The Public Assistance Act states that, "Such regulations [of the Department] shall not prevent or interfere with investigations by proper authorities as to the rights of persons to receive assistance or as to the amounts of assistance received." \textit{Pa. Stat. Ann. tit. 62, § 2504.1(b) (Supp. 1966).}

\(^\text{176}\) \textit{Greenleigh Associates, Phila. County 66.}

\(^\text{177}\) Interview With Mr. O. T., \textit{supra} note 44. This source also noted that unnecessary hardship has been caused by auditors informing recipients that they are ineligible for assistance.

\(^\text{178}\) \textit{Greenleigh Associates, Phila. County 66.}

\(^\text{179}\) For example, even though there is now a regulatory check on discussion of "past management," workers continue to ignore the prohibition by asking for detailed accountings. See notes 59-65 \textit{supra} and accompanying text.

\(^\text{180}\) For a detailed description of a declaration system, see \textsc{N.Y.C. Dep't of Welfare, Use of "Declaration" in Determining Eligibility for Public Assistance} (rev. Dec. 1966). See note 211 \textit{infra}. 
place the recipient of public assistance in a position similar to that which the taxpayer maintains with the Internal Revenue Service.

A. Rationale for the System: Unfulfilled Statutory Purpose

We have seen that the administration of the means test results in the disturbing phenomenon of a high rate of non-authorizations, a large percentage of which are ascribed to "voluntary withdrawal," "failure to keep appointments" or "failure to furnish information establishing initial or continuing eligibility." Such consequences are almost a necessary concomitant of the present eligibility process, in which workers have virtually uncontrolled discretion, and procedures for determining need are often burdensome and complicated.

Concern about the administration of eligibility tests has grown in recent years. In 1963, U.S. Welfare Commissioner Ellen Winston, after making an exhaustive, nation-wide AFDC eligibility review for the Senate Appropriations Committee, wrote:

Nothing in the results of the review or elsewhere indicates that complexity or excessive detail in themselves add anything constructive to the determination process. We just get more involved in the minutiae of each family's daily life, usually without substantially decreasing its hazards. On the contrary, when overdetailed and even punitive policies are applied, we increase the hazards.

Commissioner Winston concluded that:

The review results clearly indicate that, by and large, any intricate procedures for making detailed determinations of eligibility are unnecessary. Worse, they may be detrimental to economy of operation, to good administration, and to effective service, whether that effectiveness is evaluated from the viewpoint of the client or of the public.

Included in the "intricate procedure" which the Commissioner condemns are the proof requirements so burdensome as to lead to the denial or delay of assistance to eligible applicants or recipients, and the unnecessary verifications which are entrenched in agency practice.

A further deficiency of the present system is that trained caseworkers undertake work which could be performed better by clerks. In

181 See notes 31-36 supra and accompanying text.
182 See notes 54-70 supra and accompanying text.
183 See notes 4-7 supra.
185 Ibid.
186 See notes 37-53, 71-82 supra and accompanying text.
187 See notes 54-70 supra and accompanying text.
188 It was found in one metropolitan area that 80% of the caseworkers' time was devoted to eligibility and payment determinations. Burns, What's Wrong with Public Welfare?, 36 Social Service Rev. 111, 114 (1962).
addition to wasting professional resources, the requirement that workers be both investigator-clerks and social workers places undesirable limitations on the services offered to clients. It has been said that "the money function disables and overwhelms social services" because the allocation of time and resources is weighted toward checking eligibility, or because barriers of distrust and fear between caseworker and client are raised in an authoritarian setting. The combination of functions also may lead to the employment of the welfare check as an instrument of behavioral control over the client. Tying the availability of monetary assistance to the satisfaction of caseworkers' subjective standards is contrary to the principle of statutory entitlement to public assistance. The use of a declaration system, in which determinations would be handled by a clerical staff and social workers would be free to practice casework, greatly reduce the opportunity to employ the assistance check as "bait" for character reformation.


190 See note 188 supra. State regulations stipulate that various services should be provided at the application stage, such as identifying needs and problems affecting the individual and family functioning and referring applicants to resources in the agency and community. See Pa. Manual § 3714.311 (May 1, 1967). But the Greenleigh study of Philadelphia showed that insufficient time is allocated to achieve these ends:

"The work load of the intake units does not allow for careful planning for new applicants. The emphasis here is on establishing, or rather not establishing eligibility. It is most pointedly not on diagnosing the applicant's problem and planning how he may become independent or at least function more constructively. There is not time, nor, would it seem, the will to provide such service."


Eligibility determinations also result in considerable administrative expense. A 1960 study of administrative costs of the eligibility determination and redetermination process in Pennsylvania showed that such costs amounted to 56.4% of the total costs of administering public assistance and social services. Pa. Dep't of Public Welfare, Administrative Cost Study (1960) as cited in Copple, Improvement of Current Public Assistance Administration Procedures with the Help of Statistical Decision Theory Techniques 6 (1967) (unpublished thesis on file in library of Wharton School of Finance and Commerce, University of Pennsylvania).

191 See note 131 supra.

192 As one authority has written:

[The] concern of assistance with the whole range of income always contains a threat to the freedom of the individual. Even when there is no conscious intent to dictate behavior to the beneficiary, the pervasive power of money dispensed under the means test may cause the slightest suggestion to have the effect of compulsion. "Whose bread I eat, his song I sing."


Another defect of the current administration of the means test was suggested by Commissioner Winston's reference to the hazardous involvement "in the minutiae of a family's daily life." This statement refers to eligibility practices which are demeaning and humiliating for the client. Although determinations of individual need necessarily require governmental interference into private lives, the offensiveness of such intrusions can be minimized. Present administration of the means test virtually presumes the dishonesty of every applicant for public assistance as a justification for verification and investigation and ignores legislative goals of encouraging self-respect and administering public assistance humanely. Adoption of the declaration system would be an explicit recognition of these ends.

B. Authority and Precedent for a Declaration System

In the 1965 Social Security Amendments, Congress condemned complicated and burdensome methods of determining eligibility. The new Title XIX, which seeks to establish a more effective Kerr-Mills medical assistance program, requires that federal grants provide such safeguards as may be necessary to assure that eligibility for care and service under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipient.

The legislative history indicates that the purpose of this provision was to guarantee that states would not use "unduly complicated methods of determining eligibility which have the effect of delaying in an unwarranted fashion the decision on eligibility," and that states would eliminate "unrewarding and unproductive policies and methods of investigation." The new Title XIX provision sets the stage for state agencies to employ the declaration system in their medical assistance programs.

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States such as New York have taken advantage of this provision to establish pilot "declaration" projects. See N.Y.C. Dep't of Welfare, Use of "Declaration" in
Federal rules now state, as a criterion for administering the state plan, that the agency make "maximum use of declarations or other types of statements containing only essential factors of eligibility filled out and signed by the applicant or recipient . . . ." 198

Although the provision was not incorporated into any public assistance titles other than the medical aid title, in 1965 Congress was expanding the Kerr-Mills program and was not attempting to rewrite the public assistance program. In reviewing the medical assistance area, Congress responded to complicated procedures and unproductive investigations—problems which are equally pressing in other welfare programs. Its remedial action in this instance appears to be an instructive expression of intent that might guide states in the administration of other public assistance titles.

In 1962, Congress ordered the Secretary of Health, Education and Welfare to appoint an advisory council to review the administration of public assistance.199 The 1966 Report of the Advisory Council on Public Welfare described current welfare practices200 and recommended to the Secretary that the declaration principle be established.201 A similar recommendation has been made by the Health and Welfare Council of Philadelphia and Greenleigh Associates, Inc.202

In Pennsylvania, the use of affidavits for Medical Assistance to the Aged (MAA) is a precedent for initiating the declaration plan in other public assistance programs. Although the Legislature was silent as to the process for ascertaining resources of MAA applicants, the Department of Public Welfare specified that


200 E.g., "The methods for determining and redetermining eligibility for assistance and the amount to which the applicant is entitled are, in most States, confusing, onerous, and demeaning for the applicant; complex and time consuming for the worker; and incompatible for the concept of assistance as a legal right." U.S. DEP'T OF HEALTH, EDUC. & WELFARE, REPORT OF THE ADVISORY COUNCIL ON PUBLIC WELFARE xii (1966).

201 Ibid. The Council recommended that its proposals become part of a new title to the Social Security Act, but it may be a valid exercise of the rule-making powers of the Secretary of Health, Education and Welfare to effectuate some of the Council's recommendations which are in the nature of procedural reforms. See note 45 supra.

the client's sworn affidavit about circumstances other than [legally responsible relatives] is acceptable verification unless there are inconsistencies, clues, or information indicating that further verification is needed.203

In a study of the Pennsylvania MAA reform, one authority concluded that the declaration system proved to be "administratively simple, efficient, and relatively nondeterrent .... Home visits were seldom made, item-by-item budgeting was eliminated, paperwork and recording were minimized, and the detailed investigative process was absent." 204 "Resource examiners" handled most applications. It was found that these positions need not be filled by college graduates.205 In this manner, simplification of the means test can lead to more economical allocation of manpower, freeing skilled workers for service positions and improving the morale of caseworkers.206 Pennsylvania also has accepted the use of declarations in the Food Stamp Program207 and in the State Blind Pension assistance program.208 Partial recognition of the affidavit principle also may be seen in the Manual's presumptive eligibility provision 209 and in the informal practices of intake workers.210

The successful experiences of a number of states employing a declaration or affidavit plan should encourage an experimental program in Pennsylvania.211 A detailed study of demonstration projects in

203 Pa. Manual § 9240 (1966). The special provision covering financial circumstances of relatives permitted the use of affidavits as acceptable verification in most cases, and therefore is not an important exception to the affidavit principle. See id. § 9223.611.

204 Hoshino, Can the Means Test Be Simplified?, 10 SOCIAL WORK 98, 101 (1965). The program's effectiveness was due also to the substitution of the principle of "assumed average need" for that of "individually budgeted need." Id. at 102. See PA. STAT. ANN. tit. 62, §2509.1 (Supp. 1965).

205 Hoshino, supra note 204, at 100, 103.

206 Illustrative of the attitude of welfare caseworkers who were initially assigned to MAA eligibility determinations was a worker's statement: "I plan to leave, .... I'm not doing social work; this is a clerk's job." Id. at 103.

207 See Pa. Manual §§ 3753.11-12 (1967). For example, home visits are made on a sample basis for non-public assistance households. Id. § 3758.1 (1966).

208 See id. § 3767.2 (1965).

209 See id. § 3626 (1966).

210 Workers sometimes take at face value statements concerning bank accounts, ownership of non-resident real property and Social Security benefits. Where verification is possible, it is delayed until after authorization of assistance. Interview With Mrs. Tucker, supra note 39.

211 Such states as California, Colorado, New York and West Virginia wanted to provide improved and expanded social services through better allocation of agency resources. Hoshino, Simplification of the Means Test and Its Consequences 19-20 (1966) (unpublished manuscript on file with the author); N.Y.C. Dep't of Welfare, supra note 197, at 1. Some states which had earlier experimented with MAA declaration forms or mailed questionnaires wanted to extend the successful reform to other categories. Hoshino, supra, at 10-12. In addition to the above motivations, the New York City program was intended to provide assistance more promptly, enhance the dignity of applicants, create a climate of mutual respect between client and worker and reduce administrative costs. N.Y.C. Dep't of Welfare, supra note 197, at 1-2.
these states found that experiments with declarations and mailed questionnaires showed that the simplified methods “result in a more efficient, effective, and dignified way of determining eligibility.” 212

Because the declaration plan may be subject to the criticism that the number of ineligibles on welfare will increase, it is important to point out that there is little evidence that the use of declarations has resulted in serious problems.213 The Maryland study of declaration form usage in the Medical Assistance program showed an extremely low incidence of fraud—1.6 per cent of the cases reviewed.214

Models for “declaration” projects now exist to guide state welfare departments in the establishment of the declaration system in all categories of public assistance.215 The interests of both the agency and the welfare client require that trial projects be established.

212 Hoshino, supra note 211, at 15. Professor Hoshino does point out, though, that simplification of eligibility procedures is most effective when substantive policies such as determinations on the basis of group rather than individual need have been effectuated. In the same vein, the author also recognizes that “the basic problems are the complexity of the eligibility policies themselves—on the face of which the simplified methods still appear entirely workable—and the ingrained habits and attitudes of many staffs.” Id. at 18.

213 Id. at 17. Alabama specifically found that errors in a number of cases had been caused by factors other than willful misrepresentation. See Ala. Dep't of Pensions and Security, A Simplified Method of Establishing Continuing Eligibility in the Adult Categories, 30 ALA. SOCIAL WELFARE 13, 14 (1965).

None of the projects except the unfinished experiment in New York City involved AFDC recipients. This reticence may be due to the fear of a higher incidence of fraud in this program and to the belief that public policies require maintaining the highest level of administrative checks on eligibility for AFDC.

Reasons cited by agencies included “the more frequent changes in circumstances, the greater employment opportunities, and the variation in requirements in [the AFDC] program.” Ala. Dep't of Pensions and Security, supra, at 13.


215 See N.Y.C. Dep't of Welfare, supra note 197.