
MERCER COUNTY BOARD OF SOCIAL SERVICES, o/b/o CASSANDRA D. RICKS, : SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION, FAMILY PART
: MERCER COUNTY

Plaintiff, : DOCKET NO. FD-11-1012-06

v. :

CIVIL ACTION

REVEL FOWLER, :

Motion Returnable: July 20, 2007

Defendant. :

**BRIEF IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF
MERCER COUNTY BOARD OF SOCIAL SERVICES**

MERCER COUNTY BOARD OF SOCIAL SERVICES

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PLAINTIFF, MERCER COUNTY BOARD OF SOCIAL SERVICES,
RESPONSE TO CRYSTAL FOWLER'S
STATEMENT OF MATERIAL FACTS

1. Admitted.

2. Admitted.

3. It is admitted that there is a sixty (60) month cumulative time limit on the provision of WFNJ cash assistance to eligible families pursuant to *N.J.S.A. 44:10-72* and *N.J.A.C. 10:90-2.3*. However, MCBSS objects to the use of "few exceptions" because in the history of MCBSS' application of these laws, no family has been removed from cash assistance because they exceeded the sixty (60) month cumulative time limit. See Certification of Barbara Buckley.

4. Admitted.

5. Admitted.

6. Admitted but the footnote #2 is incorrect in stating "WFNJ-GA" program, it should be "WFNJ-TANF" in accordance with *N.J.A.C. 10:90-2.7*.

7. It is admitted that there is a sixty (60) month cumulative time limit on the provision of WFNJ cash assistance to eligible families pursuant to *N.J.S.A. 44:10-72* and *N.J.A.C. 10:90-2.3*. However, MCBSS objects to the use of "few exceptions" because in the history of MCBSS' application of these laws, no family has been removed from cash assistance because they exceeded the sixty (60) month cumulative time limit. See Certification of Barbara Buckley.

8. Admitted.

9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.

27. Denied. Unreimbursed assistance (URA) is defined as the cumulative amount of assistance paid to a family for all months which has not been repaid by assigned support collection. The term "assistance paid to the family" for child support

enforcement collection purposes, means money payments in cash, checks, or warrants immediately redeemable at par to eligible families under state plan approved under Title IV-A. See Exhibit A, Interrogatory answer to question #14 by MCBSS, of the Certification of Melanca D. Clark, Esq. in support of Crystal Fowler's Motion for Summary Judgment.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied. The child support payments that are retained are limited to the arrears set forth in the Court's Support Order and continues until TANF benefits are paid. After TANF benefits are ceased, reimbursement is obtained through arrears payment by the non-custodial parent. See Exhibit A, Interrogatory answer to question #14 by MCBSS, of the Certification of Melanca D. Clark, Esq. in support of Crystal Fowler's Motion for Summary Judgment.

35. Admitted.

36. Denied. See response to paragraph 34 above.

37. Denied. See response to paragraph 34 above.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Denied. In addition to TANF cash assistance, Crystal's family receives food stamps, emergency housing assistance, child care, and transportation to meet their living needs.

48. Denied. Cassandra Ricks also receives \$50.00 pass-through from child support payments.

49. Denied. See response to paragraph 47 above.

50. Admitted. However, it is admitted that there is a sixty (60) month cumulative time limit on the provision of WFNJ cash assistance to eligible families pursuant to *N.J.S.A.* 44:10-72 and *N.J.A.C.* 10:90-2.3. However, MCBSS objects to the use of "few exceptions" because in the history of MCBSS' application of these laws, no family has been removed from cash assistance because they exceeded the sixty (60) month cumulative time limit. See Certification of Barbara Buckley.

51. Admitted.

52. Admitted.

53. Admitted.

54. Denied to the extent that the statement implies that as of May 7, 2007, MCBSS will receive \$9,398.00 in reimbursement from Cassandra Ricks. In accordance with the Court Order dated September 20, 2006, arrears or assistance to be reimbursed is \$1,494.00 based upon an effective date of May 8, 2006. Exhibit M, Certification of Melanca D. Clark, Esq. in support of Crystal Fowler's Motion for Summary Judgment.

55. Denied to the extent that MCBSS has determined that the emergency assistance received by Ms. Ricks for the benefit of her entire family has been \$6,847.00. See Certification of Barbara Buckley.

56. Admitted.

57. Denied to the extent that there is insufficient proof documenting the amount Revel Fowler claims he has spent for Crystal's care. In addition, it is unclear how he spends approximately \$100.00 in housing cost for Crystal when she is in the primary custody of her mother, Cassandra D. Ricks.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Denied.

PLAINTIFF, MERCER COUNTY BOARD OF SOCIAL SERVICES,
COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Cassandra Ricks and her children, including Crystal Fowler, have been provided \$6,847.00 emergency housing assistance from the Mercer County Board of Social Services for the time period February 5, 2007 – May 31, 2007. She continues to receive assistance in June and July 2007 but MCBSS' vouchers have not been processed to date.

2. Although there is a sixty (60) month cumulative time limit on the provision of WFNJ cash assistance to eligible families pursuant to *N.J.S.A. 44:10-72* and *N.J.A.C. 10:90-2.3*, no family has been denied cash assistance due to this limitation because the exceptions to this requirement allows us to continue cash assistance when it is necessary.

3. For the time period December 1, 2005 – June 27, 2007, MCBSS has paid a total of \$3,197.20 for Crystal's Medicaid claims.

LEGAL ARGUMENTS

I.

STANDARD FOR SUMMARY JUDGMENT

The New Jersey Rules of Court provide that Summary Judgment is appropriate if “the pleadings, depositions, answers to Interrogatories and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact challenged, and that the moving party is entitled to a judgment or order as a matter of law.” *R. 4:46-2.*

The standard for review of summary judgment proceedings is limited to a determination as to whether or not any material issue of fact is in dispute. *Judson v. Peoples Bank and Trust Co. of Westfield*, 17 N.J. 67 (1954). Once the movant has demonstrated that there is no genuine issue of material fact, the burden shifts to the party opposing the motion to demonstrate that some material fact remains at issue.

In *Brill v. Guardian Life Insurance Co. of America, et al*, 142 N.J. 520 (1995), the Supreme Court revised the summary judgment standard. The Court held that the determination whether there exists a genuine issue of material fact requires the Court to consider whether the evidence presented, viewed in a light most favorable to the non-moving party, is sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. *Id.*

II.
**ASSIGNMENT OF CRYSTAL FOWLER'S
CHILD SUPPORT PAYMENTS TO THE
MERCER COUNTY BOARD OF SOCIAL
SERVICES IS CONSISTENT UNDER THE
CONSTITUTIONS OF THE UNITED
STATES AND NEW JERSEY.**

The issue to be determined is whether the Mercer County Board of Social Services ("MCBSS") can receive child support payments by non-custodial parent, Revel Fowler, for his daughter, Crystal Fowler, pursuant to an assignment executed by the custodial parent, Cassandra Ricks, as a condition to receive Temporary Assistance for Needy Families ("TANF"). Crystal and Mr. Fowler contend that Ms. Ricks should receive the support payments for Crystal's benefit, not MCBSS, because TANF benefits to Ms. Ricks were not increased upon Crystal's birth. It is the position of MCBSS that its right to receive these child support payments is consistent with prior judicial decisions interpreting the 5th and 14th Amendments of the U.S. Constitution and Article I, ¶ 20, of the New Jersey Constitution of 1947.

Before articulating the legal reasoning supporting MCBSS' position, it is necessary to provide the background in which the child support payments for Crystal were assigned to MCBSS. As a result of New Jersey's participation in the federally funded TANF block program, 42 *U.S.C.A.* §§ 601-608, which gives states flexibility to reform their public assistance welfare program to require recipients to become self sufficient by participating in employment training and obtainment programs, states must require that child support payments be assigned to the state (or the agency directed by the

state to administer the program such as, in this situation, MCBSS) as a condition to receiving TANF cash assistance. To implement this participation, pursuant to the family cap statute and regulation, a family does not receive additional TANF benefits for the birth of a child within ten months of the family's TANF application. *N.J.S.A.* 44:10-61(e) and *N.J.A.C.* 10:90-2.18. The New Jersey Supreme Court ruled in *Sojourner, A. v. Dept. of Human Services*, 177 N.J. 318, 337 (2003), that the family cap provision prohibiting the receipt of additional TANF benefits for the birth of a child within ten months of the family's TANF application does not violate the equal protection and due process guarantees of the New Jersey Constitution. To receive TANF, a recipient must assign child support payments to the state through its implementing agency, MCBSS. *N.J.S.A.* 44:10-49, *N.J.A.C.* 10:110-61, *N.J.A.C.* 10:90-16.2(b). If child support payments are received, regardless of the amount, the recipient will receive an additional \$50.00 a month, known as a pass-through, deducted from the child support payments with the balance going to MCBSS. *N.J.S.A.* 44:10-49.

To determine whether assignment of Crystal's child support payments to MCBSS despite no increase in her mother's TANF benefits after her birth is constitutional, the court must be guided by the U.S. Supreme Court's decision in *Bowen v. Gilliard*, 43 U.S. 587 (1987). This is the seminal case in determining whether a public assistance legislative scheme constitutes a taking without just compensation under the 5th and 14th Amendments of the U.S. Constitution. Although this case specifically addresses the U.S. Constitution, the standards articulated in *Bowen* are the same standards to be applied

when evaluating whether there are claims of taking without just compensation in violation of the New Jersey Constitution as well as New Jersey's equal protection constitutional safeguards. *Pheasant Bridge Court v. Twp. of Warren*, 169 N.J. 282, 297 (2001), cert. denied 535 U.S. 1077 (2002); *Sojourner, A.* at 329.

In *Bowen*, the Court was faced with North Carolina's implementation of the Aid for Families with Dependent Children ("AFDC") program, the predecessor of TANF, in 1972 for one of its welfare recipients, Betty Mae Gilliard. *Bowen* at 590. Specifically, the Court was asked to determine whether there was a violation of the 5th Amendment due process and equal protection principles by requiring that a family receiving AFDC benefits must include within its family unit a child for whom child support payments were being made by a non-custodial parent. *Id.* at 588. Inclusion of such a child resulted in a reduction in AFDC benefits. To determine whether there was unconstitutional taking, the Court reasoned that it does not rely upon any set formula but instead looks at each case based upon its particular facts and circumstances. *Id.* at 606, citing *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986).

To determine whether there was a taking based upon the particular facts in *Bowen*, the Court applied the three factors articulated in *Penn Central Transportation Co. v. City of New York*, 43 U.S. 104, 124 (1978). To determine whether there is a unconstitutional taking, the Court must look at the following: 1) the economic impact of the regulation on the claimant, 2) the extent to which the regulation is interfered with distinct investment backed expectations, and 3) the character of the governmental action. *Id.* Each factor

must be met to conclude there is an unconstitutional taking.

In terms of the first factor, the *Bowen* Court concluded that reducing an entire family's net income does not necessarily result in less money spent on supported children from the non-custodial parent's child support. *Id.* at 607. The loss of support payments is mitigated by the extra \$50.00 that the family receives as a result of the assignment, extra AFDC benefits received by including the additional family member in the unit, and the state's expenditure of its funds to enforce collection of support payments and carries the risk the child support payments are not made in any given month. *Id.* There is also no substantial loss to justify a taking by the child's right to have support payments used for his or her sole benefit. *Id.* In evaluating the second factor, the Court concluded that in the State of North Carolina a child has no vested protectable expectation to receive child support payments. *Id.* at 607-608. As for the third and last factor, the Court ruled that the government action in question does not constitute a taking of property through the AFDC program because hard choices that are needed to be made to balance various incentives in deciding how to allocate benefits. *Id.* at 608. There is no taking in the sense of a constitutional violation because this is not a situation where some people are forced to bear alone public burdens which should be borne by the public as a whole. *Id.*, citing *Armstrong v. U.S.*, 364 U.S. 40, 49 (1960). Since the law does not require any custodial parent to apply for AFDC benefits, it is a reasonable presumption that the parent who participates is convinced that the family as a whole as well as each child under her care will be better off with the benefits than without the benefits. *Id.* at 608-

609. Ms. Gilliard received an additional \$50.00 per month and other benefits through the assignment and the child's being part of the family unit.

In conclusion, the *Bowen* Court reasoned that it is not the Court's decision to determine whether the statutes or regulations implementing the AFDC program are the best way to resolve social and economic issues, that is the power of Congress which has the constitutional authority to make the difficult decisions of allocating limited resources among many possible recipients. *Id.*, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Dandridge v. Williams*, 397 U.S. 471, 487 (1970).

Another reported decision similar to *Bowen* that has applied the *Penn Central Transportation Co.* three-factor test is when the U.S. District Court in Indiana was faced with a challenge regarding a similar statutory limitation of public assistance benefits in *Williams v. Humphries*, 125 F. Supp. 2d, 881, 882, D. Ct. Ind. (2000). The public assistance recipient in *Humphries* contended there was a violation of the 5th and 14th Amendments due to the requirement that child support payments be assigned to Indiana's public assistance agency even though the payments were by a non-custodial parent whose child was not included in the TANF benefits afforded to the family unit because of the family TANF benefit cap. *Humphries* at 882-883. Although the Court applied the *Bowen* standard, and in turn, the three-factor test espoused by *Penn Central Transportation*, it reached a different decision than *Bowen* based upon the Indiana state statutes and regulations implementing TANF. Applying the first factor, economic impact, the Court concluded that assigning the child support payments to the State of Indiana did

not result in any additional benefits to the family. *Id.* at 886-887. The Court distinguished the Indiana statutes from the North Carolina statutes in *Bowen* where the assignment of child support payments for the capped child resulted in an additional \$50.00 per month to the family taken from the monthly child support collection. As for the second factor, interference with a distinct investment expectation, the Court ruled that under Indiana law, unlike North Carolina law, a child has a property interest in child support payments. *Id.* at 887. Thus, there was an expectation or entitlement to the child support payments. With respect to the third factor, the character of government action, the Court concluded that again, unlike *Bowen*, there was no additional family benefit of \$50.00 per month for collected child support payments resulting in “no comparable exchange, rough or otherwise, between the state and excluded child.” *Id.* at 888. The District Court, therefore, concluded that there was a violation of the 5th and 14th Amendments of the U.S. Constitution where Indiana excluded children from the family unit in calculating the families’ TANF benefits yet still insisted on retaining all the child support payments received on behalf of the excluded children. *Id.* at 891.

The within situation is a mix of common components from *Bowen* and *Humphries*. Here, like *Bowen*, Crystal’s family receives an additional \$50.00 as pass-through for the child support payments that are collected from her non-custodial father. However, under New Jersey law, Crystal, unlike the children in *Bowen*, has a property interest in child support payments. Similarly, children in *Humphries* had protectable interest in child support payments. Yet, in Indiana, a family does not receive an

additional benefit such as the \$50.00 received in North Carolina and New Jersey when the non-custodial parent makes child support payments. Applying these similarities and recognizing these differences, MCBSS is entitled to the child support payments received from Crystal's non-custodial parent even though she is excluded from the TANF benefits as a result of the family cap.

There is no unconstitutional taking in applying the three-factor test in *Penn Central Transportation*. It is conceded that under the second factor Crystal has a protectable interest in child support payments in the State of New Jersey. However, the first and third factors under *Penn Central Transportation* do not establish an unconstitutional taking. In evaluating the economic impact of the New Jersey statutory and regulatory scheme, Crystal's family receives an additional \$50.00 pass-through as a result of the child support payments from her non-custodial parent. This was recognized in the *Bowen* decision as a basis for concluding that an unconstitutional taking did not occur because the family's unit received an additional benefit for the assignment of child support payments. In fact, the Court in *Humphries* recognized that one of the failures of the Indiana program was its failure to have such an additional benefit as New Jersey had. *Humphries* at 887, fn 4. In addition, Crystal has benefited from the emergency assistance that has been provided to her family for housing by MCBSS since February 2007. Her family has received a total of \$6,847.00 which does not include assistance for the past month of June 2007. Also, food stamp allocations have increased with Crystal's addition to the family. Her family has received a total of \$1,736.00 from 2006 through

May 2007. As to the third factor, the character of MCBSS' action, consistent with the analysis of the *Bowen* decision, there is an exchange of \$50.00 pass-through for the assignment of Crystal's child support payments. This is symptomatic of the hard choice that New Jersey had to make when deciding how it was going to fund its public assistance program. MCBSS' action through its execution of the aforementioned state statutes and regulations does provide Crystal's family with something of value. Crystal benefits from TANF, Medicaid, emergency housing assistance, and food stamps. The New Jersey Legislature has decided that it needs the bulk of the child support payments to operate its WFNF/TANF program. Consequently, there is no taking in violation of the New Jersey and United States Constitutions by requiring the assignment of Crystal's child support payments from her non-custodial parent to MCBSS despite the fact that Crystal did not generate additional TANF benefits upon her birth to her family.

III.
**THE ASSIGNMENT OF CHILD SUPPORT
BENEFITS TO THE MERCER COUNTY
BOARD OF SOCIAL SERVICES IS
CONSISTENT WITH DUE PROCESS
UNDER THE NEW JERSEY AND U.S.
CONSTITUTIONS.**

Crystal Fowler contends that New Jersey statutes and regulations that would divert her non-custodial father's child support payments to MCBSS despite her not receiving any TANF benefits due to the family cap does not protect her best interests and is, therefore, void. However, this argument should fail because Crystal's child support payments are being diverted as a result of her family's receipt of public assistance. Such governmental action is consistent with due process requirements of the 5th Amendment as well as due process requirements under the New Jersey Constitution.

To evaluate whether a public assistance program is consistent with the 5th Amendment, courts apply a rational test to determine whether the legislation in question rationally achieves the goal it seeks to achieve. In applying such a rational test, our United States Supreme Court makes it crystal clear that under our separation of powers form of government, it is the function of Congress, not the courts, to determine whether savings from governmental expenditures justify the cost to those affected by the savings. *Bowen* at 596. It is not the court's power under the 5th Amendment to substitute its views on wise economic and social policy. *Id.* at 597. To establish a reasonable basis for legislation does not mean under the Constitution that legislation must apply "mathematical nicety" to demonstrate equity. *Id.* at 600-601. In the context of public

assistance programs, it is not practical to think that child support given to just one child in the family will only be used for that child. *Id.* at 605-606. The child support payments will go to the benefit of the whole family. *Id.* The rationality of a legislative act excluding a supported child from consideration of public assistance benefits supports the government's competing interest in distributing benefits to needy families in a fair way and should not be disturbed by the courts. *Id.* at 599. Therefore, it does not violate the 5th Amendment due process and equal protection principles which require that families wishing to receive AFDC benefits include within its family unit child for whom child support payments are being made by a non-custodial parent. *Id.*

Application of the rational test in the *Bowen* matter resulting in the conclusion that there was no 5th Amendment due process and equal protection violations results in the same conclusion here. As in *Bowen*, this court should defer to the legislators which have enacted a public welfare system seeking to address competing demands with limited resources. The court should not impose its belief on economic or social policy where legislators have specifically acted. It has been determined by lawmakers that TANF recipients should assign their right to child support payments to the public welfare agency. It has been decided that TANF recipient benefits do not receive additional TANF benefits for a child born within ten months of a TANF application. The public assistance agency, in this case MCBSS, has exercised its authority to obtain child support payments from Crystal's non-custodial parent. Under the assignment that was executed by Crystal's mother, MCBSS is entitled to receipt of those child support payments with

the exception of \$50.00 which will go to her mother. Obviously, the balance of the support payments will go to offset the millions¹ of taxpayers' money that it cost to provide benefits to Crystal, her family, and other residents within the jurisdiction of MCBSS. Crystal's family has received additional food stamps since Crystal's addition to the family. Crystal has benefited from the emergency assistance that has been provided to her mother for housing. Although Crystal is currently on her non-custodial parent's medical insurance coverage, before that occurred, she received the benefit of Medicaid through MCBSS. Should she stop receiving medical insurance from her father, MCBSS will provide the necessary medical coverage. Although Crystal may feel that there are inequities by diverting the child support payments to MCBSS, this system is the result of the democratic process which is the responsibility of the U.S. Congress and New Jersey Legislature and there is no legal basis for this court to alter the legislation in question.

¹ In FY'06, MCBSS spent \$33,504,197 to operate its WFNJ/TANF Program, \$9,739,927 Food Stamp Program, and \$4,279,883 Child Support Program, but collected only \$3,419,537 in child support payments. See Exhibit A, Revised Interrogatory Answers #2 and #5. Certification of Melanca D. Clark in support of Crystal Fowler's Motion for Summary Judgment.