

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>PAULINE ARGRAVES, et al.,</b>	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>COMMISSIONER, MAINE</b>	)	
<b>DEPARTMENT OF HUMAN</b>	)	
<b>SERVICES,</b>	)	<b>Civil No. 88-0167 P</b>
<b>Defendant and</b>	)	
<b>Third-Party Plaintiff</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>LOUIS W. SULLIVAN, M.D., Secretary,</b>	)	
<b>United States Department of Health &amp;</b>	)	
<b>Human Services,</b>	)	
<b>Third-Party Defendant</b>	)	

**RECOMMENDED DECISION ON CROSS-MOTIONS FOR JUDGMENT  
AND ON MOTION TO DISMISS**

This ' 1983 class action' comes before the court on cross-motions for judgment on a stipulated record.<sup>2</sup> The plaintiffs challenge Maine's policy concerning ``child-only" grants under its Aid to

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<sup>1</sup> The court (Carter, C.J.) granted plaintiffs' motion for class certification by order dated September 21, 1989. Docket Item #11. The relevant class is defined as

all households in the State of Maine who have applied for or will apply for AFDC or Medicaid for an assistance unit consisting only of children and who have been found ineligible for AFDC or Medicaid or have been given a lower AFDC benefit because the State of Maine's standard of need is lower for ``child only" assistance units than for assistance units containing an adult.

<sup>2</sup> This procedural device allows a court to resolve any lingering issues of material fact in reaching its decision on the merits. *Boston Five Cents Sav. Bank v. Secretary of the Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985).

Families with Dependent Children ("AFDC") program, authorized by Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-17.<sup>3</sup> The plaintiffs assert that the policy of the Maine Department of Human Services ("DHS") deprives them of their federal rights in violation of 42 U.S.C. § 1983. They accordingly seek relief in the form of a declaratory judgment and an injunction against continuation of the challenged practice.

The defendant, Commissioner of DHS, has filed a third-party complaint against the Secretary of the United States Department of Health and Human Services ("HHS") seeking indemnification should the court find DHS liable. The third-party defendant has moved to dismiss the complaint against him for failure to establish a case or controversy, for lack of subject matter jurisdiction or, in the alternative, for judgment on the stipulated record in favor of HHS and DHS. For the reasons enumerated below, I recommend that the court grant the defendant's motion for judgment on a stipulated record and dismiss the complaint as against the third-party defendant.

## I. STIPULATED RECORD

The stipulated facts, insofar as relevant to this decision, are as follows. Third-party defendant Louis W. Sullivan is the Secretary of HHS, the federal agency which has responsibility for the AFDC program. Stipulations of Fact §§ 2-3. Defendant H. Rollin Ives is the Commissioner of DHS, the state agency which administers the AFDC program. *Id.* §§ 4-5. In that capacity, defendant Ives is responsible for ensuring that all DHS programs comply with applicable legal requirements. *Id.* § 5.

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<sup>3</sup> The plaintiffs are no longer pursuing any claims regarding disregards of a child's Social Security benefits in light of the Supreme Court's decision in *Sullivan v. Strop*, 110 S. Ct. 2499 (1990). See Memorandum in Support of Plaintiffs' Motion for Judgment on Stipulated Facts at 1 n.1.

The AFDC program is a cooperative effort by the federal and state governments to provide financial assistance to certain needy families with dependent children. *Id.* & 6. In Maine, a dependent child is defined as a needy child under the age of 18 (or 19 if finishing secondary school) who has been deprived of parental support or care because of the death, continued absence or incapacity of at least one parent, or the unemployment of the principal wage-earning parent. *Id.* The child must be living in a parent's home or with certain relatives. *Id.* Since 1984, all eligible parents and siblings living with the dependent child who is seeking an AFDC grant are required to be included in the "assistance unit," along with their countable income and resources. *Id.* & 7. Countable income is that income which remains after any disregards allowed by law. *Id.* & 8. In Maine the amount of the family's AFDC grant is determined, in part, by subtracting the family's countable income from the standard of need adopted by DHS. *Id.* & 10. Because Maine does not pay the full standard of need, it has adopted a "maximum payment standard" to determine the family's AFDC grant. *Id.* & 9. The maximum payment standard is established as a uniform percentage of the standard of need. *Id.* After subtracting the countable income from the standard of need, the family's AFDC grant is either the amount of the maximum payment standard or any lesser amount yielded by the calculation. *Id.* & 10.

DHS has established a dual standard of need and maximum payment standard formula, one for family units with an adult included and one without. *Id.* & 11. The latter unit is referred to as a "child-only" unit because only the child in the family assistance unit qualifies for the AFDC grant. *Id.* & 12. The standard of need and maximum payment standard for child-only units in Maine are lower than the standards used for family units with an adult included. *Id.* & 17; Exhibit I to Stipulations of Fact.

The most common child-only family unit in Maine is one where the child lives with a non-parent relative and the adult relative does not seek or qualify for AFDC. *Id.* & 13. Another type of

child-only assistance unit is where the custodial parent is receiving Supplemental Security Income ("SSI") benefits under Title XVI of the Social Security Act, 42 U.S.C. ' ' 1381-83d. *Id.* & 14. Under 42 U.S.C. ' 602(a)(24), the income and resources of an SSI recipient cannot be counted as a source of available income and resources for the AFDC family. *Id.* In these two types of assistance units, the child-only AFDC standard is used, and the AFDC grant is calculated based only upon the income and needs of the child. *Id.* & 15.

Since 1972, Maine has increased the amounts of its AFDC standards and has periodically modified its method of calculating AFDC grants. *Id.* & 20. It has always maintained the dual-standard policy, *id.*, and this practice has been approved by HHS as a permissible policy under federal regulations, *id.* & 21. However, DHS has been unable to produce any document which sets forth its rationale for establishing the lower child-only standard. *Id.* & 23. DHS has stated that the lower standard is justified because (1) it costs more to support units with qualifying adults since adults have greater needs and (2) such adults who care for dependent children should be partially reimbursed for the added responsibilities of child care and support and for managing the household and its finances. *Id.* & 24. There are no studies or other documentation to support DHS's justifications. *Id.* & 25.

Approximately 20,000 families receive AFDC in Maine each month and, of that amount, approximately 1,000 are child-only assistance units. *Id.* & 26.

## II. DISCUSSION

Maine has established a lower standard of need for AFDC households containing children but no qualifying adults than for those containing children and qualifying adults. The plaintiffs argue that, by establishing the lower child-only standard, DHS presumes the availability of income to the child from the caretaker relative in violation of 42 U.S.C. ' 606(a) and 45 C.F.R. ' 233.90(a)(1), the

implementing regulation. The plaintiffs further allege that the dual standard is arbitrary and unreasonable, in violation of 45 C.F.R. ' 233.10(a)(1), because the defendant cannot produce any documentation to justify the lower child-only standard. Finally, the plaintiffs contend that the policy violates 42 U.S.C. ' 602(a)(24) and 45 C.F.R. ' 233.20(a)(1)(ii) which contain guidelines for caretaker relatives who receive benefits under the Supplemental Security Income ("SSI") program.

The defendant argues that it has made no assumption of income in determining child-only standards of need and that its dual-standard policy complies with all federal regulations. In addition, the defendant argues, HHS oversees the state's administration of the AFDC program and has approved Maine's dual-standard practice. Consequently, the defendant urges the court to defer to the discretionary authority of DHS to set standards and to the judgment of HHS in approving the standards and to uphold its policy as set forth in this case.

### **A. Standard of Review**

Although the plaintiffs here do not directly challenge the federal AFDC statute and regulations, they do challenge state rules which were promulgated in accordance with those laws. In this framework, DHS and HHS are both interpreting and applying federal AFDC statutes and regulations as they administer the AFDC program. Therefore, it is appropriate that the traditional standard-of-review doctrine employed by courts to determine compliance with federal law be applied here. *See Maine Ass'n of Interdependent Neighborhoods v. Commissioner*, 732 F. Supp. 248, 250 (D. Me. 1990). The court's review of an agency's statutory interpretation must begin by determining "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously

expressed intent of Congress." *Id.* at 842-43. If the intent of Congress is not clear and the statute is silent or ambiguous concerning the issue at hand, the court must defer to the agency's permissible construction of the statute. *Id.* at 843.

The AFDC program is premised on financial need. The Social Security Act of 1935 authorizes the appropriation of funds for state plans that help families with needy dependent children. 42 U.S.C. ' 601. In order to qualify for federal funds, the state plan must conform with requirements of the Social Security Act and with rules and regulations promulgated by HHS. 42 U.S.C. ' 602. In addition, the plan must be approved by HHS. 42 U.S.C. ' 601.

It is clear from the applicable statutes that, while the state plan must conform to federal law, Congress has given the states primary responsibility for administering the AFDC program. The legislative history indicates that Congress never contemplated the precise question whether dual standards may be utilized in determining AFDC benefits. However, the legislative history does indicate that Congress intended to give states significant flexibility in administering the AFDC program. *See* S. Rep. No. 1356, 93d Cong., 2d Sess., *reprinted* in 1974 U.S. Code Cong. & Admin. News 8133, 8138 ("[T]he Committee bill provides that the States would have maximum freedom to determine what services they will make available, the persons eligible . . . , the manner in which services are provided, and any limitations or conditions on the receipt of such services.") Given the statutes' silence regarding a dual-standard policy and the clear delegation of authority to the states, I next examine HHS' interpretation of the applicable statutes as embodied in the regulations.

## B. Implementing Regulations

The federal regulations that implement 42 U.S.C. ' 602(a) require uniformity in AFDC administration and equitable treatment of individuals in similar circumstances.<sup>4</sup> These regulations reflect the broad scope of state authority to administer the AFDC program. It is instructive also to note that the administrative history of 45 C.F.R. ' 233 buttresses the legislative history of the enabling statutes. The earliest indication of the "flexibility" approach can be found at 36 Fed. Reg. 3866 when proposed regulations amending ' 233 were released. The amendment, in part, established ' 233.10(a)(1)(i):

States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.

After the proposed regulations were published, the Secretary of HHS released the comments and responses to proposed ' 233.10 pertaining to the extent of State discretion in establishing

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<sup>4</sup> Under 45 C.F.R. ' 233.20, the state AFDC plan must, in part, provide assistance on an equitable basis, ' 233.20(a)(1), specify a state-wide standard to be used in determining the assistance unit's need and amount of payment, ' 233.20(a)(2)(i), apply the standard uniformly throughout the state, ' 233.20(a)(2)(iii), include the method used in determining the need standard and the amount of assistance payment, ' 233.20(a)(2)(iv), and provide that the amount of the AFDC payment will not be reduced, nor contributions assumed, because of the presence of a legally non-responsible person in the household, ' 233.20(a)(2)(viii).

coverage and conditions of eligibility for financial assistance" under the AFDC program. 39 Fed. Reg. at 26,912. The Secretary, responding to certain comments, noted that

[t]he regulation is designed to provide maximum State flexibility within the requirements of the law. Conditions that States wish to impose must be reflected in their State plans, giving SRS an opportunity to determine whether they are in compliance with the regulation.

*Id.* The Secretary then adopted ' 233.10 as amended and found in its present form.<sup>5</sup>

In addition to ' 233.10, the plaintiffs allege a violation of ' 233.90(a)(1), which prohibits a state from assuming that ``the inclusion in the family, or the presence in the home, of a `substitute parent'

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<sup>5</sup> This section provides for coverage and eligibility under the federal AFDC program. Among other requirements, the regulation provides that

[t]he groups selected for inclusion in the [state] plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act.

45 C.F.R. ' 233.10(a)(1). Section 233.10(a)(1)(ii)(A) mandates that a state may ``[p]rovide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage."

or 'man-in-the-house' or any individual other than [a parent or stepparent]" necessarily means that that person will contribute to the income of the household.<sup>6</sup>

### C. Applicable Case Law

In keeping with the legislative mandates, the Supreme Court has construed federal law to allow states great flexibility in administering the AFDC program. *Rosado v. Wyman*, 397 U.S. 397, 408 (1970); *King v. Smith*, 392 U.S. 309, 318 (1968). Furthermore, the Court has accorded substantial deference to the Secretary's administration of the AFDC program through the states. *See, e.g., Connecticut Dep't of Income Maintenance v. Heckler*, 471 U.S. 524, 532 (1985); *Chevron*, 467 U.S. at 844.

The Court has specifically acknowledged that the states have "broad discretion in determining both the standard of need and the level of benefits." *Shea v. Vialpando*, 416 U.S. 251, 253 (1974). The Court of Appeals for the First Circuit has stated that, "[h]istorically, the determination of the elements and amount of a state's standard of need has been a matter of state prerogative." *Bourgeois v. Stevens*, 532 F.2d 799, 802 (1st Cir. 1976).

### D. Maine's DHS Child-Only Standard

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<sup>6</sup> The plaintiffs' allegation regarding the defendant's presumption of SSI income to the child-only assistance unit parallels their claim under ' 233.90. Assumption of SSI contribution is disallowed under ' 233.20(a)(1). Because the claims under each section are substantially similar, I address both under the umbrella of impermissible presumption of contribution.

I conclude from an examination of the above regulations, the rules promulgated by DHS in conformance with them and the applicable case law that DHS has properly exercised its discretion in establishing the lower child-only standard for AFDC benefits. The plaintiffs assert that the Maine AFDC standards are not applied uniformly in violation of ' 233.10(a)(1). Their concern is best illustrated by comparing the baseline -- or one-person -- figures in the 1990 cost chart at Exhibit I.<sup>7</sup> The chart shows that the need standard for an adult-included assistance unit is \$308 while the need standard for the child-only unit is \$182. This necessarily results in disparity in the payment standard since the percentage of payment is based on the standard of need figures.<sup>8</sup> Maine has established a maximum payment standard at 69.4% of the need standard. Hence, the maximum payment for adult-included units is \$214 while the child-only unit amount is \$127. As the plaintiffs point out, with this disparity at the one-person unit base amount, all subsequent additions to that baseline are also disproportionate.

While the cost chart breakdown does reflect some disparity between the two types of units, there is also consistency throughout the payment schedules. For example, there is a uniform \$303 dollar difference between each child-only need standard and the next larger adult-included standard (e.g., \$485 - \$182 = \$303; \$652 - \$349 = \$303). Accordingly, the needs of the adult caretaker are identified and uniformly applied throughout the schedule. Similarly, except for the one-person unit, the difference between the two need standards is a uniform \$136 (e.g., \$485 - \$349 = \$136; \$819 - \$683 = \$136). Finally, as the family size increases, the incremental difference within each standard remains constant, again with the exception of going from a one-person to a two-person unit. For

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<sup>7</sup> Unless otherwise indicated, all figures cited in the text are drawn from the 1990 basic cost chart.

<sup>8</sup> States are not required to meet the full need under the established standard. They may pay less than full need as long as the ratable reduction is uniformly applied statewide. See 45 C.F.R. ' ' 233.20(a)(2)(ii), 233.20(a)(3)(viii).

example, the need standard is increased by \$167 with the addition of a child in both the child-only standard and the adult-included standard.

The same uniformity is applied throughout the maximum-payment schedule. For example, the 69.4% reduction is consistently applied to both standards, dropping the amount for the adult caretaker from \$303 to \$210 across the board. This adjusts the difference between the standards from \$136 to a uniform \$94 (except for the one-person units). Finally, the incremental difference as the family size increases is a constant \$116, again noting the exception at the one-person unit standard. In sum, all children appear to be treated equally regardless of their living arrangements.<sup>9</sup>

As the Secretary states in his memorandum, the federal regulations do not mandate, and HHS has not required, that states adopt equal need standards for adults and children. *See* Memorandum in Support of Third-Party Defendant Sullivan's Motion to Dismiss or in the Alternative for Judgment on Stipulations of Fact and in Opposition to Plaintiffs' Motion for Judgment on Stipulated Facts at 19-20, 28. In fact, nothing in the legislative history or applicable statutes and regulations suggests such a requirement. As noted above, the case law is replete with examples and guidance regarding the deference to be accorded to states in administering the AFDC program and to HHS in overseeing their administration. Although, as the plaintiffs assert, the defendant apparently can offer no

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<sup>9</sup> The plaintiffs also assert that the defendant has not identified the pro rata share of various expenses incurred by a child and adult when they are sharing a household with individuals not on the AFDC grant. Under ' 233.20(a)(5)(ii), a state may reduce AFDC benefits paid to children or adults living with non-recipients. The defendant, however, asserts that it is not exercising this option to implement a pro rata payment system. *See* State Defendant's Memorandum in Support of Motion for Judgment on a Stipulated Record at 10-11 n.9.

documentation to support the increased cost for adults, I can find no requirement that they do so. Accordingly, I find that it is reasonably within the defendant's discretion to determine that adults require a higher standard of need due to their greater costs.

The plaintiffs next contend that the DHS dual-standard policy and corresponding rationale is merely a guise under which DHS improperly presumes that the caretaker adult in a child-only AFDC household is contributing to the child's support, though under no legal obligation to do so. In addition to violating federal regulations ( ' 233.90(a)(1)), the plaintiffs contend that this dual-standard policy contravenes the principles set forth in *Van Lare v. Hurley*, 421 U.S. 338 (1975). In that case, the Supreme Court reaffirmed its earlier construction of federal law, including ' 233.90(a)(1), ``as barring the States from assuming that nonlegally responsible persons will apply their resources to aid the welfare child." *Id.* at 347. The Court concluded that the state in that case was reducing the AFDC family's needs because of the presence of a non-paying lodger and that this was an ``impermissible assumption that the lodger [was] contributing income to the family." *Id.* (footnote omitted).<sup>10</sup> I find this case, and others cited by the plaintiffs, of little assistance in resolving the present assumption-of-income-contribution issue. Those cases involve situations where the state agency either expressly conceded that it was taking into account the income of a non-recipient or presumed such a contribution which resulted in disparity throughout the need and payment schedule. While these cases stand for the proposition that states must adhere strictly to the requirements of ' 233.90(a)(1),

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<sup>10</sup> The plaintiffs cite other cases where courts found a violation of ' 233.90(a)(1). *See, e.g., Jenkins v. Georges*, 312 F. Supp. 289 (W.D. Pa. 1969) (state may not justify lower benefit standard for AFDC households containing a non-recipient when actual contribution of non-recipient has not been determined); *Hoehle v. Likins*, 405 F. Supp. 1167 (D. Minn. 1975) (lower benefit standard for ``shared households" without proof of actual contribution by non-recipient is impermissible assumption of contribution).

they do not squarely address the current controversy. Here, the defendant makes no such concession. Nor has he purported to make the impermissible presumption of financial contribution prohibited by ' 233.90(a)(1), and I am reluctant to infer such a presumption. Furthermore, the need and payment schedule reflects a uniform and equitable treatment of children regardless of how many children -- or adults -- are added to the unit. I find that the defendant has established an identifiable and reasonable basis for its dual-standard policy.

In light of the deference to be accorded to state agencies which administer AFDC programs, I defer to the defendant's administrative action here. The Social Security Act and the AFDC program comprise a complex and technical body of law. In addition, the state has a working knowledge of the competing forces which combine to shape state policy regarding distribution of available resources. Finding no violation of federal statutes or regulations, I recommend that the court uphold the defendant's dual-standard policy as a permissible construction of state rules promulgated in conformance with the applicable federal regulations.

### **III. THIRD-PARTY DEFENDANT'S MOTION TO DISMISS**

Third-Party Defendant Louis W. Sullivan, in his capacity as Secretary of the U.S. Department of Health and Human Services, has asked the court to dismiss the complaint against him. If my conclusions and recommendation concerning the plaintiffs' claim against the defendant are accepted, then there will no longer remain a case or controversy involving the Secretary. In that event, I recommend that the court grant the third-party defendant's motion to dismiss.

### **IV. CONCLUSION**

For the foregoing reasons, I recommend that the court DENY the plaintiffs' motion and GRANT the defendant's motion for judgment on a stipulated record. I also recommend that the court GRANT the third-party defendant's motion to dismiss.

NOTICE

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 11th day of March, 1991.*

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*David M. Cohen  
United States Magistrate Judge*