

To: Commission
From: John Cannel
Re: Title 44, Poor Law; Financial Responsibility of Relatives
Date: July 10, 2017

MEMORANDUM

The issue before the Commission is whether to delete the old statutory provisions making relatives responsible for county and municipal welfare costs or to revise them to cover current Work-First programs.

1) Background

The current provisions are one set of several, nearly identical, sets:

44:1-139. Obtaining or compelling assistance of relatives

Upon application for the relief of a poor person an overseer shall ascertain if possible the relatives chargeable by law for his support and proceed to obtain their assistance or compel them to render such assistance as is provided by law.

44:1-140. Relatives chargeable

a. The father and mother of a person under 18 years of age who applies for and is eligible to receive public assistance, and the children, and husband or wife, severally and respectively, of a person who applies for and is eligible to receive public assistance, shall, if of sufficient ability, at his or their charge and expense, relieve and maintain the poor person or child in such manner as shall be ordered, after due notice and opportunity to be heard, by any county or municipal director of welfare, or by any court of competent jurisdiction upon its own initiative or the information of any person.

b. The provisions of this section shall apply to the minor children of a mother whose husband shall fail properly to support and maintain such children when by reason thereof they are likely to become a public charge.

c. The provisions of this section shall not apply to any person 55 years of age or over except with regard to his or her spouse, or his or her natural or adopted child under the age of 18 years.

Amended by L.1968, c. 446, s. 1, eff. Feb. 19, 1969; L.1975, c. 1, s. 1, eff. Jan. 14, 1975; L.1979, c. 401, s. 1, eff. Feb. 8, 1980.

By their terms, these provisions apply to the old county and municipal welfare programs. The fact of their amendment as late as 1979 would suggest that they were applicable to AFDC, the last of those programs, the program that preceded Work-First, and a case so holds.¹ There is

¹ *Mulvahill v. Dept. of Inst. & Agencies*, 120 N.J. 546 (App. Div. 1972).

some authority that holds that these provisions create a general duty to support relatives² but other authority (and the words of the provisions) suggest otherwise.³ No New Jersey case has suggested that a third party (a person other than the poor person or the Welfare Director) can use these provisions as a basis for a claim. In addition, the obligation of support of children by their parents in 44:1-40 has been superseded by 2A:17-56.67 (Termination of obligation to pay child support).

Current practice does not use these statutes. To the best of our knowledge, no claim has been made under them since 1980. We have been informed by a spokesperson for the Department of Human Services that the provision is not used. That position is the same taken during consultations with the Department during the preparation of the 2009 Commission Report. In further support, Department regulations on evaluating applicants for benefits do not refer to any relatives beyond those in the “assistance unit,” the household of the applicant.⁴

The Department spokesperson said that an applicant is required to sign an assignment of future assets. That assignment appears to be broader than that in the 2009 Commission Report, based on current 44:10-64:

2-10. Repayment obligation; sanctions

a. A person shall be required to satisfy any sanction or repayment obligation incurred pursuant to any federal or State law governing assistance, including any repealed by this act, as a condition of eligibility for benefits.

d. When a person applies for or receives benefits, and it appears that there is pending entitlement to a payment to the person of funds arising from a claim or interest legally or equitably owned by the person, the county or municipal agency, as a condition of eligibility or continuation of eligibility for benefits, may require the person to execute a written promise to repay from anticipated funds, the amount of benefits to be granted from the date of entitlement to that payment.

Nothing in these statutes suggests that they affect benefits under Medicaid. They have never been applied to that program. As Medicaid is not controlled by Title 44 of the Statutes, it is beyond the scope of this project, and no recommendation is made as to that program.

² *Pavlick v. Teresinski*, 54 N.J. Super. 478 (Juv. & Dom. Rel. Ct., 1959) and see, *Gierkont v. Gierkont*, 46 N.J. Super. 112 (App. Div. 1957)

³ *Stark v. Overseer of Poor*, 90 N.J.L. 187 (E & A 1916); *Crowe v. DeGioia*, 90 N.J. 126, 143 (dissent) (1982).

⁴ NJAC § 10:90-3.12 Treatment of income and resources from eligible and noneligible individuals in the WFNJ TANF/GA household, as appropriate

2) Options

The Commission should realize that any action has the capacity to have substantive effects. It is not clear whether 44:1-140 validly applies to current welfare programs; reasonable people could come to opposite conclusions. A person reading that statute could conclude that Work-First, as a successor to older welfare programs includes an obligation imposed on relatives. Deletion will foreclose a possible future attempt to collect support payments from relatives. If 44:1-140 is applicable to Work-First, that would be a change in the law. On the other hand, the Department administering Work-First does not consider 44:1-140 applicable, and consistent practice for many years has treated the statute as no longer valid. Including a revised version of 44:1-140 would make the provision part of Work-First. That also would be a change in the law.

In the past, the Commission has recommended substantive change in statutes. While it has eschewed taking a position on controversial matters, it has often recommended that the statutes be revised so that they reflect accepted, appropriate practice. The Report on Enforcement of Judgments is a recent example of such an effort. Current law establishes a method for enforcement, but large parts of it have not been used for a long time. The Report bases new statutes on practice. We have drafted a provision for the Commission's consideration if it wishes to add a section to the Poor Law Report or to include it as a legislative option.

Draft

Support by spouse or adult children

a. If a person applies for, and is eligible to receive public assistance under a Work-First program, the public agency that provides the assistance may assess for a portion of the assistance:

- (1) the person's children who are at least 18 and less than 55 years of age; and
- (2) the person's spouse.

b. A child or spouse may be assessed for support only after notice, an opportunity to be heard and a court finding of the amount if any that the relative is financially able to provide considering the relative's personal and family obligations.

c. However, if the person receiving public assistance failed to support and maintain a child during the child's minority, the court may reduce the amount assessed against the child in proportion to the actual support and maintenance rendered by the person receiving public assistance.

d. This section shall not authorize an action for support by any party other than the public agency that provides Work-First assistance.

e. Nothing in this section shall affect the duty that a parent has to provide support for a child. That duty shall continue to be controlled by N.J.S. 2A:17-56.67.