GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

LEGISLATIVE OVERSIGHT COMMITTEE

ISSUES OF FRAUD IN THE AFDC PROGRAM

Report No. 81-1

June, 1981

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Introduction

Of the many governmental programs that provide financial assistance to individuals, organizations and businesses in such forms as direct subsidies, loan guarantees, research grants and preferential tax treatments, one among them invariably attracts headlines, investigations and public disapprobation -- public assistance to the poor. Though one hallmark of our society is its concern for and generosity towards those in need, we have tended to view with misgivings the values and virtues of the institutionalized charitable system that we generally label as welfare.

The sheer size of the public assistance budget automatically, and quite appropriately, attracts attention. As continuing inflation further erodes the value of the dollar, as the economy falters, and as severe limits are imposed on government spending, it is only natural to review the efficiency and effectiveness of welfare programs and to insure that each dollar is legitimately awarded and properly used. Unfortunately, popular sympathy is not necessarily on the side of those who live, however meagerly, on public funds and whose access to political power is limited. Further, attempts to address welfare issues in an analytical manner often fail to break through the gossamer of myths and shibboleths which entangle the subject.

This review was undertaken by the Assembly Legislative Oversight Committee with one goal in mind: to gather information on the prevalence, prevention, detection and punishment of fraud in public assistance programs. Clearly, any fraudulent spiriting away of scarce welfare dollars diminishes the amount available to those in legitimate need and undermines public confidence in and willingness to fund the public assistance budget. On this point there is unanimous agreement among legislators, administrators, taxpayers, welfare clients and social advocacy groups alike.

This committee would hope that its purpose is not misinterpreted. To explore the administration of public assistance programs is not to express disenchantment with the concept of aid for the needy nor to denigrate the dire straits of those who rely on public funds for some modicum of support. We should not fall into the trap of mistaking the exception for the rule. Most people receiving public assistance have no alternative means by which they can obtain funds for food, shelter and clothing. Most would work but for poor health, lack of day care for their children, insufficient job skills or an absence of employment opportunities. And last, but not least, most are honest.

Public Assistance Programs

Approximately 800,000 New Jersey residents receive public assistance at an annual cost of about $1 billion in combined federal, state and local money. The assistance is provided through a variety of programs, each with its own characteristics as regards its source of funding and manner of administration (see Appendix A). The Division of Public Welfare in the Department of Human Services supervises those programs that are administered by county and municipal welfare offices and represents the State's interests for those programs funded or administered at the federal level.

Most of the attention directed to welfare issues on the state level centers on the program of Aid to Families with Dependent Children (AFDC). Not only does AFDC claim the lion's share of state and local money, but its clients constitute the overwhelming majority of all public assistance recipients. The nearly half-million AFDC clients also represent about two-thirds of all Food Stamp beneficiaries. The major thrust of this report, therefore, concerns fraud issues with regard to the AFDC program.

The AFDC program provides assistance to dependent children and the parents or relatives with whom they live under three distinct segments:

> Regular segment (AFDC-R)--provides financial assistance to families in which one parent is incapacitated or absent from the home due to divorce, separation, abandonment, imprisonment or death. Assistance is based on a schedule of benefits according to family size and income. To encourage the parent to supplement the family income through

employment, the first $30 and 1/3 of earnings in each month are disregarded in computing net family income. Benefit costs are shared by federal (50%), state (37.5%) and county (12.5%) governments.

Unemployment of Parents (AFDC-F)--offers assistance to two-parent families when involuntary unemployment renders them unable to provide necessary support for their children. One parent may work up to 100 hours each month and still remain eligible for benefits. The allowance schedule, income disregards and cost-sharing among governments are the same as those for the regular segment.

Insufficient employment of parents (AFDC-Non Federal)--provides assistance to two-parent families who fail to meet the federal eligibility standards for unemployment. No limit exists on the number of hours a person can work. Income disregards of the first $60 and 1/3 of earnings are applied. The benefit schedule is set at 2/3 of the standards for the other two AFDC segments. Costs are divided by the state (75%) and the counties (25%).

Recent figures show that of the 478,000 persons receiving AFDC assistance, 327,000 are children. The AFDC benefit for a family of four in fiscal 1981 is $414 per month. This family would also be eligible for a minimum monthly value of $132 in food stamps. The family's total monthly income of $546 stands well below the amount calculated by the Bureau of Labor Statistics as a Lower Living Budget. In June, 1980, the Lower Living Budget was set at $805 per month. It is undoubtedly considerably higher one year later.

AFDC benefits have run well behind inflation during the past decade. The monthly grant for a family of four has increased 28% from $324 to $414 between FY 1972 and 1981.

During the same period, the Consumer Price Index rose 103%. Even including food stamp allocations, the assistance dollar has decreased in real value by 38% over the past decade.

AFDC Error Rates

Not all instances of misapplied or misdirected AFDC funds involve the element of client fraud. Indeed, in a significant number of cases, an inappropriate payment results from error on the part of a welfare agency. The issue of agency error is an important matter that is beyond the topic at hand. Nevertheless, a brief review of recent AFDC error rates is appropriate in order to place the subject of fraud in its proper context.

The federal government requires the Division of Public Welfare to conduct a quality control survey of 1200 AFDC cases in each six-month period in order to ascertain the prevalence of payment errors, which include all inappropriate payments regardless of cause. This survey yields a payment error rate, stated as a percentage of the total amount of AFDC funds paid in error during the survey period. In an effort to reduce the payment error rate to not more than 4% per state by late 1982, the federal government is threatening to reduce funding to those states which do not show evidence of moving towards that goal.

New Jersey has considerable ground to cover in order to meet the final goal of a maximum payment error rate of 4%. The State's error rate for each six-month interval between April, 1978 and March, 1980 has varied from 9.3 to 11.7%. Preliminary figures for the six-month period ending in September, 1980 show an improvement to below 9%. This figure, however, is subject to possible upward revision by federal quality control analysts.

The error rate expresses the percentage of total AFDC funds that were inappropriately paid, regardless of reason. For the 1981 fiscal year expenditures of a half-billion dollars in AFDC funds, a 10% error rate translates into \$50 million of incorrect payments. The State's share of this amount is about \$19 million.

Fraud: Nature and Scope

To commit a fraud is to purposefully provide a false representation of fact, usually to gain something of value. In the case of the AFDC program, fraud involves obtaining assistance payments (or overpayments) to which one is not entitled by intentionally giving false information or withholding information concerning one's eligibility status. It should be noted that the term "welfare fraud" serves only as a convenient description for the perpetration of a fraud in a public assistance program. It is not the legal name of a particular class of crime.

A recent quality control sampling of AFDC recipients identified possible client fraud in about 7% of the cases.

(The total AFDC caseload is approximately 150,000 families.) Fraud is certainly a significant element in any accounting of misspent AFDC funds. Yet, as discussed above, agency errors and genuine client mistakes and misunderstandings account for a large proportion of the incorrect payments. Surely, the effort to bring greater efficiency and economy to welfare programs must place a high priority on steps to improve the structure of a system whose complexity of regulation and operations results in millions of dollars worth of honest errors.

It may well prove to be easier to improve the system to control for errors than to prevent, detect and punish fraud. The myth of welfare fraud portrays the culprit as having collected tens of thousands of dollars under several assumed names while fully employed. Another common perception pictures the supposedly absent male living with the welfare family and hiding from the caseworker. Public anger is also directed at welfare recipients who have neither the interest nor desire to work.

The actual facts portray a far different scenario. As previously indicated, 7 out of 10 recipients of AFDC are children. The adults are predominantly women. They live in families headed by women who are often unable to work for lack of day care for the children. They exist on a welfare budget that is considered inadequate by virtually all observors and an inducement to commit a fraudulent act to obtain some extra assistance dollars.

The Director of the Division of Public Welfare, G. Thomas Riti, addressed this very point in a statement to this committee on January 26, 1981: "My broad experience in the welfare field has made it clear that continuing and prolonged inadequate grants of assistance are the foundations for persons being more readily willing to commit fraud -- sometimes out of sheer necessity."

In the main, therefore, welfare fraud is a crime committed by the poor. As obvious as this statement is, its ramifications are not always given proper consideration. The motivation to commit fraud stems not from greed, nor, given the low levels of support, an attempt to get rich quick, but from the need for meeting the essential needs of children. While the welfare rules permit a certain amount of earned income to be disregarded in calculating benefits, the offset is not great enough to provide a substantial incentive to earn (or report) income, even assuming day care is available.

The woman who receives AFDC funds is vulnerable to pressures which make fraud, though illegal, quite enticing. These pressures include the lack of employment opportunities, the lack of day care facilities, the lack of court-ordered child support enforcement and the lack of educational and vocational programs to assist the recipient in getting off the welfare rolls.

The impoverished status of the head of a welfare household, plus her responsibilities to her children, also render impractical the typical criminal punishment remedies of fines or imprisonment.

Handling of Fraud Cases

To sympathize with the situation of public assistance recipients is not to suggest that fraud be ignored. Scarce public assistance dollars should not be lost to illegal conduct. And especially in those cases of egregious fraud, detection should be swift and punishment sure.

The Division of Public Welfare and the county welfare agencies are acutely aware of the need to maintain strong efforts to identify and take action against fraud. Current steps include computer searches to ferret out duplicate applications by the same person; matches of welfare rolls against State, county and federal payrolls and of the rolls of other assistance and unemployment benefit programs; and a variety of enforcement efforts in cooperation with State and federal prosecutors and inspectors offices. A major advance in the Division's ability to seek out sources of unreported income took place with the enactment of the state's Wage Reporting Act in 1980. This law provides for the matching of welfare and unemployment recipients with payroll records of all businesses in the State. Implementation of the matches is expected during FY 1982.

The processing of cases of suspected fraud turns on a number of points where action is discretionary. The chart in Appendix B demonstrates the various pathways for the handling of fraud cases.

Agreements can be reached on an informal basis between the welfare office and the client; formal agency sanctions (reduction or suspension in benefits) may be challenged by the client through an administrative hearing. Criminal action may be sought by the welfare director through referral to the county prosecutor. Lastly, the prosecutor renders a decision as to whether to proceed with an indictment or not.

It is difficult to tell whether this myriad of posssible routes serves the public and the welfare client well or ill. On the one hand, broad grants of discretion allow for individual adjustments where a suspected fraud is a minor infraction not likely to be repeated or perhaps the result of understandable confusion over the applicability of a complex regulation. On the other hand, it provides for instances of dissimilar treatment and raises issues involving equal enforcement of or protection by the law.

At the highest level of discretion, county prosecutors differ as to the minimum amount of an alleged fraud they will accept as a case. These amounts range from no minimums in some jurisdictions to $200 in others and to at least $4,000 in the highest instance. The higher amounts reflect situations in which prosecutors give priority to other types of criminal activities.

According to figures provided by the Division of Public Welfare, an average total of 1,850 cases of suspected fraud have been referred to county prosecutors by the 21 county welfare agencies in each of the last three fiscal years. The number of referrals actually increased by 17% from 1978 to 1979 and by 30% from 1979 to 1980. The number of prosecutions for 1978 and 1979 represented only 37% of those referred. In 1980, however, 64% of the cases referred were prosecuted. Virtually all persons who are prosecuted are found guilty. The conviction rate was 96% in 1978, 95% in 1979 and 92% in 1980. Most of those found guilty are given suspended sentences and placed on probation. Only about 6 to 8% are incarcerated. Further, restitution is ordered in about 8 out of 10 convictions.

Identified Problems and Recommendations

The following series of findings and recommendations fall into two broad categories: prevention and prosecution. Clearly, the former is preferable to the latter. However, where the best preventive efforts have failed, expeditious prosecution of criminal cases ought to be undertaken. The recommendations also reflect the committee's review of the responses to a questionnaire circulated to county welfare agencies and other concerned State agencies and private parties (see Appendix C).

1. Inadequate grant levels are widely recognized as providing a major source of motivation to commit fraud. The committee recommends a continuing public effort to maintain assistance grants at levels adequate to meet the basic needs of recipients.

2. The committee recommends an increase in vocational and educational programs, through public and private resources, in an effort to improve the marketable skills of clients.

3. The committee applauds the efforts of the State Parent Locator Service in locating absent parents. Progress in child support collections is encouraging, with collections for 1980 representing an increase of 30% over those of 1978. The total distributed AFDC collections for calendar 1980 equalled $28.6 million. Of this amount, $10.7 million was returned to the State, $7 million to the counties and the remainder to the federal government.

To improve these efforts, the committee recommends swift passage of Senate, No. 1508, the "Income Assignment Act," which would provide for the automatic assignment of income as part of any maintenance, alimony or child support order. Under this legislation, a payor's wages would be automatically attached if payments were more than two weeks overdue. At present, not more than 30% of those ordered to pay alimony, support or maintenance do so willingly. The other 70% seek to avoid this obligation by making partial payments, changing jobs or relying on court delays to avoid payment. Director Riti estimates that up to 5,000 families per year would avoid welfare assistance with a savings of $36 million in public funds if court-ordered payments were automatic.

4. As an incentive to recipients to obtain employment and leave the assistance program, the committee recommends the establishment of a grace period (perhaps 2 or 3 months) during which the welfare grant would continue undiminished while the recipient was gainfully employed. The transition to employment often requires certain start-up expenses that leave the client with little financial improvement to show for having gotten a job.

5. The complexity of AFDC regulations may contribute to instances of fraud due to a lack of clear understanding

by the client as to what constitutes a reportable change in income. Since 55% of fraud involves the lack of reporting of other income, the committee recommends that a check list of categories of reportable income be mailed monthly with the check. This would provide a constant reminder to clients of the need to report income and any other changes which might affect the welfare grant.

6. The committee recommends that the regulations of the Division of Public Welfare concerning the handling of fraud cases be clarified to insure uniform disposition throughout the State. This recommendation received a large measure of support among the county welfare directors responding to the survey.

7. The committee views maintenance of the integrity of welfare programs as essential to fraud prevention. We recommend mandatory photo identification cards for all recipients (at present they are optional on the part of clients).

8. The committee recommends a study of the feasibility of electronic deposit of clients' checks, particularly for those clients who request this service. This would result in a reduction in lost or stolen checks.

9. The committee recommends a clarification of what constitutes fraudulent behavior with regard to the AFDC program. This would most likely entail a revision

of the Public Assistance Manual and perhaps the inclusion of such examples as are given in the Food Stamp manual.

10. The committee recommends a continuing inter-county sharing of "best practices" with regard to the treatment of alleged fraud cases. Its purposes would be to promote greater uniformity and efficiency in dealing with fraud. To initiate this increased communication, the committee urges a statewide conference on welfare fraud, under the dual auspices of the Division of Public Welfare and the Attorney General's Office. Participants should include county welfare agency staff, representatives of Legal Services, public defenders, prosecutors, probation officers and judges.

11. The committee is aware that in some instances a lack of cooperation may exist between county prosecutors' offices and county welfare agencies in regard to the investigation and disposition of alleged fraud cases. We urge that joint procedural manuals be developed as an aid in the training of staff and in the efficient processing of fraud cases.

12. The committee recommends that, where appropriate, a guilty client should pay a penalty to the county welfare agency or perform community service restitution in addition to making full repayment of all fraudulently received monies.

13. The committee recommends that wherever there is

a suspicion of collaboration in the commitment of fraud involving a supposedly absent husband or boyfriend who in real terms actually benefits from the fraud, a vigorous prosecution of the collaborators should be pursued.

14. The committee recommends legislation to make mandatory the reporting of wage information by employers to the county welfare agency directors or their authorized representatives. This is necessary to assure county welfare investigators have access to information which is vital to fraud investigations.

CHARACTERISTICS OF PUBLIC ASSISTANCE PROGRAMS WITHIN DIVISION OF PUBLIC WELFARE, FY 1981

Program	Administered By	Number of Recipients (Fall, 1980)	Estimated Total Assistance Payments (millions)	Federal Share (millions)	State Share (millions)	County Share (millions)	Municipal Share (millions)
Food Stamps	County	625,000 (1)	$228	$228	-	-	-
Supplemental Security Income	Federal	85,000	$168	$141	$20	$7	-
Aid to Families With Dependent Children	County	478,000 (2)	$554	$227	$208	$69	-
General Assistance	Municipal	25,000	$46 (4)	-	$35 (3)	-	$11
Emergency Assistance	County	2,500	$2.3	$1.1	$0.9	$0.3	-

(1) Two-thirds of food stamp recipients receive AFDC and are included in AFDC totals.

(2) This figure includes 327,000 children.

(3) Includes funds to administer workfare program.

(4) Approximately 23% of total payments are for health-related expenditures.

APPENDIX A

PATHWAYS OF ALLEGED AFDC FRAUD CASES

- Case Worker Suspects Fraud
  - ignores evidence
  - confronts client
    - client quits AFDC
    - client admits, agrees to repay
  - refers to supervisor for fraud investigation
    - Supervisor
      - confronts client, admits, agrees to repay
      - denies; super. reduces or suspends benefits
        - client asks fair hearing — Office of Administrative Law —
        - client admits, agrees to repay
      - refers to fraud investigation unit
        - finds no grounds, refers back to supervisor
        - finds suspicion for fraud, refers to county welfare director — CWA Director —

Cont. Below

- — Office of Administrative Law
  - finds in favor of client, restores benefits
  - finds in favor of welfare agency, upholds reduction, suggests client repay

- — CWA Director
  - decides against criminal prosecution
    - seeks informal, in-house agreement with client to repay
    - initiates complaint in municipal court for recoupment
  - refers to county prosecutor
    - does not prosecute refers back to director
    - seeks conditional downgrade and refers to municipal court
    - seeks indictment

— Judges - sentencing is commonly repayment and probation, not jail

APPENDIX B

G. Richardson - 5/81

RESULTS OF SURVEY OF COUNTY WELFARE DIRECTORS, STATE AGENCIES AND PRIVATE ORGANIZATIONS WITH INTEREST IN WELFARE ISSUES

(Respondents: 20 county welfare agencies, Division of Public Welfare, Office of Administrative Law, New Jersey Welfare Rights Organization, New Jersey Association of Social Workers.)

Part I -- Respondents were asked to indicate whether they agree or disagree with the following statements.

To help people to get on their feet and as an incentive to seek employment, welfare recipients should be allowed to receive their full benefits for the first three months of their employment.

Agree	11
Disagree	12
No Opinion	1

The Division of Public Welfare regulations regarding the disposition of alleged AFDC fraud cases should be tightened and made uniform throughout the State.

Agree	16
Disagree	6
No Opinion	2

Except for the most egregious cases, alleged welfare fraud cases should not be criminally prosecuted but handled by administrative solution (i.e., as in the Food Stamp program by use of the Office of Administrative Law).

Agree	8
Disagree	16
No Opinion	0

Provider fraud is a greater problem than client fraud.

Agree	5
Disagree	3
No Opinion	16

Part II -- Respondents were asked to indicate whether they think each of the following ideas has merit, even though implementation might be difficult.

Yes	No	
13	11	Electronic deposit of AFDC checks in client checking accounts.
19	5	Mandatory photo I.D.'s for all clients.
4	20	Client fingerprints on the application.
14	10	Clients fill out complete application in own hand.
17	7	Require employers to release wage information to county welfare agencies under penalty of fine.
9	15	Welfare fraud should be treated as a separate and distinct category of fraud.
4	20	Juvenile and Domestic Relations Court is the appropriate place to handle welfare fraud cases.
4	20	Clients should be guaranteed immunity from prosecution for fraud if they sign an agreement to pay.
11	13	In addition to repayment of fraudulently received benefits, a client should pay a penalty to the county welfare agency.
10	14	In addition to restitution of fraudulently received benefits, a client should perform community services.
17	7	More vocational education programs should be instituted.
15	9	Some period of grace prior to a lessening of benefits should be allowed a client who obtains a job.