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MEETING SHORT-TERM NEEDS OF POOR FAMILIES:
EMERGENCY ASSISTANCE FOR NEEDY FAMILIES
WITH CHILDREN*

In 1968, Congress amended the Social Security Act\(^1\) to ensure that children receive the care which the Aid to Families with Dependent Children (AFDC) program\(^2\) was unable to provide.\(^3\) Within the framework of AFDC, the amendment created a new program, Emergency Assistance to Needy Families With Children (EANFC),\(^4\) to provide short-term relief to meet the needs of children in families faced with emergencies.\(^5\) The program is

\* I wish to express my thanks to Lawrence S. Kahn and Martin A. Schwartz of the Legal Aid Society of Westchester County for their helpful ideas regarding the right to expedited fair hearings on emergency assistance claims.


\(^3\) The committee's bill is concerned with several major objectives—to assure needed care for children, to focus maximum effort on self-support by families, and to provide more flexible and appropriate tools to accomplish these objectives. . . .

The committee understands that the process of determining AFDC eligibility and authorizing payments frequently precludes the meeting of emergency needs when a crisis occurs. In the event of eviction, or when utilities are turned off, or when an alcoholic parent leaves children without food, immediate action is necessary. It is frequently unavailable under State programs today.


\(^4\) 42 U.S.C. § 606(e) (1970) provides:

(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a) (1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care authorized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance;

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

\(^5\) The federal government participates in two other programs designed to provide
optional and may be incorporated into the state's AFDC plan. States electing to exercise this option are given considerable flexibility in determining how EANFC is to be utilized to meet the needs of eligible families. Federal funds are available to a state to reimburse one-half of its expenditures for emergency payments, services, and care, if the state's program satisfies certain federal requirements. 

I

ADMINISTRATION OF EANFC

Although many of the administrative requirements of EANFC merely duplicate those of the general AFDC program, others

short-term emergency relief to low-income households: Emergency Assistance to Adults (EAA), 42 U.S.C. § 1383(a)(4) (Supp. III, 1973), and “disaster relief,” 42 U.S.C.A. §§ 5121–5202 (Supp. 1975). EAA is a part of the Supplemental Security Income (SSI) program. It grants temporary assistance to certain people who have applied for SSI benefits and who are awaiting departmental determination of eligibility. An applicant presumptively eligible for SSI will be awarded a cash advance up to $100 if he needs the money in order to meet a financial emergency. An applicant who is presumptively disabled may receive EAA benefits equivalent to full SSI payments for a period not to exceed three months, pending departmental determination of his eligibility, if he is found to be otherwise eligible for SSI benefits. Under the EANFC and EAA programs, states may have a residual responsibility to meet the needs of applicants for and recipients of SSI assistance. See generally Fuller v. Nassau County Dep't of Social Serv., 77 Misc. 2d 677, 352 N.Y.S.2d 978 (Sup. Ct. 1974) (providing aid generally in instances of administrative delay within the SSI program); Ingram v. Fahey, 78 Misc. 2d 958, 558 N.Y.S.2d 604 (Sup. Ct. 1974) (preventing termination of an SSI recipient's utility service); Note, 1974 Developments in Welfare Law—The Supplemental Security Income Program, 60 COLUM. L. REV. 825, 829-33 (1975). Contra, King v. New Jersey Dep't of Institutions & Agencies, 124 N.J. Super. 518, 308 A.2d 32 (App. Div. 1973). See note 45 infra.

Unlike EANFC and EAA, the disaster relief program aids people of every income level. It also grants assistance to nonprofit educational and utility facilities and to local governments. 42 U.S.C.A. § 5172 (Supp. 1975). Several provisions do, however, focus on problems experienced by low-income people in the wake of a natural disaster. For example, 42 U.S.C.A. § 5179 (Supp. 1975) authorizes the President to ensure that low-income households are issued food stamp coupons and that surplus commodities are made available to them. Nevertheless, because the program only operates in instances of major area-wide disasters, it cannot be considered a significant means of granting emergency aid to the poor.

6 The District of Columbia and the following states had adopted some form of EANFC program as of the end of 1972: Alaska, Arkansas, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. SOCIAL SECURITY BULLETIN ANNUAL STATISTICAL SUPPLEMENT 1972, Table 141, at 148 (1974). The Table presents the amount of money expended by each of these states for emergency assistance and for other forms of public assistance.


8 Both AFDC and EANFC authorize payments only to homes in which a needy child
differ significantly from corresponding AFDC requirements. One basic difference is that EANFC benefits for any eligible household are limited to one thirty-day period in any twelve-month period, whereas AFDC assistance is available whenever need exists and certain nonfinancial eligibility criteria remain satisfied. The rationale for imposing this time limitation on EANFC grants stems from the concept of "emergency." Evidently, Congress decided that an emergency situation could always be remedied within thirty days, and that a family was unlikely to be stricken by bona fide

lives, and only if the child is living with, or has recently lived with, one or more relatives within specified categories. 42 U.S.C. § 606(a)(1) (1970). Both programs contain substantial work penalty provisions denying aid to older children refusing to accept work or training for employment. Although the AFDC work penalty terminates public assistance benefits of only the family member who fails to satisfy a work requirement, EANFC provisions deny aid to the entire family. See note 16 and accompanying text infra. In addition, because EANFC is a part of AFDC, the general administrative provisions concerning approval of a state AFDC plan by the Secretary of Health, Education, and Welfare also apply to EANFC. See 42 U.S.C. §§ 602(a)(1)–(6), (12), (13), (16), (21)–(24) (Supp. III, 1973).

The time limitation is not quite as harsh as it might initially appear. Payments authorized within the 30-day period can provide for needs that arose before the first day and for those expenses that extend beyond the thirtieth day. 45 C.F.R. § 233.120(b)(3) (1974). This regulation specifies neither how soon before the start of the 30 days an obligation must have been incurred for it to be included in an EANFC grant, nor for how long after the thirtieth day payments can be authorized. Presumably, no matter how long a debt has existed, it can be paid by an emergency assistance grant if its nonpayment has created a current crisis. For instance, emergency aid can be given to pay for back rent of several months if a tenant family would otherwise be evicted. See, e.g., 18 NYCRR 572.4(a) (Sept. 30, 1973).

Nevertheless, Oregon has imposed significant restrictions on coverage of back rent and utility payments. Rent for a dispossessed family's "back rent and utility bills may be paid for a period not to exceed one month before the date of application . . . ." OREGON PWD RULES AND REGULATIONS § 5.625(2) (Transmittal Letter No. 47, May 15, 1974). Because one of the purposes of the enactment of EANFC was to provide immediate relief to families faced with eviction or utility termination (see note 3 supra), this state regulation may be invalid. Often a landlord will not threaten eviction when a tenant is only one month behind on his rent; therefore, a crisis may not arise until two or more months of back rent is due. Furthermore, a tenant might not seek emergency assistance until after his rent is one month overdue. In either instance, the Oregon regulation specifies that the state will not make those payments which may be necessary to avoid loss of living arrangements.

Where a particular need is not satisfied by a single EANFC grant, further payments associated with this need may be made after the end of the period. For example, in Maye v. Lavine, [1972-1974 Transfer Binder] CCH Pov. L. Rep. ¶ 18,130 (Sup. Ct. N.Y. 1973), the court stated that the 30-day limitation did not preclude the granting of emergency assistance when a recipient faced destitution because of the theft of EANFC funds which she had been given to pay a judgment for rent to avoid eviction.
emergencies more than once a year. Inevitably, some families will face more than one crisis; nevertheless, EANFC will not provide them with additional relief.10

Because of the emergency nature of EANFC situations, the procedures for granting benefits have been made more efficient than those for AFDC. Since state plans incorporating EANFC must "[p]rovide that emergency assistance will be given forthwith,"11 a state's method of providing public assistance payments may be satisfactory for regular AFDC benefits, yet impermissibly slow for EANFC grants.12 Accordingly, in Adens v. Sailer,13 a federal district court held that the Philadelphia County Board of Assistance had violated this federal requirement by utilizing a centralized mailing system that produced delays of several days before eligible applicants received their emergency assistance checks. The requirement that emergency aid be provided forthwith has also placed significant substantive limitations on a state's freedom to choose a method of administering emergency assistance. Thus, in Purnell v.

10 The states remain free, of course, to use their own funds to meet the emergency needs of people who are suffering from their second crisis situation in a 12-month period. New Jersey has instituted a system that authorizes state-financed emergency assistance to qualified families faced with their second or third crisis within a one year period. Such families may receive emergency benefits if their eligibility is confirmed by a special review process administered by the county welfare board. See N.J.A.C. 10:82-12.11(b)1 (Supp. Aug. 15, 1973).

New York provides aid to a family stricken by a natural disaster even if that family has received EANFC benefits within the year preceding the application for catastrophe assistance. See N.Y. Soc. SERV. LAW § 131-a(6) (McKinney Supp. 1974).


12 The only federal time constraint on regular AFDC benefit payments is that applications be acted upon "with reasonable promptness," 42 U.S.C. § 602(a)(4) (Supp. III, 1973), and that an eligibility determination be made within 45 days after the filing of the application. See 45 C.F.R. § 206.10(a)(3)(i) (1974). Clearly, these requirements do not mandate that aid be granted "forthwith."

13 312 F. Supp. 923 (E.D. Pa. 1970). Pennsylvania had a policy of granting emergency assistance to individuals whose regular public assistance checks did not arrive when due and to people with emergency needs who were awaiting departmental decision on their applications for general assistance. However, only after an anticipated check was five days late could a public assistance recipient apply for EANFC. Even recipients declared eligible for emergency relief were forced to wait until an emergency check was mailed because Pennsylvania welfare departments refused to issue these checks on demand. The court, citing the legislative history as expressed in S. REP. No. 744, 90th Cong., 1st Sess. (1967), invalidated the Pennsylvania system, and stated that:

It is clearly the intent of these statutes and regulations that in view of the crisis nature of the circumstances in which emergency assistance is provided for, such assistance must be furnished immediately and without any undue delay. We think that the present system of centralized mailing of emergency checks utilized by the Department of Public Welfare in Philadelphia is inconsistent with the federal requirement that emergency checks be given to recipients immediately upon determination of eligibility.

312 F. Supp. at 927.
Edelman, the Illinois Department of Public Aid was directed to change its policy of granting emergency assistance in utility termination cases only after the utility service had been terminated.

The factors that states must consider in determining which class of persons to protect differ in the EANFC and AFDC programs. Most of these variations enable a state to establish an EANFC plan which encompasses a broader spectrum of low-income families than is covered by the rest of the AFDC program. However, one difference causes certain children, qualified to participate in AFDC, to be excluded from EANFC benefits; EANFC denies emergency assistance to children faced with destitution because of the unjustified refusal of a relative living in the household to accept employment or training for employment. The AFDC work penalty merely reduces the size of the total family grant when a responsible relative refuses to work or to accept training; it does not deny aid to those in the household who have not violated a work requirement.

14 365 F. Supp. 499 (N.D. Ill. 1973), aff'd in part mem., 495 F.2d 1375 (7th Cir. 1974). Prior to this decision, when a person was faced with the imminent termination of utility service, the Illinois Department of Public Aid (IDPA) would not grant any benefits to forestall the termination. Only when service had been discontinued would IDPA grant emergency assistance to restore the person's utility service. The court held that a "failure to give timely assistance occurs when the IDPA permits the utility service to be discontinued, especially when it will authorize the necessary funds immediately after termination." Id. at 500. See also note 35 infra.

15 See notes 18-22 and accompanying text infra. Note, however, that although EANFC provisions empower a state to extend assistance to people who are ineligible for AFDC, a state is not required to do so. The District of Columbia limits emergency assistance eligibility to individuals eligible for regular public assistance. See D.C. Code Ann. § 3-209 (1973). A similar practice was upheld in Baxter v. Minter, 374 F. Supp. 1213 (D.C. Mass. 1974), in which the court stated that federal law afforded the states the discretion to establish whatever standards of need they deemed appropriate.

Oregon presents an interesting contrast to the pattern of most states which grant EANFC coverage to all AFDC recipients and then choose to include other groups as well. If an Oregon family is "eligible for, or receiving AFDC," it cannot receive emergency assistance. Oregon PWD Rules and Regulations § 5.610(2)(c) (Transmittal Letter No. 47, May 15, 1974). The Oregon regulations require a family eligible for AFDC to seek benefits from AFDC rather than from the more efficient EANFC program. The exclusion of families that are eligible for AFDC but who are not actually receiving such assistance seems to be contrary to the intent of the Social Security Act, which is concerned with providing benefits more promptly than can generally be done under AFDC programs. See note 3 supra. See also notes 11-14 and accompanying text supra.

By categorically excluding all AFDC recipients, Oregon may again be acting contrary to the intent of the Act. If its house burns down, if its welfare check is stolen, if its food spoils during an electric blackout, or if it is faced with a similar emergency, a recipient family should also be eligible for EANFC. However, if Oregon public welfare offices promptly issue extra AFDC grants to replace stolen checks and additional benefits to provide for needs occasioned by a disaster, there may be no grounds for attacking the exclusion from coverage. For a discussion of the related issue of grant duplication, see notes 43, 44, and 51 infra.

In general, the administrative provisions of EANFC pertaining to determination of classes of eligible individuals reflect a congressional intent to allow a state to meet the emergency household needs of a broader population than those eligible for AFDC. For example, Congress expanded the AFDC definition of "child" for EANFC purposes to include every person between the ages of eighteen and twenty-one, rather than only those who were attending some educational or training program. More significantly, the EANFC statute and regulations do not include the AFDC requirement that a needy child be "deprived of parental support or care." Any needy child living with one or more of the relatives specified in the AFDC chapter of the Social Security Act may receive assistance. Thus, a child may be eligible if he lives with his natural parents, even if they are healthy and working. Moreover, if a needy child is not living with one of the specified relatives, he is eligible for EANFC if he has lived with such a relative within the six months prior to making application for emergency assistance.

A state may specify standards of financial eligibility for EANFC more liberal than those for other portions of its AFDC plan. A state which establishes a liberal test may even obtain federal reimbursement for assistance granted to a family earning in excess of general AFDC guidelines. Apparently, Congress recognized that many people just above the "poverty line" were also unable to weather crises and therefore encouraged the states to

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17 See notes 1-3 and accompanying text supra.
19 When used in this part—
   (a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, or stepfather, stepmother, stepsister, or stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.
20 Because there is no express ceiling on either the size of an individual EANFC grant or the total amount of state expenditures subject to federal reimbursement, the option to include families ineligible for AFDC has been abused by some state welfare departments. For example, in New York, a social services department may give up to three months of EANFC benefits to certain people found eligible for home relief before the department transfers them to the wholly state-funded general assistance program. See New York Department of Social Services Administrative Letter, 72 P.W.D.—20 (Feb. 24, 1972).
22 Id. § 233.120(a)(1).
provide them with financial assistance. In addition to providing the discretion to specify eligibility criteria, EANFC authorizes a state to determine the particular emergency needs its program will meet, the services which will be offered to meet those needs, and the methods which will be employed to provide the necessary money, services, and care. It is clear that federal administrative provisions allow a state far more freedom in operating its EANFC program than its AFDC program. However, the freedom given to the states may be limited by the purposes of the EANFC sections of the Social Security Act and by the structure within which the state must formulate the EANFC portion of its AFDC plan.

II

Emergency Needs for Which EANFC Is Available

When a child is without resources, a state may give his family EANFC to provide living arrangements for the child or to prevent deprivation of any necessity. Assistance may be granted for such needs as shelter, moving expenses, furniture, household appliances, utility service, food, clothing, medical care, child care, and transportation expenses. State EANFC programs provide for a variety of these needs, but many states do not attempt to meet a recognized need in all emergency situations.

23 The state AFDC plan must "[s]pecify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care." Id. § 233.120(a)(3).

24 The state AFDC plan must "[s]pecify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations." Id. § 233.120(a)(4).

25 Id. § 233.120(a)(1)(3). Note that AFDC authorizes only money grants, except in certain specified situations. See note 51 infra.

26 See notes 28-38 and 41-49 and accompanying text infra.

The authority of a state to restrict the availability of emergency assistance is not without limitations. Although states are generally afforded more discretion under EANFC than under AFDC, eligibility criteria must comport with the express provisions and the legislative intent of the Social Security Act. If state EANFC regulations create eligibility conditions that are not authorized by the Social Security Act, the regulations may be void under the supremacy clause of the Constitution. The Supreme Court in *King v. Smith* established the principle that states may not deny AFDC to

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28 392 U.S. 309 (1968). The Supreme Court has held that a state does not have the power to impose AFDC eligibility standards, other than those found in the federal statute and regulations, when the result of such criteria is the exclusion from coverage of families otherwise eligible for AFDC. In *Townsend v. Swank*, 404 U.S. 282 (1971), the Court stated: *King v. Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause.


Relying on *Townsend* and on *Carleson v. Remillard*, 406 U.S. 598 (1972), the Supreme Court recently reiterated this position in *Lascaris v. Shirley*, 95 S. Ct. 1190 (1975). The Court affirmed a 3-judge district court decision that New York State could not condition AFDC eligibility on a recipient’s cooperation in a paternity or support action absent authorization in the Social Security Act for the imposition of such a requirement. *Shirley v. Lavine*, 365 F. Supp. 818 (N.D.N.Y. 1973). Since Congress had subsequently amended the Act to allow a state the option of requiring this type of cooperation, the Supreme Court’s holding had retroactive effect only. See *Note, 1974 Developments in Welfare Law—Aid to Families With Dependent Children*, 60 CORNELL L. REV. 857, 871-75 (1975).

In *New York Department of Social Services v. Dubino*, 413 U.S. 405 (1973), the Supreme Court upheld New York regulations which effectively added an AFDC eligibility criterion not expressly provided for in the Social Security Act. However, the Court had no difficulty distinguishing *Townsend*, *Carleson*, and *King*.

In those cases it was clear that state law excluded people from AFDC benefits who the Social Security Act expressly provided would be eligible. The Court found no room either in the Act’s language or legislative history to warrant the States’ additional eligibility requirements. Here, by contrast, the Act allows for complementary state work incentive programs and procedures incident thereto—even if they become conditions for continued assistance.

*Id.* at 421-22. Although the federal act did not explicitly permit the work requirements imposed by New York, it manifested a clear federal policy to condition receipt of AFDC benefits on a person’s making efforts to secure employment. Hence, the New York regulation was in line with the legislative history of the Social Security Act.

The standards by which to test the validity of a state regulation excluding a group of people from AFDC have not been changed by *Burns v. Alcala*, 95 S. Ct. 1180 (1975). See note 46 infra. See also *Note, 1974 Developments in Welfare Law—Aid to Families With Dependent Children*, 60 CORNELL L. REV. 857, 865-70 (1975). In *Burns*, the Supreme Court rejected the idea that a presumption of coverage should be applied in determining whether any particular group of people can be excluded from participation in a state’s AFDC program. The Court stated instead that regular rules of statutory construction should apply. In *King*, *Townsend*, and *Carleson*, the Court had used normal methods of statutory interpretation, presuming coverage only when a group would be eligible under a straightforward reading of the Social Security Act.
individuals who are eligible under federal standards, absent authorization in the Social Security Act. In holding that federal participation is available only when a state does not exclude persons eligible under federal standards, the AFDC cases have relied on section 602(a)(10).\textsuperscript{29} In *Townsend v. Swank*,\textsuperscript{30} the Court explicitly stated that the language in this statutory subsection overruled the latitude created by HEW regulations which "imply that States may to some extent vary eligibility requirements from federal standards."\textsuperscript{31}

Despite the lack of an EANFC provision corresponding to section 602(a)(10), which applies only to AFDC, a state may have to adopt eligibility standards that conform to the statutory terms and the intent of the federal EANFC program. Section 602(a)(10) was cited by the Supreme Court in *Townsend* because it specifies a condition that a state plan must satisfy if it is to be approved by the Secretary of Health, Education, and Welfare.\textsuperscript{32} However, although decisions in *King* and subsequent AFDC eligibility cases purport to rely on section 602(a)(10), they are actually based instead on a consideration of policy expressed in this part of the Social Security Act.\textsuperscript{33} The key holding of these cases is that federal AFDC eligibility criteria are mandatory on the states. By its terms, section 602(a)(10) does not seem to justify this result. It merely requires that states act promptly on all AFDC applications. Furthermore, Congress did not intend that section 602(a)(10) be interpreted to compel states to adopt federal standards.\textsuperscript{34} Hence, it appears that the Court created a new requirement for state plans so that the statutory purposes of the federal AFDC program would be given full effect, and cited section 602(a)(10) as a convenient provision incorporating this requirement. Because the purposes of AFDC and EANFC are equally significant, a

\textsuperscript{29} "[A]ll individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and . . . aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 602(a)(10) (1970).

\textsuperscript{30} 404 U.S. 282 (1971).

\textsuperscript{31} *Id.* at 286.

\textsuperscript{32} "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section . . . ." 42 U.S.C. § 602(b) (1970).

\textsuperscript{33} The purposes of the AFDC program are set forth in 42 U.S.C. § 601 (1970).

\textsuperscript{34} Indeed, HEW had no idea that such significance could be afforded to § 602(a)(10). In attempting to justify its imposition of general limitations on state eligibility criteria, sometimes called "Condition X," HEW never relied on this provision. Instead it focused on § 602(a)(4) and § 602(a)(5), although neither provision is relevant to the issue. Furthermore, on two occasions Congress acquiesced in HEW's interpretations. From the congressional response to the HEW action, it may be inferred that Congress did not believe that § 602(a)(10) provided a firmer basis for limiting state discretion on this matter. *See* 76 *Yale L.J.* 1222 (1967).
condition compelling states to adopt federal eligibility criteria should be similarly read into the EANFC provisions.  

Even if emergency assistance cases are held to be distinguishable from *King* and its progeny, states would not be left free to violate either the express wording or the legislative purposes of EANFC. Under one HEW regulation, a state may restrict the scope of a state-federal program such as EANFC "only where the Social Security Act or its legislative history authorize more limited coverage." It may impose eligibility conditions only if such conditions: "assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act." By this regulation, HEW has imposed on all state-federal programs the limitations established in *King* as further elaborated in *Townsend*.  

One attempt to restrict the scope of an EANFC program may be found in a New York Department of Social Services regulation which excludes from EANFC participation all families left destitute.

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35 Purnell v. Edelman, 365 F. Supp. 499 (N.D. Ill. 1973), modified, 495 F.2d 1375 (7th Cir. 1974), is in point: The Court finds no merit in the defendants' argument that since they are not required to adopt an emergency assistance program, they can operate it in virtually any way they please. Federal law does not require them to adopt any welfare program at all. See Townsend v. Swank. However, once the state has accepted federal money it is bound to follow the federal law. The state may have some discretion in establishing what kinds of destitution it seeks to avoid, but once it identifies a certain type of destitution it must act in any way that avoids that destitution. *Id.* at 500-01 (citation omitted). See Weiss, *Emergency Assistance Under the AFDC Program*, 4 CLEARINGHOUSE REVIEW 120, 122-23 (1970), for another argument that acceptance of federal EANFC money subjects a state's program to mandatory provisions like § 602(a)(10).  


37 *Id.* § 233.10(a)(1)(ii)(B).  

38 See note 28 *infra*. In 39 Fed. Reg. 26,912 (1975), which announced the amendment to § 233.10(a)(1), the Social and Rehabilitation Service gave the reason for such program restrictions: "The current state of the law as interpreted by the United States Supreme Court does not permit a broader regulation." Before the amendment was promulgated, the regulation gave states "substantial latitude" in "determining the coverage, nature and scope of their public assistance programs." 45 C.F.R. § 233.10(a)(1)(i) (1973). The only limitations on state flexibility were that the state plan "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) (1973). The provision remains in effect today, strengthened by § 233.10(a)(1)(ii)(A) and § 233.10(a)(1)(ii)(B). Under the former regulation, a state was free to exclude a group only when Congress did not specifically intend to grant assistance to such a group. An exclusion was proper unless one of the stated purposes of the program was violated. For example, because of explicit congressional concern that needy children not be denied emergency assistance because of parental fault, a state would not have been allowed to deny aid to all families that could have averted crisis by proper planning. See notes 47-50 and accompanying text *infra*.
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by the theft of their public assistance benefit checks. A state court struck down this regulation, relying in part on the supremacy clause. Although the regulation protects against recipient fraud, an ostensibly reasonable objective, the court found the policy was invalid because it inevitably denied aid to innocent persons requiring such essentials as food, clothing, heat, and shelter. New York's limitation on EANFC was not in accord with the structure of the federal program, which provides that a state should select emergency needs that it will attempt to meet regardless of their cause—provided that a work requirement is not violated. It was improper for the New York Department of Social Services to single out certain emergency situations for which aid could not be given; the Department must find a different method to safeguard against the possibility of fraud.

States have also attempted to restrict the availability of EANFC by imposing express or implied limitations upon the definition of "emergency." For example, a number of states have narrowed the scope of EANFC by declaring ineligible all families stricken by some crisis which could have been avoided by advance planning and careful budgeting. The states that have promulgated this

39 18 NYCRR 372.2(c) (Oct. 31, 1974) provides: "Emergency assistance shall not be provided when destitution is due to loss, theft, or diversion of a grant already made."
40 Young v. Shuart, 67 Misc. 2d 689, 324 N.Y.S.2d 583 (Sup. Ct. 1971), modified, 39 App. Div. 2d 724, 531 N.Y.S.2d 962 (2d Dep't 1972). The court explained that the language of the statute reflects the belief of the state legislature that the requirement of Rosado v. Wyman, 397 U.S. 397 (1969), applies to EANFC as well as AFDC. The legislature concluded that in order to continue to receive federal money for emergency assistance, the state had to conform to all relevant federal eligibility requirements; therefore, it incorporated the federal criteria into the New York program. The court also noted that the exclusion of destitution due to loss or theft of a grant already made was probably inconsistent with applicable federal requirements and thus void under Rosado, Lewis v. Martin, 397 U.S. 552 (1970), and King v. Smith, 392 U.S. 309 (1968). See also Ross v. Sippell, 71 Misc. 2d 677, 336 N.Y.S.2d 861 (Sup. Ct. 1972), aff'd, 42 App. Div. 2d 691, 346 N.Y.S.2d 788 (4th Dep't 1973); Jones v. Berman, 75 Misc. 2d 659, 348 N.Y.S.2d 670 (Sup. Ct. 1973), aff'd, 43 App. Div. 2d 942, 351 N.Y.S.2d 728 (2d Dep't 1974).
41 See note 23 supra.
42 For protection against fraud, the Department of Social Services could require an expedited hearing of limited scope whenever there is reason to believe that an EANFC claimant is attempting to defraud the department and receive double benefits. See notes 54-63 and accompanying text infra. In addition, there are individual civil and criminal penalties available if it is determined that a fraudulent claim has been made. See 18 NYCRR § 348A (May 51, 1974). See also N.Y. Soc. Serv. Law § 145 (McKinney Supp. 1974). Other states have similar sanctions against welfare fraud. See, e.g., CAL. WEL. & INST'NS §§ 11,482, 11,483 (West 1972); MASS. GEN. LAWS ANN. ch. 117, § 23 (Supp. 1975).
43 See N.J.A.C. 10:82-12.11(c) (Supp. Aug. 15, 1973) and the cases interpreting this provision so as to deny EANFC to certain AFDC recipients, Boyd v. Department of Institutions & Agencies, 126 N.J. Super. 273, 314 A.2d 79 (App. Div.), cert. denied, 65 N.J. 281, 321 A.2d 242 (1974), and to certain other recipients of categorical assistance, King v. New Jersey Dep't of
restriction intend that their limited resources be used to aid only those people whose needs were not caused by their own fault. Although this motivation may be rational, the eligibility restriction is nevertheless impermissible if not authorized by the Social Security Act.

Federal statutory and regulatory provisions do not define the term "emergency." However, the absence of an express federal definition does not allow a state to define the term in any way it deems appropriate. In the absence of a congressional definition, one can assume that Congress intended "emergency" to have its ordinary meaning without any notion of fault. Thus, the exclu-


We do not read the federal statute as attempting an exclusive definition of the term "emergency" for all situations under which emergency assistance may be provided. Rather we think the New Jersey regulation refining the term according to its general common sense understanding.

126 N.J. Super. at 275-76, 314 A.2d at 80.

Another related consideration is a state's desire to avoid granting duplicate assistance. A grant of regular public assistance is presumed sufficient to meet all of a recipient's needs. Therefore, a person who uses his regular benefits properly should not require any additional assistance. Duplication occurs whenever a recipient of regular public assistance, who has spent his entire monthly grant before the end of the month, receives emergency assistance to provide needed clothing or fuel. By administrative regulation, Oregon prohibits such duplicate assistance: "Payments shall not be made to meet emergent need when the need arose solely because of the family's failure to meet obligations already provided for in Public Assistance grants."

OREGON PWD RULES AND REGULATIONS § 5.635(1) (Transmittal Letter No. 47, May 15, 1974).

Other states, such as New York and New Jersey, achieve the same result through judicial interpretation of the state's EANFC program requirements. See note 50 infra.

Although the Social Security Act contains no express definition of "parent," the Supreme Court, in King v. Smith, 392 U.S. 309 (1968), invalidated a Louisiana welfare department regulation which defined a "child's parent" to include a man who was neither the natural nor the adoptive father of the child, and thus had no statutory duty to support the child. Id. at 327-33. See 45 C.F.R. § 233.90(a) (1974). The Court held the regulation void because it effectively denied aid to eligible needy children. Neither the Social Security Act nor its legislative history authorized the exclusion of children living in a home in which their mother cohabited with a man who did not have a sufficient support obligation.

In examining the validity of a state's exclusion of all unborn children, the Supreme Court used the same test: "The State must provide benefits to all individuals who meet the federal definition of 'dependent child' and who are 'needy' under state standards, unless they are excluded or aid is made optional by another provision of the Act." Burns v. Alcala, 95 S. Ct. 1180, 1183 (1975). Because there was no express federal definition, the Court looked first to the ordinary meaning of the word "child," and concluded that it applied only to children who had been born, although some dictionary definitions included unborn children. Then, after considering the purpose of the Social Security Act and certain specific language in the Act (the words "child" and "children" were used in a context where they could refer only to horn children), the Court upheld the state's policy of exclusion of the unborn. Id. at 1184-86.

Dictionary definitions of "emergency" stress the need for immediate action and typically emphasize unforeseeability, but make no reference to fault. WEBSTER'S THIRD NEW INTERNA-
sion from eligibility of those who fail to plan to avert a disaster is unauthorized unless such a restrictive interpretation of the word "emergency" can be found either in other statutory language or in the applicable legislative history.\footnote{See note 28 and accompanying text supra.}

In the EANFC provisions of the Social Security Act, the only reference to fault as a factor concerning eligibility appears in the clearly stated work penalty clause.\footnote{See note 16 and accompanying text supra. See also Bryant v. Lavine, 79 Misc. 2d 425, 359 N.Y.S.2d 492 (Sup. Ct. 1974), in which the court held that the only eligibility criteria for emergency assistance were that a child be needy and without resources, that assistance be necessary to avoid destitution, and that such destitution not result from a violation of the work requirement.}

Since the Act specifies this single fault ground for ineligibility, one may infer that Congress was not concerned with other types of fault, such as failing to plan adequately for the possibility of future adversity. Moreover, the legislative history of the Social Security Act manifests a concern for providing for children in need, regardless of parental fault.\footnote{The reason for instituting EANFC was to improve the AFDC program's care and protection of children. The conference report on the bill stated that emergency assistance should be available even when an alcoholic leaves children without food, because the children are put in a position of dire need. See note 3 supra. Only after a child's needs have been met should the welfare officials concern themselves with parental fault. See notes 50-51 infra. Considering this congressional concern, the severe work penalty provision of the EANFC program is an obvious anomaly.}

Accordingly, a state is not free to conserve its fiscal resources by categorically denying emergency assistance to all unsophisticated budgeters.\footnote{Emergency aid must be granted where children are faced with destitution, even if it constitutes duplicate assistance. Preston v. Barbaro, 61 Misc. 2d 327, 305 N.Y.S.2d 627 (Sup. Ct. 1969), aff'd on other grounds, 34 App. Div. 2d 809, 311 N.Y.S.2d 997 (2d Dep't 1970); see also note 5 supra. An Illinois court reached the same conclusion in a case dealing with a clothing allowance. Relying on state statutory grounds, the court decided that the EANFC grant, although constituting a duplicate grant, could not be recouped from subsequent AFDC payments. Heinrich v. Illinois Dep't of Pub. Aid, 129 Ill. App. 2d 65, 262 N.E.2d 785 (1970). Another New York case, Domine v. Schreck, 74 Misc. 2d 1074, 347 N.Y.S.2d 293 (Sup. Ct. 1973), modified, 44 App. Div. 2d 98, 353 N.Y.S.2d 821 (3d Dep't 1974), arrived at a slightly different solution. The court authorized emergency assistance only for the children in a family, pending an investigation of the issue of grant duplication. Id. at 100-101, 353 N.Y.S.2d at 824. But cf., Boyd v. Department of Institutions & Agencies, 126 N.J. Super. 273, 275-76, 314 A.2d 79, 82-83 (App. Div.), cert. denied, 65 N.J. 281, 32 A.2d 242 (1974); King v. New Jersey Dep't of Institutions & Agencies, 124 N.J. Super. 518, 308 A.2d 32 (App. Div. 1973). The policy against duplication of assistance has also been a significant factor when EANFC funds were requested to replace furniture that was worn out through normal use. In Baumes v. Lavine, 44 App. Div. 2d 356, 355 N.Y.S.2d 477 (3d Dep't 1974), a denial of such a request was affirmed because EANFC.}

The state has other means to ensure a proper utilization of emergency funds: The DICTIONARY 741 (3d ed. 1961) defines emergency as "an unforeseen combination of circumstances or the resulting state that calls for immediate action." The RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 467 (1967) defines emergency as "a sudden, urgent, usually unforeseen occurrence or occasion requiring immediate action."
tion of its public assistance expenditures. It has the power to choose what exigent needs will be met. But once these needs have been identified, the state is required to provide EANFC benefits to all such necessitous families if there is no violation of the work requirement.

III

REVIEW OF ADVERSE DETERMINATIONS

When a family's application for emergency assistance is denied, the applicant must be afforded a means of challenging that determination. Although the family has recourse to a fair hear-

was enacted to apply to sudden and unexplained emergency events and not to remedy the anticipated demands created as the result of everyday life. It was not designed to replace furniture merely worn by normal use ... but where emergency or catastrophe suddenly affects the family or individuals involved. To so hold would violate the concept of semimonthly flat grants to welfare recipients and inundate the Department of Social Services with requests for additional assistance to meet the everyday needs for which the vast population, also on fixed incomes, have learned to budget and expect. Id. at 336-37, 355 N.Y.S.2d at 478 (citations omitted). The court based its decision not only on grant duplication, but also on unforeseen destitution; hence, the privation did not arise from an emergency. Despite its name, however, emergency assistance is not confined to unforeseen exigencies. Rather, it encompasses all forms of destitution requiring immediate action. The statutory language focuses on the extent of need with no reference to foreseeability. See note 4 supra. Furthermore, the legislative history indicates a congressional desire to meet immediate needs. For example, during the course of debate on the 1968 Amendments to the Social Security Act, Representative Farbstein (New York) said of EANFC:

I view with particular enthusiasm the provision establishing an emergency assistance program for dependent children and their families. ... Program coverage includes not only cash payments, but payments to purchase items needed immediately by the family such as living accommodations, medical care, and a variety of related services. I believe we should study the results of this program carefully in the year ahead to see if additional benefits and legislative authority are needed to effectively carry out this emergency assistance program.

113 Cong. Rec. 23131 (1967). When a child is in urgent need of a bed either because his first bed has become worn, lost in a fire, or because he has grown too old to be sleeping with siblings of the opposite sex, a state which recognizes household furnishings in its EANFC program must provide emergency aid. See Hatfield v. Lavine, 42 App. Div. 2d 855, 346 N.Y.S.2d 845 (2d Dep't 1973); Woods v. Lavine, 76 Misc. 2d 677, 351 N.Y.S.2d 309 (Sup. Ct. 1973); Nicholson v. Schreck, 75 Misc. 2d 676, 348 N.Y.S.2d 653 (Sup. Ct. 1973).

51 Inefficient use of public assistance moneys could be minimized if local departments of social services provided classes in money management to families on public assistance or those near the poverty line. When departmental officials have reason to believe that public assistance benefits are not being used in the best interests of a family's children, they should provide some form of money management counseling. See 42 U.S.C. § 605 (1970). The possibility of an emergency arising from mismanagement of public assistance benefits might also be reduced by allowing the state to make payments in kind for such needs as rent and heat whenever a recipient has demonstrated an inability to manage his money efficiently. In extreme instances of parental abuse of public assistance funds, the state could institute neglect proceedings against the parents, and a guardian could be appointed to protect the children's interests. See id.
ing, the regular fair hearing procedure may be inadequate for handling the special problems that the emergency assistance program was designed to solve. The major shortcoming of the normal fair hearing process is delay. Generally, a fair hearing cannot be obtained until two or three weeks after it has been requested. Moreover, the state welfare department need not render its fair hearing decision until ninety days after the hearing has been requested. Throughout this period, the EANFC applicant is without the assistance for which he has claimed an urgent need.

The slowness of the fair hearing process creates two difficulties when the process is applied to cases under the emergency assistance program. First, it may violate federal requirements that emergency assistance be provided “forthwith” and that aid be furnished to “avoid destitution.” Once an eligible individual is denied EANFC by a local department, he will not receive any benefits until after a fair hearing decision has been rendered, perhaps several months following the initial application. If the initial need were urgent, the delay might result in the payment of benefits only long after the applicant has become destitute. Second, a delay of ninety days between the making of an EANFC application and the rendering of the fair hearing decision


53 45 C.F.R. § 205.10(a)(16) (1974). Prior to the 1973 amendment, the limit was 60 days. 45 C.F.R. § 205.10(a)(1)(ii) (1972). Regulations in some states may still adhere to the former 60-day rule, see, e.g., N.J.A.C. 10:81-24.28 (1969), but it is likely that these states will soon take advantage of the amendment to the federal regulation. New York has already changed its limit from 60 to 90 days. See 18 NYCRR 358.18(a) (Nov. 30, 1974).


55 The tendency of welfare departments to deny benefits to some people eligible for them has been widely recognized. Comment, Due Process and the Right to a Prior Hearing in Welfare Cases, 37 Fordham L. Rev. 604, 610-11 (1969), is cited as illustrative of the “welfare bureaucracy’s difficulties in reaching correct decisions on eligibility.” Goldberg v. Kelly, 397 U.S. 254, 264 n.12 (1970). In this article, the author notes:

[Intense public and political pressures to "cut costs" have had the pernicious effect of forcing welfare departments to be both oversensitive to keeping persons off relief rolls and in not allowing the agencies to improve their internal administrative practices.


Goldberg and the Fordham Law Review article emphasize the improper termination of aid. However, applicants for public assistance face identical difficulties. “Eligibility determinations, both at the time of intake or [sic] at the time of redetermination, often result in the denial of public assistance to eligible persons and applicants.” Comment, Eligibility Determinations in Public Assistance: Selected Problems and Proposals for Reform in Pennsylvania, 115 U. Pa. L. Rev. 1307, 1312 (1967).
may constitute a denial of the applicant's due process right to a prompt adjudication of his claim. The Supreme Court, in *Goldberg v. Kelly*,\(^6\) held that due process considerations apply to the determination of public assistance benefits. In fact, due process mandates that an applicant for public assistance be given an opportunity to be heard "at a meaningful time and in a meaningful manner."\(^7\) He must be able to contest the local department denial before he becomes effectively bound by that decision. Since an applicant for emergency assistance will be rendered destitute unless he receives benefits shortly after filing his application, a hearing on an emergency assistance claim must produce a decision within a short time if it is to be meaningful. An eligible applicant would otherwise be placed in economic jeopardy pending the decision on his claim.\(^8\)

\(^6\) 397 U.S. 254 (1970). *Goldberg* emphasized that a welfare recipient's survival depends upon his continued receipt of welfare benefits. The Supreme Court said: "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss'..." *Id.* at 262-63, quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). An applicant and a recipient may each be rendered destitute by the denial of benefits. Therefore, consideration of the urgency of need dictates that due process be afforded to an EANFC applicant as it is to an AFDC recipient, at least where the applicant needs public assistance in order to survive.

Furthermore, it can be argued that the existence of a state statute or regulation authorizing emergency assistance gives an EANFC applicant an interest and claim to which due process requirements apply. In *Goldberg*, the Court noted that AFDC benefits "are a matter of statutory entitlement for persons qualified to receive them." *Id.* at 262. The Court supported this argument by citing cases concerning withdrawal of other forms of public benefits to establish the need for evidentiary hearings prior to the termination of welfare benefits. *Id.* at 262-63. Although it did not discuss the need for a prompt evidentiary hearing upon the denial of an applicant's claim for public assistance, it did cite several cases which held that due process must be afforded applicants for certain public benefits. *Id.* at 262-63 n.9. In one of these cases, *Goldsmith v. Board of Tax Appeals*, 270 U.S. 117 (1926), a certified public accountant sought the right to practice before the Board of Tax Appeals. Because his application indicated that he was within the class of those entitled by the rules of the Board to practice before it, the Court stated, in dictum, that the accountant could not be denied admittance upon charges of unfitness until "after fair investigation, with such a notice, hearing and opportunity to answer... as would constitute due process." *Id.* at 123. Because *Goldberg* emphasized the similarity of various types of public entitlements, it appears that on the basis of such cases as *Goldsmith* an applicant for EANFC has an interest to be protected by due process.

\(^7\) Armstrong v. Manzo, 380 U.S. 545, 552 (1965). In *Armstrong*, an adoption proceeding decree was set aside for reconsideration because the natural father had not received notice until after the burden of proof had been shifted by the findings at the initial adoption proceeding. Petitioner Armstrong's rights had been effectively throttled by the initial hearing because of the difficulty in meeting the resulting burden of proof. Normal fair hearing procedure at the subsequent hearing was, therefore, held to be insufficient to satisfy the demands of the due process clause of the fourteenth amendment.

\(^8\) For instance, an applicant who was seeking to forestall utility termination would lose
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It is virtually certain that any procedure to expedite the fair hearing process will entail additional expense and inconvenience for state governments. Nevertheless, because the applicant's interest in avoiding destitution so outweighs the governmental interests involved, some type of prompt review must be provided.59

The particular circumstances confronting those applying for emergency assistance has led a number of courts to conclude that there is no need to exhaust administrative remedies where grave harm would result from delay in the determination of initial entitlement. Applicants have therefore been granted a right to immediate judicial review of denials by local welfare departments.60 Other courts, believing that departmental hearings are more appropriate for reviewing departmental decisions, have directed welfare departments to grant a fair hearing with the instruction that "the decision thereon should not be unduly delayed."61 Such an expedited review process has many advantages over immediate resort to the courts. The relatively informal setting of the hearings is more conducive to rapid resolution of the factual questions that often arise in EANFC claims.62 The informality also makes de-

utility service if his claim for financial assistance were not approved with sufficient speed. The applicant would then be forced to live without heat or electricity until after the decision on his claim had been rendered.

59 Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance . . . . While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process. Goldberg v. Kelly, 397 U.S. 254, 261 (1970), quoting Kelly v. Wyman, 294 F. Supp. 893, 901 (1968).


61 Anderson v. Goldberg (Sup. Ct. Feb. 1, 1971), in 165 N.Y.L.J., Feb. 2, 1971, at 19, col. 2. See Randle v. Weaver, [1972-1974 Transfer Binder] CCH Pov. L. REP. ¶ 18,895 (E.D. Ill. 1974). Randle required Illinois welfare agencies to replace missing categorical assistance checks within either two weeks or one month, depending on whether the recipient had previously made a fraudulent claim for replacement. It also ordered that a recipient be given the opportunity to have a prompt hearing and decision on the question of whether he had ever made such a fraudulent claim.

62 In Lucas v. Chapman, 430 F.2d 945, 948 (5th Cir. 1970), the court of appeals held that the "localized, less formalized, less adversary atmosphere" of the board of education is to be preferred to a courtroom for resolving problems concerning teacher rehiring. Similar considerations should apply in challenges of EANFC denials. A hearing officer has more freedom than a judge to interrupt the flow of testimony and question either party concerning an unclear point which has been raised. In this way, he can quickly reach a decision on a subissue, whereas a judge might have to wait until after the end of a trial to resolve such a matter. In addition, since administrative proceedings are not rigidly bound by rules of evidence, a claimant enjoys a better opportunity to present all of the evidence in his favor.
partmental hearings less burdensome for applicants and the state social services departments; the applicant need not prepare complicated legal papers, and the state is spared the greater expense and investment of personnel associated with a court proceeding. An applicant's due process rights might best be satisfied by granting him a fair hearing within a week of his EANFC denial, and by rendering the actual decision within twenty-four hours after the hearing.  

**CONCLUSION**

Although EANFC is seven years old, it is still in its early stages of development. Outside of New York State, case law on the program is virtually nonexistent. As a result, many state EANFC programs, operated beyond the boundaries of their allowable discretion in restricting eligibility, remain virtually unchallenged. At a time when increasing numbers of people are pushed toward destitution by inflation, recession, and high unemployment, it is hoped that that EANFC program will be properly utilized to respond to the emergency needs of our nation's poor.

_Lawrence Gardella_

Factual issues are critical in emergency assistance cases. The key issue is whether the applicant is truly destitute, or whether there are resources available to a child or parent to meet the stated need. It is also important to determine whether the applicant has refused work or work training and whether the applicant has made any fraudulent statements.