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Due Process

reversal of the defendant's robbery conviction since there was proper identification at trial by five eyewitnesses to the crime.[218]

Wortzman v. Kaladjian[219]
(decided October 20, 1994)

Petitioner claimed that respondent's method of calculation used to determine petitioner's eligibility for medical assistance violated his right to due process and equal protection as guaranteed by both the New York State[220] and Federal[221] Constitutions.[222] Petitioner alleged that the method of calculation was arbitrary and capricious and sought relief through an article 78 proceeding.[223] Petitioner requested a declaration that the respondent had violated his constitutional rights.[224] Furthermore, petitioner sought an order directing respondent to retroactively recalculate his eligibility "based on his actual expenses and an allocation of a personal needs allowance."[225] Although the Appellate Division,

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218. *Id.* at 252, 423 N.E.2d at 384, 440 N.Y.S.2d at 907.

219. 617 N.Y.S.2d 466 (App. Div. 1st Dep't 1994).

220. N.Y. CONST. art. I, § 6. This provision provides: "No person shall be deprived of life, liberty or property without due process of law." *Id.*; N.Y. CONST. art. I, § 11. This provision provides: "No person shall be deprived the equal protection of the laws of this state or any subdivision thereof." *Id.*

221. U.S. CONST. amend. XIV, § 1. This provision provides: "No state shall . . . deprive any person of life, liberty or property without due process of law." *Id.*; U.S. CONST. amend. XIV, § 1, cl. 3. This provision provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

222. *Wortzman*, 617 N.Y.S.2d at 468.

223. Article 78 of the Civil Practice Law & Rules § 7803, provides for judicial review of respondent's determination of the issue raised in the proceeding to consider "whether a determination was made in violation of lawful procedure . . . or was arbitrary and capricious or an abuse of discretion . . . ." N.Y. CIV. PRAC. L. & R. § 7803(3) (McKinney 1993).

224. *Wortzman*, 617 N.Y.S.2d at 468.

225. *Id.* at 467. Petitioner contended that eligibility should be

> based upon a computation of his net income which treats as surplus income available to meet medical expenses only Petitioner's net income after deduction of the payment actually made to the adult care facility in each month and the personal allowance provided in that month under

First Department did not explicitly address petitioner's constitutional claims, the court held that the calculations "accorded disparate treatment to the medical needs of the categorically needy and medically needy."[226] The matter was remitted to the respondent for reconsideration.[227]

Petitioner, Leo Wortzman, is a psychiatrically disabled veteran, qualified as "medically needy,"[228] residing at an adult home licensed and regulated by the New York State Department of Social Services [hereinafter DSS].[229] Petitioner's application for medical assistance was denied by the New York City Human Resources Administration [hereinafter HRA] until he had incurred $113 in medical expenses.[230] This amount, representing

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Social Services Law § 131-o to SSI [Supplemental Security Income] recipients residing in health care facilities.

Id.

226. *Id.* at 469.

227. *Id.* at 467. However, the Appellate Division, First Department modified the order and judgment of the Supreme Court to vacate the directions to respondent requiring that the respondent consider actual expenses in determining eligibility. The court held that there was no statutory authorization for such a requirement and that consideration of such expenses may present new comparability difficulties. *Id* at 469-70.

228. *Id.* at 468. "Medically needy" individuals may qualify for medical assistance if they incur medical expenses that reduce their available income to the eligibility level. *Id.* at 467-68. *See, e.g.*, N.Y. SOC. SERV. LAW § 366 (McKinney 1992). A person is "medically needy" if his income is not enough to cover his medical expenses but too high to qualify for Supplemental Security Income (SSI) which would categorize the individual as "categorically needy." *Wortzman*, 617 N.Y.S.2d at 468. The difference between the eligibility level and the net income is known as "excess income." *Id.* When a "medically needy" person applies for medical assistance, the DSS measures his net income against an established medically needy income standard. *Id.* "New York regulations provide for a medically needy income standard equal to either the 'medical assistance standard' or the 'public assistance standard of need,' whichever is greater. Net income is derived from gross income by deducting exempt income and allowable deductions." *Id.*; *see also* 42 U.S.C. § 1396a[a][10][C][i] (1989); 42 C.F.R. § 435.812 (1993); N.Y. SOC. SERV. LAW § 366.2[a] (McKinney 1992); N.Y. COMP. CODES R. & REGS. tit. 18, § 352.8[b][3], [c][1][ii], § 360-4.7[b][1] (1962).

229. *Wortzman*, 617 N.Y.S.2d at 467.

230. *Id.* at 617 N.Y.S.2d at 468.

the difference between the petitioner's gross income adjusted by insurance premiums and a predetermined standard of need value, constituted excess income.[231] Petitioner was granted a hearing by the DSS to challenge the calculations on the contention that the $800 monthly rent that he paid in early 1990 and the $850 monthly rent paid after August 1, 1990 were not properly taken into account.[232] Consequently, petitioner alleged that his actual financial condition was not properly reflected.[233] Moreover, petitioner contended that, as a "medically needy" person, he was entitled to the same personal needs allowance that a "categorically needy" person is statutorily guaranteed.[234] The petitioner stated that the $113 "spend down" amount from his income deprived him of additional funds to tend to his personal needs.[235] However, after its deliberation, DSS determined that the calculations were correct.[236]

The court concluded that "[t]he computations employed by the respondents require the petitioner to spend his income on medical care to a level below the amount of the personal needs allowance

> The $113 excess income figure . . . was arrived at by deducting a $20 Medicare premium and health insurance premiums of $28.60 in 1990 and $29.90 in 1991, from his gross income, which consisted of his disability benefits [including Social Security Disability and Veterans Disability benefits]. In 1990, these benefits totaled $982.60 and in 1991, they totaled $1004.90 per month. From this net income of $934 a month in 1990 and $955 a month in 1991, was deducted a "public assistance standard of need," which, in July of 1990, was $821 and in July of 1991, was $842.

Id.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* A personal needs allowance is "set aside" from a categorically needy person's fixed income. *Id.* at 469. This can neither be attached by the facility where the individual resides, nor can it be relinquished to the facility by the individual. *Id. See* N.Y. SOC. SERV. LAW §§ 131-[1],[2], 461-c[4] (McKinney 1992). "As of January 1, 1991, the monthly personal allowance was 'at least $90.' In 1990, by contrast, the respondent's calculations left the [petitioner] with $21 for personal needs. In 1991, the amount was eight dollars short." *Id.* (citation omitted).

235. *Wortzman*, 617 N.Y.S.2d at 468.

236. *Id.*

which categorically needy recipients are permitted to retain before he is eligible for medical assistance."[237] The court reasoned that this was a more restrictive eligibility requirement for "medically needy" individuals than for "categorically needy" persons[238] and therefore, petitioner was entitled to have his eligibility requirements re-calculated.[239]

The court was able to reach its decision without expressly addressing petitioner's constitutional claims. This was due to the fact that federal statutes, as well as federal case law, provide that "[c]omparable treatment must be accorded categorically needy and medically needy medical assistance recipients."[240] In *Calkins v. Blum*,[241] the United States District Court for the Northern District of New York held that comparable treatment of "medically needy" and "categorically needy" persons is mandated by statutory and judicial authority.[242] The plain language of section 1396 of the Social Security Act[243] states that the determination of medical assistance is to be "determined in accordance with comparable standards."[244] Furthermore, judicial interpretation has concluded that this provision requires that states prescribe standards "for medically needy persons that are no more restrictive than those standards governing the eligibility of categorically needy persons."[245]

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237. *Id.* at 469.

238. *Id.*

239. *Id.* at 470.

240. *Id.* at 469. *See* 42 U.S.C. § 1396a(a)(10)(A), (C).

241. 511 F. Supp. 1073 (N.D. N.Y. 1981), *aff'd*, 675 F.2d 44 (2d Cir. 1982). In *Calkins*, after plaintiffs had applied for assistance as medically needy persons, they instituted an action for declaratory, injunctive, and monetary relief by alleging that the eligibility for medically needy persons was determined in a manner different from, and less generous than, the manner used for categorically needy persons. *Id.* at 1079. Plaintiffs alleged *inter alia* that such treatment violated the Equal Protection Clause. *Id.*

242. *Id.* at 1092.

243. 42 U.S.C. § 1396 (a)(10)(C)(i) (1970).

244. *Calkins*, 511 F. Supp. at 1090-91.

245. *Id.* (citing Caldwell v. Blum, 621 F.2d 491, 497 (2d Cir. 1980), *cert. denied*, 452 U.S. 909 (1981)).

Other courts have addressed claims by welfare recipients holding that classifications for purposes of eligibility calculations are violative of the Equal Protection Clause.[246] The New York Court of Appeals rejected such a claim in *Bernstein v. Toia*.[247] While this case did not deal specifically with the classifications of "medically needy" and "categorically needy,"[248] the court held that if there is a rational basis for the legislation, and there is no claim of invidious discrimination, then there are no constitutional claims for violation of equal protection or due process.[249] The *Bernstein* court noted that the rise of public assistance has become a matter "of primary social and economic concern to the people of the state of New York"[250] and these concerns can provide a rational basis for classifying people for purposes of distributing

246. *See* Daniels v. Sullivan, 979 F.2d 1516 (11th Cir. 1992) (holding a Georgia intestacy statute, requiring that an illegitimate child establish paternity during fathers lifetime in order to be eligible for survivors benefits under the Social Security Act, to be violative of equal protection, since the child was only two and one-half years old at the time of his putative father's death); Medora v. Colautti, 602 F.2d 1149 (3d Cir. 1979) (denying benefits based on SSI guidelines in violation of the Equal Protection Clause). *But see* Dumaguin v. Secretary of Health and Human Servs., 28 F.3d 1218 (D.C. Cir. 1994) (holding that section of the Social Security Act imposing additional residency requirements on adopted individuals beyond those otherwise applicable to alien dependents and survivors seeking benefits is not violative of equal protection rights); Miernicki v. Railroad Retirement Bd., 20 F.3d 354 (8th Cir. 1994) (holding the application of a statute governing railroad retirement annuities to deny railroad employee years of service credit for months not worked due to injuries which were compensated under the Longshore and Harbor Worker's Compensation Act, did not deny equal protection); Douglas v. Babcock, 990 F.2d 875 (6th Cir.), *cert. denied*, 114 S. Ct. 86 (1993) (holding denial of pregnancy-related Medicare Benefits to mother who previously failed to cooperate in protection because government could rationally argue that compelling low-income pregnant women to participate in establishing paternity would make more funds available for all other recipients of Medicare).

247. 43 N.Y.2d 437, 373 N.E.2d 238, 402 N.Y.S.2d 342 (1977).

248. In *Bernstein*, a DSS regulation that fixed maximum shelter allowances for recipients of public assistance but did not take into account circumstances peculiar to individual recipients was being challenged. *Id.* at 440, 373 N.E.2d at 239, 402 N.Y.S.2d at 343.

249. *Id.* at 446, 373 N.E.2d at 243, 402 N.Y.S.2d at 347.

250. *Id.* at 444, 373 N.E.2d at 242, 402 N.Y.S.2d at 346.

welfare benefits.[251] Although the court found that different classes of people were being treated differently, the court held that such treatment was "[m]otivated to make optimum responsible use of the not unlimited funds appropriated and likely to be appropriated for social services."[252] Therefore, the court found no constitutional violation.[253]

The *Bernstein* court relied in part on the Supreme Court case of *Dandridge v. Williams*.[254] *Dandridge* involved an equal protection claim in the area of welfare benefits.[255] The action was based on a claim that a regulation resulted in disparity of welfare payments.[256] The court announced that:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."[257]

When dealing in the area of social welfare, the regulation will be upheld so long as the state action is "rationally based and free from invidious discrimination."[258]

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251. *Id.* at 445, 373 N.E.2d at 242, 402 N.Y.S.2d at 346.

252. *Id.* at 446, 373 N.E.2d at 242, 402 N.Y.S.2d at 347.

253. *Id.* at 446, 373 N.E.2d at 243, 402 N.Y.S.2d at 347.

254. 397 U.S. 471 (1970).

255. Petitioners in *Dandridge* challenged provisions of the Federal Aid to Families With Dependent Children under the laws of the State of Maryland. *Id.* at 473. This program was designed to provide eligible families with the full amount of their computed standard of need. However, the provisions provided for an upper limit on the total amount of assistance that any one family could receive. *Id.* Petitioners had large families and their computed standard of need was higher than this ceiling amount. *Id.* at 474-75. They argued that this, in effect, discriminated against them on the basis of the size of their family in violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 475.

256. *Id.* at 484.

257. *Id.* at 485 (quoting Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911)).

258. *Id.* at 487.

Several years after *Dandridge* was decided, the Supreme Court was faced with the constitutional question that was posited to the court in *Wortzman* - whether the classification of "medically needy" and "categorically needy" for purposes of Medicaid benefits, violates the Equal Protection Clause.[259] The purpose of the classification, the court reasoned, was to determine who was the most impoverished and who was often least able to overcome the effects of their poverty.[260] The court held that "a decision to allocate medical assistance benefits only to the poor does not itself violate constitutional principles of equality; in terms of their ability to provide essential medical services, the wealthy and the poor are not similarly situated . . . ."[261] The court further stated that, "[i]t is clear that a decision to allocate scarce assistance benefits on the basis of an assumption that persons with greater incomes generally are better able to prepare for future medical needs is not inconsistent with constitutional principles of equal treatment."[262] Applying the "rational basis" test enunciated in *Dandridge*, the Court found that there was a rational basis to define need based on income "even though some persons with greater income -- who have been unable or unwilling to save enough of their earnings to prepare for future medical needs -- may actually be in greater need of assistance than those with less gross income."[263]

In conclusion, although it was not specifically addressed in *Wortzman*, the federal and state constitutional analysis on this issue is virtually identical. When the challenged legislation is in

259. Schweiker v. Hogan, 457 U.S. 569, 583 (1982). Appellees originally challenged the validity of the Social Security Act claiming it violated the Equal Protection Clause of the Fifth Amendment. *Id.* As the Act was applied in Massachusetts, appellees were ineligible for SSI or supplemental state payments because they were currently receiving Social Security Benefits. *Id.*

260. *Id.* at 589.

261. *Id.* at 590.

262. *Id.* at 591.

263. *Id.* In dicta, the court argued that this equal protection argument was really self-defeating. *Id.* at 592. "The injury that they regard as inconsistent with constitutional principles of equal treatment could be avoided by denying them *all* Medicaid benefits, thus placing them in a worse position financially than they are in now." *Id.*

the area of economic and social welfare, the courts will uphold the statute in the face of an equal protection claim so long as there is a rational basis for the classification. Allocation of scarce resources is a major concern for the state. "[For the] people [who] are the most needy in the country . . . it is appropriate for medical care costs to be met, first, for [those] people."[264]

SUPREME COURT

ALBANY COUNTY

Augat v. Dowling[265]
(decided May 20, 1994)

Petitioner, Robert Augat, claimed the conduct of respondent, Commissioner of Social Services of the State of New York, violated his liberty interest in reputation and employment, as well as his constitutional right to due process under the New York[266] and Federal Constitution.[267] Specifically, petitioner claims that a report was issued citing allegations of physical abuse by the petitioner against a resident, and directing the revocation of his approval to act as administrator for the Laurel Manor Home for Adults.[268] Further, the petitioner was discharged from his employment, denied an opportunity to challenge the accusations against him, and was not permitted to be present at the home or

264. *Schweiker*, 457 U.S. at 590.

265. 161 Misc. 2d 225, 613 N.Y.S.2d 527 (Sup. Ct. Albany County 1994).

266. N.Y. CONST. art. I, § 6. Section 6 provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

267. U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." *Id.*; U.S. CONST. amend. XIV, § 1. Section 1 provides in pertinent part: "No State shall deprive any person of life, liberty, or property, without due process of law . . . ." *Id.*

268. *Augat*, 161 Misc. 2d at 226-27, 613 N.Y.S.2d at 528. Mrs. Agatha Augat also claimed respondent's conduct violated her constitutional rights. *Id.* at 226, 613 N.Y.S.2d at 528.