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Public Relief

While the New York State Constitution mandates that the state provide for the needy, federal public assistance programs are implemented via statutory authority.[76] In providing such public assistance to those categorically defined as needy, the State Legislature cannot arbitrarily create a classification based on criteria unrelated to need. In creating classifications, the State Legislature may not abridge its residents equal protection rights by imposing requirements on one class through means not rationally related to a legitimate goal. Alternately, the equal protection right of the Federal Constitution requires the state to overcome strict scrutiny when instituting regulations that abridge fundamental rights such as the right to travel.

SUPREME COURT

QUEENS COUNTY

Pastore v. Sabol[77]
(decided March 9, 1994)

Petitioners, as applicants for Medicaid, sought declaratory and injunctive relief[78] in order to receive temporary medical assistance to meet their "immediate medical needs" while awaiting a decision on their Medicaid applications.[79] However,

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N.W.2d 896, 907 (Minn. Ct. App. 1992), *aff'd*, 504 N.W.2d 198 (Minn. 1993), *cert. denied*, 114 S. Ct. 902 (1994).

76. *See, e.g.*, 49 Stat. 627 (as amended 42 U.S.C.A. §§ 601-09). The Social Security Act of 1935 established the program Aid to Families with Dependent Children.

77. 160 Misc. 2d 983, 611 N.Y.S.2d 755 (Sup. Ct. Queens County 1994).

78. The petitioners also sought an award of attorneys' fees. *Id.* at 994, 611 N.Y.S.2d at 762. However, the court denied this request based on the reasoning that CPLR article 86, a provision which shifts to the state the obligation to pay counsel fees, is restricted and narrowly interpreted. *Id.* (citing Peck v. State Div. of Hous., 188 A.D.2d 327, 590 N.Y.S.2d 498 (1st Dep't 1992)).

79. *Id.* at 985, 611 N.Y.S.2d at 756. Robert Pastore was the original petitioner. In separate motions, Mr. and Mrs. Timmes for themselves, and on behalf of their granddaughter Lisa Cannalonga, and Belva Frank and her

since the court's determination of the issues was based on whether the particular policy[80] violated the New York State Constitution[81] and New York's Social Services law,[82] the petitioners had to withdraw their request for injunctive relief and seek only declaratory relief.[83] Respondent, Barbara J. Sabol, the Commissioner of the New York City Department of Social

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husband Kenneth, sought to intervene. The separate motions also sought declaratory and injunctive relief. The request to intervene was granted because they were all Medicaid applicants and their claims were the same as Mr. Pastore's claim challenging the respondent's policy of denying temporary medical assistance during pendency of applications for Medicaid. *Id.* at 986, 611 N.Y.S.2d at 757. The court stated that "[t]he proposed intervenors . . . have a real and substantial interest in the outcome of the within action, and need not separately litigate these issues." *Id.* Mr. and Mrs. Timmes later withdrew the claim on behalf of their granddaughter because "her status as a Medicaid recipient was restored by respondents." *Id.* However, contrary to Sabol's belief, the Timmes' did not withdraw their own claims, and contended they were never previously settled. *Id.*

80. The state's agency policy was embodied in 86 Administrative Directive 7 [hereinafter the directive] which provides "that when an applicant for public assistance indicates that an emergency situation exists the local district must conduct an interview on the same day and must determine if the applicant has an immediate need." *Pastore*, 160 Misc. 2d. at 992, 611 N.Y.S.2d at 760. In addition, the directive further provides that "'[t]here are no formal provisions . . . which would permit . . . emergency pre-investigation coverage . . . . '" *Id.* at 992, 611 N.Y.S.2d at 761.

81. N.Y. CONST. art. XVII, § 1. This section states: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." *Id.*

82. N.Y. SOC. SERV. LAW § 133 (McKinney 1993). This section states: "If it shall appear that a person is in immediate need, temporary assistance or care shall be granted pending completion of an investigation." *Id.*

83. *Pastore*, 160 Misc. 2d at 986, 611 N.Y.S.2d at 757. In order for the court to determine the validity of an action, an Article 78 proceeding must be converted to an action for declaratory judgment. *See* New York State Coalition of Pub. Employers v. New York State Dep't of Labor, 89 A.D.2d 283, 456 N.Y.S.2d 465 (3d Dep't 1982) (holding that the action had to be converted to one seeking declaratory judgment), *aff'd*, 60 N.Y.2d 789, 457 N.E.2d 785, 469 N.Y.S.2d 679 (1983); Erie County v. Whalen, 57 A.D.2d 281, 282, 394 N.Y.S.2d 747, 748 (3d Dep't 1977) (holding that a declaratory judgment is more appropriate when a "declaration that a regulation is invalid [is] sought"), *aff'd*, 44 N.Y.2d 817, 377 N.E.2d 984, 406 N.Y.S.2d 453 (1978).

Services, requested that the petitions be dismissed as moot, but the court denied the request as an exception to the mootness doctrine.[84] The court found that the sections violated the New York State Constitution and Social Services Law, and asserted that the policy needed to be changed.[85] The court concluded that the New York State Constitution and applicable case law recognize the importance of providing aid to the needy and would not allow policy provisions to override the drafters' intention to protect the public.[86]

The plaintiffs[87] suffered from various illnesses which required immediate attention while their Medicaid applications were being processed. For example, Mr. Pastore suffered from both irregular heartbeat and rapid heartbeat.[88] He filed an application for Medicaid, home relief, and food stamps.[89] He also requested, but received no response to a "temporary grant of medical

84. *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 758. Normally, a case is moot if it raised a justiciable controversy at the time the complaint was filed, but events occurring after the filing deprived the litigant of an ongoing stake in the controversy.

85. *Pastore*, 160 Misc. 2d at 993-94, 611 N.Y.S.2d at 761. Petitioners did not have to exhaust administrative remedies before bringing this suit. *Id.* at 986, 611 N.Y.S.2d at 757. Normally, a party must exhaust administrative remedies before seeking relief in court. *Id.* at 986-87, 611 N.Y.S.2d at 757. However, this rule is flexible and does not have to be followed "when an agency's action is challenged as either unconstitutional or wholly beyond its grants of power . . . or when resort to an administrative remedy would be futile . . . or when its pursuit would cause irreparable injury." Watergate II Apartments v. Buffalo Sewer Auth., 46 N.Y.2d 52, 57, 385 N.E.2d 560, 563, 412 N.Y.S.2d 821, 824 (1978). *See* Good Samaritan Hosp. v. Axelrod, 150 A.D.2d 775, 542 N.Y.S.2d 28 (2d Dep't 1989). In *Pastore*, resorting to an administrative remedy would have been useless because the hearing officer must follow the law in question, which denies pre-investigative grants for medical assistance. *See, e.g.*, Johnson v. Blum, 83 A.D.2d 731, 442 N.Y.S.2d 618 (3d Dep't 1981), *rev'd*, 58 N.Y.2d 454, 448 N.E.2d 449, 461 N.Y.S.2d 782 (1983).

86. *Pastore*, 160 Misc. 2d at 993, 611 N.Y.S.2d at 761.

87. Since the action was now a declaratory judgment action, the petitioners and intervenors are henceforth referred to as plaintiffs and the respondents are henceforth referred to as defendants. *Id.* at 987-88, 611 N.Y.S.2d at 758.

88. *Id.* at 988, 611 N.Y.S.2d at 758.

89. *Id.*

assistance" to alleviate "his immediate needs."[90] He later requested an "emergency fair hearing" on this issue, which was adjourned.[91] He then withdrew his request and commenced this action.[92] In a notice, he was informed of his eligibility for home relief, food stamps, and Medicaid.[93] Plaintiffs sought a declaration mandating defendants to provide "pre-investigative [medical] assistance" while an applicant awaited a decision on their application for public assistance.[94]

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90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* The other plaintiffs' situations varied slightly; however, they all sought the same relief. Mr. Timmes was in the hospital because he suffered from a heart attack, pneumonia, and emphysema. *Id.* Since he was released, he had been attached to a "non-portable breathing apparatus." *Id.* Mrs. Timmes had coronary artery disease which went untreated because of her lack of funds. *Id.* Mr. and Mrs. Timmes applied for permanent assistance, and requested "pre-investigative assistance[;]" however, they only received money for their non-medical needs. *Id.* at 989, 611 N.Y.S.2d at 758. Mrs. Frank had numerous ailments, and Mr. Frank suffered from malnutrition and was subsequently admitted to the hospital for colon cancer. *Id.* at 989, 611 N.Y.S.2d at 759. He was unable to get the medicine he needed because of the "invalidity of the temporary Medicaid cards." *Id.* at 990, 611 N.Y.S.2d at 759. They intervened in this action, claiming the state's policy prohibiting pre-investigative assistance needed to be amended. *Id.*

94. *Id.* at 990, 611 N.Y.S.2d at 759. The court addressed and acknowledged that the parties had standing to bring this suit. *Id.* at 987, 611 N.Y.S.2d at 757-58. Plaintiffs applied for public assistance and requested pre-investigative grants "to meet their immediate medical needs." *Id.* at 987, 611 N.Y.S.2d at 757. The state's policy precluded this assistance and, therefore, the applicants were not given notice that such assistance was denied. *Id.* Thus, the court found that all of the parties had been aggrieved by the policy and had standing to challenge it. *Id.* at 987, 611 N.Y.S.2d at 757-58.

The court cited Davis v. Perales, 151 A.D.2d 749, 542 N.Y.S.2d 772 (2d Dep't 1989), which held that the petitioners lacked the requisite standing requirements because they failed to demonstrate that they were harmed by the directive, as their Medicaid applications predated its enactment. *Id.* at 752, 542 N.Y.S.2d at 775. The court noted that "[t]he amended petition did not challenge this provision, and the appellants were not given an opportunity to defend its validity." *Id.* at 753, 542 N.Y.S.2d at 775. However, the *Pastore* court reasoned that the present case was different because all of the petitioners were injured by the policy and, therefore, had standing to challenge it. *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 757-58. The petitioners in

The defendants asserted "that the Medicaid program [did] not authorize emergency pre-investigatory Medicaid coverage."[95] Additionally, defendants contended that neither section 133 of the Social Services law[96] nor the New York State Constitution[97] were violated because neither mandated temporary pre-investigatory medical assistance.[98] They further contended that "plaintiffs failed to show that they were entitled to temporary Medicaid coverage," or that there was an emergency situation that required medical assistance.[99]

In New York, an applicant for public relief must receive federal assistance before he is eligible for exclusively state funded programs.[100] New York law requires that a qualified applicant receive benefits within thirty days, "or within 90 days if eligibility is based on a disability."[101] Those who are receiving benefits may be reimbursed for covered expenses during the pre-application period.[102] Here, the plaintiffs lacked the resources to pay and were not entitled to any coverage in the interim.[103]

Davis, unlike those in *Pastore*, were not injured by the directive because it was issued after their application for relief. *Davis*, 151 A.D.2d at 752, 542 N.Y.S.2d at 775.

95. *Pastore*, 160 Misc. 2d at 991, 611 N.Y.S.2d at 760.

96. N.Y. SOC. SERV. LAW § 133 (McKinney 1993).

97. N.Y. CONST. art. XVII, § 1.

98. *Pastore*, 160 Misc. 2d at 991, 611 N.Y.S.2d at 760.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* Respondent argued that the case was moot because all parties have obtained permanent or impermanent Medicaid cards. *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 758. However, the court rejected the respondent's mootness argument. *Id.* Mootness precludes a case from justiciability because the litigants are deprived of their ongoing stake in the controversy by events occurring after the filing. *See, e.g.*, Defunis v. Odegaard, 416 U.S. 312, 319 (1974) (holding that petitioners case was moot "[b]ecause [he] will complete his law school studies at the end of the term for which he has now registered regardless of any decision this Court might reach on the merits of this litigation. . ."). The articulated exceptions to the mootness doctrine are: "(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a show of significant or important questions not previously passed on, i.e., substantial

In New York, "[t]he care of the needy . . . is not a matter of grace or charity, [since] the State has an affirmative duty to aid the needy."[104] In the instant case, Judge Posner followed *Tucker v. Toia*,[105] and recognized New York's obligation to help the

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and novel issues." *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 758 (quoting Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714-15, 409 N.E.2d 876, 878, 431 N.Y.S.2d 400, 402 (1980)).

In *Hearst Corp.*, the New York Court of Appeals found that a claim involving the legality of closing a courtroom to the press during entry of a guilty plea was moot because the underlying proceeding was complete. *Hearst*, 50 N.Y.2d at 713, 409 N.E.2d at 878, 431 N.Y.S.2d at 402. Relying on the exception articulated in *Hearst*, the court in *Pastore* struck down this mootness argument. *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 758. The *Pastore* court reasoned the case was not moot because an applicant's inability to receive pre-investigative costs is of public importance, may reoccur, and involves issues that may evade judicial review. *Id.*

In Allen v. Blum, 85 A.D.2d 228, 448 N.Y.S.2d 163 (1st Dep't 1982), *aff'd*, 58 N.Y.2d 954, 447 N.E.2d 68, 460 N.Y.S.2d 520 (1983), recipients of home relief sought a declaratory judgment and argued that the lack of investigation by social services prior to suspension or revocation of home relief was unlawful. *Id.* at 230, 448 N.Y.S.2d at 165. The court found the claim justiciable and stated that it was considering the issue not only for the named litigants, but for the policy itself. *Id.* The court further stated that declaratory judgments seek relief "not merely for the individual plaintiffs, but also a declaration that the continuing policy . . . is unlawful." *Id.* at 230, 448 N.Y.S.2d at 165 (citing Zuckerman v. Board of Educ., 44 N.Y.2d 336, 376 N.E.2d 1297, 405 N.Y.S.2d 653 (1978)).

The court in *Pastore* concluded, based on the reasoning in *Allen*, that declaratory judgment was the proper remedy for a challenge to a continuing policy and is a way to review its legality. *Pastore*, 160 Misc. 2d at 987, 611 N.Y.S.2d at 760. Hence, the court decided the case was not moot and went on to decide whether the policy was unlawful. *Id.*

104. *Pastore*, 160 Misc. 2d at 991, 611 N.Y.S.2d at 760 (citing N.Y. CONST. art XVII, § 1; Tucker v. Toia, 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977)).

105. 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977). The court declared a statute unconstitutional which stated that home relief should not be available to a person under the age of 21 who does not live with a parent or legally responsible relative, unless a support proceeding is commenced and an order of disposition is obtained. *Id.* at 9, 371 N.E.2d at 452, 400 N.Y.S.2d at 731. The *Tucker* court explained this provision to aid the needy was mandated by the New York Constitution and was created for two purposes: "(1) it was felt to be necessary to sustain from constitutional attack the social welfare

needy. In *Tucker*, the court reinforced the notion that "[i]n New York State, the provision for assistance to the needy is not a matter of legislative grace; rather it is specifically mandated by our Constitution."[106] In conjunction with the aforementioned constitutional provision and case law, the court examined section 133 of the Social Services Law.[107]

Section 133 of the Social Services law established the right of pre-investigative relief for public assistance applicants if they are in immediate need.[108] The court discussed whether the statutory language should be interpreted as to require immediate or emergency need.[109] The court concluded that only an immediate need was required to receive pre-investigative relief.[110] The court originally passed 86 Administrative Directive 7 [hereinafter the directive] when section 133 of the Social Services Law was challenged in *Gonzales v. Blum*[111] and *Davis v. Perales*[112] on the

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programs created by the State during that period and (2) it was intended as an expression of the existence of a positive duty upon the State to aid the needy." *Id.* at 7, 371 N.E.2d at 451, 400 N.Y.S.2d at 730.

106. *Id.* at 7, 341 N.E.2d at 451, 400 N.Y.S.2d at 730. This statement contemplates that most constitutions do not require such a generous and giving attitude towards the needy.

107. *Pastore*, 160 Misc. 2d at 991, 611 N.Y.S.2d at 760.

108. *Id.* (citing Gutowski v. Lavine, 44 A.D.2d 649, 353 N.Y.S.2d 281 (4th Dep't 1974)). The *Gutowski* court reversed the special term's decision because they attempted to determine whether or not petitioner's situation was an emergency. However, the court concluded only immediate need, not emergency need, was required under the Social Services Law. *Gutowski*, 44 A.D.2d at 649, 353 N.Y.S.2d at 282.

109. *Pastore*, 160 Misc. 2d at 991-92, 611 N.Y.S.2d at 760-61. The court said the obligation to provide such relief was mandatory without the existence of contrary legislative intent. Although section 133 did not define the emergency relief which must be granted, section 2, subdivision 18, states that "public assistance and care includes home relief . . . medical assistance for needy persons, institutional care for adults . . . at public expense pursuant to this chapter." *Id.* at 992, 611 N.Y.S.2d at 760 (citing N.Y. SOC. SERV. LAW § 2(18) (McKinney 1993)).

110. *Id.* at 993, 611 N.Y.S.2d at 761. The state passed the existing policy which was challenged in this case. However, the conclusion was that "an applicant [must have] an immediate need, and not an emergency need." *Id.*

111. 127 Misc. 2d 558, 486 N.Y.S.2d 630 (Sup. Ct. Westchester County 1985). Mrs. Gonzalez, a mother of four children, applied for public aid and

ground that applicants need to be given notice of the existence of pre-investigative grants.[113] The directive provides for an interview on the same day of the application when an emergency situation exists to determine if there is an immediate need for aid.[114] Relying on *Gutowski v. Lavine*,[115] the court concluded that the directive is an improper attempt to amend section 133's requirement that a Medicaid applicant show a need for immediate, rather than emergency relief.[116] In addition, the court found this policy to be "an improper attempt to derogate the government's responsibility to the needy."[117]

The court concluded that the state and city must provide applicants for public assistance with pre-investigative temporary assistance to meet their immediate medical needs.[118] The court directed the state to promulgate new regulations or amend the

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claimed that during her application period she was never told of her right to be eligible for pre-investigative relief, was never informed of being denied of such relief, and was never told that she had a right to a review of the denial. *Id.* at 559, 486 N.Y.S.2d at 631-32. The court held that Mrs. Gonzalez, as well as other public applicants, were to be advised of the availability of the programs, and had a right to a hearing when relief was denied, and had a right to be advised of the reasons for such denial. *Id.* at 560-61, 486 N.Y.S.2d at 632-33.

112. 137 Misc. 2d 649, 520 N.Y.S.2d 925 (Sup. Ct. Kings County 1987), *aff'd as modified*, 151 A.D.2d 749, 542 N.Y.S.2d 772 (2d Dep't 1989). Under the New York State Constitution, officials must notify applicants of their rights to receive assistance, and the right to have pre-investigative grants. *Id.* at 657, 520 N.Y.S.2d at 930-31.

113. *Pastore*, 160 Misc. 2d at 992, 611 N.Y.S.2d at 760.

114. *Id.* An emergency situation is "a set of circumstances that often will require some action before the determination of eligibility is complete." *Id.* The directive also provides that "immediate needs are those needs resulting from emergency situations that must be met the same day to insure the health and safety of individuals . . . An immediate need must be met unless the applicant is determined to be ineligible, regardless of the extent to which the investigation is completed." *Id.* at 992, 611 N.Y.S.2d at 761. It further states that there is "no emergency pre-investigative coverage," and if clients require such immediate care they should be sent to a hospital. *Id.*

115. *Gutowski*, 44 A.D.2d at 649, 353 N.Y.S.2d at 282.

116. *Pastore*, 160 Misc. 2d at 993, 611 N.Y.S.2d at 761.

117. *Id.*

118. *Id.* at 993-94, 611 N.Y.S.2d at 761.

existing policy to provide for temporary medical assistance. Additionally, the state could implement an appropriate policy to provide applicants with notice of the availability of the assistance.[119]

Thus, as *Pastore* points out, the New York State Constitution has imposed an obligation on the state to care for and aid the needy. The Federal Constitution, on the other hand, does not have a similar provision, although both state and federal legislatures can adopt welfare programs. The state constitutional mandate forces New York to maintain and impose legislation that ensures the social welfare of the needy and, therefore, provides greater protection for indigency than provided under federal constitutional doctrine.

119. *Id.* at 994, 611 N.Y.S.2d at 761.

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