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## Public Relief

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## PUBLIC RELIEF

*N.Y. CONST. art. XVII, § 1:*

*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.*

### COURT OF APPEALS

Couch v. Perales<sup>717</sup>  
(decided November 26, 1991)

Petitioner, a recipient of an Aid to Families with Dependent Children (AFDC) grant, challenged a determination by the Commissioner of the New York State Department of Social Services (DOSS) that temporarily reduced the family's AFDC grant by ten percent in order to recoup an overpayment.<sup>718</sup> Petitioner contended, *inter alia*, that the New York State Constitution<sup>719</sup> permits the commissioner to recoup overpayment only from her *pro rata* share of the AFDC grant and "prohibit[s] recoupment of the overpayment from the entire assistance unit" absent a determination that the needs of the children have diminished.<sup>720</sup> The court of appeals held that the New York State Constitution requires neither 1) a recoupment of an AFDC overpayment to be made only from the proportionate share of the individual recipient who received the overpayment, nor 2) the state to make a prior determination that the needs of the children in the assistance unit have diminished before recoupment from the assistance unit is ordered.<sup>721</sup>

Petitioner and her six minor children were receiving AFDC

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717. 78 N.Y.2d 595, 585 N.E.2d 772, 578 N.Y.S.2d 460 (1991).

718. *Id.* at 600, 585 N.E.2d at 774, 578 N.Y.S.2d at 462.

719. N.Y. CONST. art. XVII, § 1.

720. *Couch*, 78 N.Y.2d at 600, 585 N.E.2d at 774, 578 N.Y.S.2d at 462.

721. *Id.*

benefits. After the state made an emergency utility payment to prevent termination of the family's electric service, the DOSS sought recoupment pursuant to federal<sup>722</sup> and state<sup>723</sup> laws and regulations and reduced petitioner's monthly grant by ten percent.<sup>724</sup> "Petitioner demanded and received a fair hearing to review the agency's determination, contending that the imposition of the 10% recoupment rate reduced her grant to a level so inadequate as to cause undue hardship."<sup>725</sup> The respondent Commissioner affirmed the reduction, concluding that petitioner failed to prove that the recoupment caused her undue hardship.<sup>726</sup> Petitioner brought an article 78 proceeding in supreme court which was transferred to the appellate division.<sup>727</sup> The appellate division affirmed the commissioner's determination and dismissed the proceeding. The court of appeals granted the recipient leave to appeal.

Plaintiff relied on *Tucker v. Toia*<sup>728</sup> for the proposition that the New York State Constitution confers a right to assistance for all needy residents of New York and imposes a duty on the state to provide for the needy. *Tucker* invalidated a statute that withheld AFDC from family units that had met all needs criteria but had failed to obtain a final disposition in a child support proceeding.<sup>729</sup> Calling *Tucker* "wholly inapposite," the *Couch* court stated that the statute in *Tucker* completely denied AFDC to needy children whereas the state statute and regulation at issue effected a temporary reduction in benefits.<sup>730</sup> The court, citing *Bernstein v. Toia*,<sup>731</sup> declared that there was no constitutional

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722. See 42 U.S.C. § 602(a)(22) (1991); 45 C.F.R. § 233.20(a)(13) (1991).

723. See N.Y. SOC. SERV. LAW § 106-b (McKinney 1983 & Supp. 1991).

724. *Couch*, 78 N.Y.2d at 600, 585 N.E.2d at 774, 578 N.Y.S.2d at 462.

725. *Id.* at 600-01, 585 N.Y.S.2d at 775, 578 N.Y.S.2d at 462.

726. *Id.* at 601, 585 N.E.2d at 775, 578 N.Y.S.2d at 463.

727. *Id.*; see N.Y. Crv. PRAC. L. & R. § 7804(g) (McKinney 1981 & Supp. 1991).

728. 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977).

729. *Id.* at 9, 371 N.E.2d at 452, 400 N.Y.S.2d at 731.

730. *Couch*, 78 N.Y.2d at 606, 585 N.E.2d at 778, 578 N.Y.S.2d at 466.

731. 43 N.Y.2d 437, 373 N.E.2d 238, 402 N.Y.S.2d 342 (1977).

violation.<sup>732</sup>

The United States Constitution imposes no duty on the government to provide assistance to needy citizens. Rather, federal assistance programs are statutorily based. Congress, in the exercise of its plenary powers, established several statutory public assistance programs. The federal statutory right is enforceable against wrongful denial by the government under title 42 of the United States Code section 1983.<sup>733</sup> All federal assistance programs are rooted in discretionary congressional decisions to provide such assistance. On the other hand, the New York State Constitution mandates the state legislature to provide for the needy.<sup>734</sup> *Couch* further defines the scope of this right. Recoupments, which go to the level of aid, not its grant or denial, are within the area of the legislature's discretion. The constitutional mandate is to aid, care and support the needy. Legislative discretion on the level of aid does not necessarily require the aid to be satisfactory.

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732. *Couch*, 78 N.Y.2d at 606, 585 N.E.2d at 778, 578 N.Y.S.2d at 466 (citing *Bernstein*, 43 N.Y.2d at 449, 373 N.E.2d at 244, 402 N.Y.S.2d at 348). In *Bernstein*, the petitioner contended that a flat grant shelter allowance that does not consider individual needs is violative of article XVII, section 1 of the New York State Constitution. In rejecting this claim, the court of appeals stated:

We do not read this declaration and precept as a mandate that public assistance must be granted on an individual basis in every instance, thus precluding recourse to the flat grant concept, or indeed as commanding that, in carrying out the constitutional duty to provide aid, care and support of the needy, the State must always meet in full measure all legitimate needs of each recipient. When . . . the method of distribution . . . is reasonably expected to be in furtherance of the optimum utilization of public assistance funds, there has been no violation of the constitutional command.

*Bernstein*, 43 N.Y.2d at 448-49, 373 N.E.2d at 244, 402 N.Y.S.2d at 348.

733. See 42 U.S.C. §§ 601-610 (1988). The federal Social Security Act provides for grants to states for aid and services to needy families with dependent children. *Id.*

734. See N.Y. CONST. art. XVII, § 1; see also *Bernstein*, 43 N.Y.2d at 448, 373 N.E.2d at 244, 402 N.Y.S.2d at 348; *Tucker*, 43 N.Y.2d at 7, 371 N.E.2d at 451, 400 N.Y.S.2d at 730.