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Due Process in the Administration of General Assistance: Are Written Standards Protecting the Indigent?

All animals are equal but some animals are more equal than others. George Orwell, *Animal Farm*.*

Many needy Americans currently qualify for financial assistance through federal-state public assistance programs—"categorical" programs—such as Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC). There are, however, needy persons who fall outside the scope of these categorical programs.¹ General assistance provides financial aid to people in need who cannot qualify for categorical assistance or whose categorical assistance is especially inadequate.²

General assistance programs, variously referred to as "home relief," "poor relief," or "direct relief," are purely a state phenomenon.³ Therefore, the administration of general assistance varies widely in accordance with state legislative directives. Twenty-three states administer general assistance through local offices of the state public assistance agency.⁴ In nine states, the state public assistance agency supervises general assistance administration through local branch offices of county or municipal governments, which usually also serve federally aided programs.⁵

In stark contrast to the state-supervised administration of general assistance is the local administration that takes place in remaining states. Currently there are sixteen states in which no state agency exercises supervision in the administration of general assistance.⁶ Until recently, many of these states allowed

* G. ORWELL, *ANIMAL FARM* ch. 10 (1946).

1. OFFICE OF FAMILY ASSISTANCE, SOCIAL SEC. ADMIN., U.S. DEP'T OF HEALTH, EDUC. AND WELFARE, *CHARACTERISTICS OF GEN. ASSISTANCE IN THE UNITED STATES 1* (1978) [hereinafter cited as *CHARACTERISTICS*].

2. *CHARACTERISTICS*, *supra* note 1, at 1. In 12 states general assistance is limited to persons not eligible for AFDC or SSI. In 20 states, eligibility for general assistance extends to persons eligible for but pending receipt of SSI or AFDC. In 6 states, recipients of AFDC or SSI may receive general assistance, but only in emergency situations. It is assumed that the other 15 states would give general assistance to SSI or AFDC recipients who have some special need for the income supplementation. *CHARACTERISTICS*, *supra* note 1, at 133 (figures include all states, and D.C., Guam, P.R., and V.I.).

3. *CHARACTERISTICS*, *supra* note 1, at 1.

4. *CHARACTERISTICS*, *supra* note 1, at 126. (Ala., Alaska, Ariz., Ark., Del., D.C., Guam., Hawaii, Kan., La., Mass., Mich., Mo., N.M., Okla., Or., Pa., P.R., Utah, Vt., V.I., Wash., W. Va.)

5. *CHARACTERISTICS*, *supra* note 1, at 126 (Conn., Md., Minn., Mont., N.Y., Ohio, S.C., Va., Wyo.).

6. *CHARACTERISTICS*, *supra* note 1, at 126 (Colo., Fla., Ga., Idaho, Ind., Iowa, Ky., Miss., Neb., Nev., N.H., N.C., N.D., S.D., Tenn., Tex.). In addition, the states of California, Illinois,

general assistance to be administered on a discretionary basis without written, objective and ascertainable standards. Recent cases and consent decrees, however, have begun to halt this practice because of due process considerations. This Note addresses the issue of whether the emerging standards adequately fulfill their intended purpose of providing general assistance applicants the gamut of due process protections. The Note first presents an overview of the jurisdictions that administer general assistance without state supervision.⁷ Second, it discusses the extent to which general assistance applicants have a constitutional right to written standards.⁸ The Note then examines several due process challenges to the standardless administration of general assistance, as well as the resulting decisions that have required the establishment of written standards.⁹ After analyzing three sets of general assistance standards emanating from recent litigation, this Note concludes that emerging general assistance standards do not adequately insulate indigents from the arbitrary and prejudicial administration of general assistance.¹⁰

I. THE LOCAL ADMINISTRATION OF GENERAL ASSISTANCE

Counties, cities, townships and municipalities are representative of the various local jurisdictions which administer general assistance without state supervision.¹¹ Indiana, for example, delegates the administration of poor relief to the trustees of its 1,008 townships.¹² In South Dakota, the counties provide general assistance to indigents,¹³ and the county commissioners are required to see that their poor "are properly relieved and taken care of . . ."¹⁴ One advantage of administering general assistance through local and autonomous political jurisdictions appears to be the straightforward and simple statutory grant of powers to the locality.¹⁵ Additionally, discretion is placed in the hands of local administrators who are familiar with the community, rather than with "strangers" at the state level. Fiscal responsibility and con-

Maine, New Jersey, Rhode Island, and Wisconsin administer general assistance through local political jurisdictions, with specifically limited responsibility exercised by the state public assistance agency. CHARACTERISTICS, *supra* note 1, at 126.

7. See *infra* notes 11-17 and accompanying text.

8. See *infra* notes 18-32 and accompanying text.

9. See *infra* notes 33-78 and accompanying text.

10. See *infra* notes 79-127 and accompanying text.

11. CHARACTERISTICS, *supra* note 1, at 126.

12. IND. CODE § 12-2-1-1 (1982).

13. S.D. CODIFIED LAWS ANN. § 28-13-1 (Supp. 1983).

14. "The county commissioners in each county shall have the oversight and care of all poor persons in the county so long as they remain a county charge, and shall see that those persons are properly relieved and taken care of in the manner provided by law . . ." S.D. CODIFIED LAWS ANN. § 28-13-16 (Supp. 1983).

15. The Indiana statute is straightforward and simple: "The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain in a charge, and shall see that they are properly relieved and taken care of in the manner required by law." IND. CODE § 12-2-1-6 (1982). For the text of South Dakota's similar statute, see *supra* note 14. For the text of New Hampshire's statute, see *infra* note 110.

trol are sometimes touted as advantages because the financing of unsupervised general assistance programs is usually provided by the individual county or township (or similar jurisdiction) administering the program.¹⁶

Criticism, however, has been leveled at the integrity and efficacy of local and unsupervised general assistance programs:

For better or for worse, we have passed out of the era which produced the township assistance system. Problems which were once laid on the shoulders of individuals are now society's responsibilities. Questions which were once answered by human intuition are now responded to in tapestries of numbers and symbols. Furthermore, these trends toward standardization and objectification have had their influence on our laws, especially at the constitutional level.¹⁷

The question of which jurisdictional body will govern the administration of a state's general assistance program is of course a legislative one. State legislatures, however, should take cognizance of open-ended statutes that leave unsupervised local administrators of general assistance the potential to neglect carelessly or invidiously the needs of the poor.

II. SUBSTANTIVE AND PROCEDURAL DUE PROCESS CONSIDERATIONS IN THE ADMINISTRATION OF GENERAL ASSISTANCE

The Constitution's fourteenth amendment prohibits deprivation of life, liberty or property without due process of law.¹⁸ The concept of "due process" has come to encompass both substantive and procedural aspects. The substantive due process doctrine is premised on the notion that certain types of lawmaking go beyond any proper sphere of governmental activity.¹⁹ If a particular piece of legislation inhibits a guarantee protected by the Bill of Rights, or a "fundamental right" as designated by the Supreme Court, strict scrutiny of the law is triggered.²⁰ Procedural due process, on the other hand, concerns the decision-making process followed before the government takes some action directly impairing a person's life, liberty, or property.²¹ Unlike the substantive due process analysis, the concern here is not with the legislation itself, but rather with the process of administration.

Any given situation may implicate both procedural and substantive due process guarantees, and it is often difficult to distinguish between the two. A general assistance applicant's claimed right to standards implicates both substantive and procedural due process concerns. On the one hand, the lack

16. See generally CHARACTERISTICS, *supra* note 1.

17. Rosenberg, *Overseeing the Poor: A Legal-Administrative Analysis of the Indiana Township Assistance System*, 6 IND. L. REV. 385, 386 (1973).

18. "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" U.S. CONST. amend. XIV.

19. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 418 (1983) [hereinafter referred to as NOWAK, ROTUNDA & YOUNG].

20. *Id.*

21. *Id.* at 417.

of written standards may render legislation authorizing general assistance violative of substantive due process because the legislation is subject to arbitrary and capricious administration. The possibility of arbitrary and capricious administration, however, strikes at the heart of procedural due process guarantees. This inevitable effect of the legislation, rather than the legislation itself, is the real evil which creates an essentially procedural due process problem.

Courts have not agreed as to whether the standardless administration of general assistance involves a substantive or a procedural due process problem.²² It is clear, however, that in order to invoke procedural due process protection, one must first establish a "property" or "liberty" interest subject to governmental deprivation.²³ Although the Supreme Court has not directly addressed the issue of whether general assistance *applicants* have a legitimate property or liberty interest sufficient to trigger fourteenth amendment guarantees, in *Goldberg v. Kelly*²⁴ the Court found that a *recipient* of welfare benefits has a statutory entitlement to continuation of benefits constituting a protectible property interest.²⁵ Two years later, in *Board of Regents v. Roth*,²⁶ the Court delimited *Goldberg's* expansive concept of property interests, stating:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . .

Property interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.²⁷

Without ignoring the dictates of *Roth*, the Supreme Court subsequently held in *Greenholtz v. Nebraska Penal Inmates*²⁸ that an *applicant* may, in some circumstances, have a protectible property interest in a benefit not yet received. In *Greenholtz*, prisoners of the Nebraska Penal and Correctional Complex brought a class action claiming they had been unconstitutionally denied parole. The Court addressed, in part, whether the Nebraska parole release statute creates in inmates a *protectible expectation* of parole. The Court held that although a provision for the mere possibility of parole does not create an

22. Compare *White v. Roughton*, 530 F.2d 750, 754 (7th Cir. 1976) (issue is whether plaintiffs' procedural due process rights were violated by the method by which they were denied general assistance) with *Baker-Chaput v. Cammett*, 406 F. Supp. 1134, 1137 (D.N.H. 1976) (administration of general assistance pursuant to written standards is essentially a question of substantive due process).

23. *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972).

24. 397 U.S. 254 (1970).

25. *Goldberg*, 397 U.S. at 266.

26. 408 U.S. 564 (1972).

27. *Roth*, 408 U.S. at 578.

28. 442 U.S. 1 (1979).

entitlement to it, the "unique structure" of the Nebraska parole statute²⁹ did provide a protectible, albeit limited, entitlement.³⁰ The "unique structure" of the statute which the Court found dispositive apparently relates to the provision mandating release when none of the statute's four exceptions applies. In *Griffeth v. Detrich*,³¹ the Ninth Circuit relied heavily on *Greenholtz* in holding that general assistance applicants do have a legitimate property interest in benefits. The appellate court emphasized that the state statute authorizing general assistance placed a "mandatory duty" on counties to supply general assistance to eligible applicants, and that the state-promulgated regulations governing general assistance were sufficiently comprehensive and definite to establish clear eligibility criteria.³²

Greenholtz and *Griffeth* suggest that where objective criteria set forth by state law sufficiently allow an applicant to make a prima facie showing of eligibility, and where state law places a mandatory duty on the administrator to provide assistance to eligible applicants, the applicant has a protectible property interest in the expected benefits.

III. CHALLENGES TO THE STANDARDLESS ADMINISTRATION OF GENERAL ASSISTANCE

The administration of general assistance without written, ascertainable standards has been challenged in various states. An overview of recent litigation demonstrates a judicial trend toward requiring written standards in an attempt to guarantee applicants the due process rights of the fourteenth amendment.

The question of whether due process considerations required the town selectmen in New Hampshire to administer general assistance pursuant to public, written standards was addressed in *Baker-Chaput v. Cammett*.³³ The federal district court held that the establishment of written, objective and ascertainable standards for general assistance was an elementary and intrinsic part of due process:

29. The Nebraska statute stated:

Whenever the Board of Parole considers the release of a committed offender who is eligible for release on parole, it shall order his release unless it is of the opinion that his release should be deferred because:

(a) There is a substantial risk that he will not conform to the conditions of parole;
(b) His release would depreciate the seriousness of his crime or promote disrespect for law;
(c) His release would have a substantially adverse effect on institutional discipline;
or

(d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law-abiding life when released at a later date.

NEB. REV. STAT. § 83-1, 114(1) (1976) (emphasis added).

30. *Greenholtz*, 442 U.S. at 11-12.

31. 603 F.2d 118 (9th Cir. 1979), cert. denied, 445 U.S. 970 (1980) (Rehnquist, J., dissenting).

32. *Griffeth*, 603 F.2d at 121.

33. 406 F. Supp. 1134 (D.N.H. 1976).

The applicant must be afforded the opportunity to know beforehand what substantive criteria she had to meet in order to obtain general assistance. Without the issuance of standards, the initial reasons for denial may change and be replaced with new and differing reasons which the applicant is unable to contest.³⁴

In *Baker-Chaput*, the thirty-one year old plaintiff was single and five months pregnant.³⁵ Her twenty dollars per week income was insufficient to meet her minimum needs; her landlord had threatened eviction, and her utility company had threatened a shut-off.³⁶ She applied to the town selectmen for general assistance and was denied.³⁷

To determine whether the plaintiff had a right to demand written standards, the *Baker-Chaput* court embarked upon a two-step analysis. First, it asked whether the private interest at stake was a property interest or a liberty interest protected by the fourteenth amendment.³⁸ The court found that the plaintiff's interest was a property interest, since, under the statute, she had made a *prima facie* showing of eligibility.³⁹ The second step of the court's analysis weighed the plaintiff's interest in being informed of the standards against the government's interest in not promulgating standards.⁴⁰ The court found that the plaintiff's interests outweighed the state's interests, stating:

The absence of standards creates a void in which malice, vindictiveness, intolerance or prejudice can fester. Plaintiff has a paramount interest in receiving those benefits for which she statutorily qualifies. In addition, as a member of our society, she has an interest not only in being treated fairly by the administrative agency, but, just as important, in believing that she has been treated fairly. A standardless method of administration negates these interests.⁴¹

In *White v. Roughton*,⁴² the Seventh Circuit reached a decision similar to that in *Baker-Chaput*. In *White*, the court held that the defendant, the administrator of the general assistance program in Champaign Township, Illinois, was responsible for administering the program to ensure the "fair and

34. *Id.* at 1140 (citations omitted).

35. *Id.* at 1136.

36. *Id.*

37. *Id.*

38. *Id.* at 1137. To qualify as a fourteenth amendment property or liberty interest, it must be shown that the deprived individual has a legitimate claim of entitlement which is rooted in a legal obligation. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

39. *Baker-Chaput*, 406 F. Supp. at 1135 ("Plaintiff, like the Goldberg plaintiffs [see *infra* note 40] bases her claim on a state statute under which she has made a *prima facie* showing of eligibility . . . it follows that she has a 'property' interest in general assistance benefits and that due process considerations attached upon her application for public welfare.").

40. *Id.* at 1137-38. *Cf.* *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare recipient is entitled to notice and an evidentiary hearing before termination of benefits); *Brooks v. Center Township*, 485 F.2d 383 (7th Cir. 1973), *cert. denied*, 415 U.S. 911 (1974) (termination of Indiana poor relief benefits without notice, a pretermination hearing, and an opportunity to be heard held unconstitutional).

41. *Baker-Chaput*, 406 F. Supp. at 1140.

42. 530 F.2d 750 (7th Cir. 1976).

consistent" application of eligibility requirements,⁴³ which required the defendant to establish written standards and regulations.⁴⁴ The court based its holding on the due process clause, stating, "[d]ue process requires that welfare assistance be administered to ensure fairness and freedom from arbitrary decision-making as to eligibility. Federally subsidized public assistance is governed by statute and extensive regulations."⁴⁵

In Indiana, general assistance is administered through the state's 1,008 townships.⁴⁶ The township trustee, an elected official, is the supreme administrator of the assistance program, and thus is not within the jurisdiction of the State Department of Public Welfare.⁴⁷ If an applicant for poor relief is not satisfied with the decision of the township trustee, the applicant may appeal the initial denial to the board of county commissioners.⁴⁸ The decision of the board of commissioners is final, unless the applicant seeks relief through the court system.

Nothing in Indiana's statute specifically requires the township trustee to establish standards for the administration of relief.⁴⁹ This omission, however, was remedied by the consent decree of a federal district court in *Hopson v. Schilling*.⁵⁰ The indigent plaintiff in *Hopson* alleged that Indiana poor relief laws were unconstitutional because they failed to require the township trustees to administer relief pursuant to public, written standards.⁵¹ In a consent decree,⁵² the court ordered that the failure of the trustees to administer poor relief in accordance with public, written standards violated the fourteenth amendment due process rights of all poor relief applicants and recipients in Indiana.⁵³ The minimum standards mandated by the *Hopson* decree required

43. *Id.* at 753-54.

44. *Id.* at 754. At a hearing in the district court on plaintiff's motion for a preliminary injunction, the defendant admitted that he and his staff determined eligibility based upon their own unwritten personal standards. *Id.*

45. *Id.* at 753 (citations omitted).

46. IND. CODE § 12-2-1-1 (1982).

47. *Id.* § 12-1-20-1 ("No township trustee of the state of Indiana shall be under the jurisdiction of the State Department of Public Welfare . . .").

48. *Id.* § 12-2-1-18.

49. The language is ambiguous as to whether the trustee must promulgate standards:

In hearing an appeal the Board and its hearing officers shall be guided by uniform relief standards of eligibility and need established by or for the township trustee as overseer of the poor for the granting of poor relief in his township. *If no such standards have been established*, the board and its hearing officers shall be guided by the circumstances in each case.

Id. (emphasis added). In *Hopson v. Schilling*, 418 F. Supp. 1223, 1232 n.10 (N.D. Ind. 1976), this precise statutory language is discussed:

Especially under section 12-2-1-18, it is apparent that as between the county commissioners and the township trustee, the trustee is expected to exercise his delegated powers by promulgating standards. But while the statute, fairly read, anticipates certain conduct by the trustee, the statutes do not expressly place in the applicant a right to command the performance of these duties.

50. 418 F. Supp. 1223 (N.D. Ind. 1976) (granting certification of plaintiff class).

51. *Id.* at 1227.

52. *Hopson v. Schilling*, No. L-75-30 (N.D. Ind. May 18, 1978) (unpublished consent decree).

53. *Hopson v. Schilling*, No. L-75-30, slip op. at 4.

guidelines detailing financial eligibility for poor relief, including the maximum allowable income, a statement of all non-financial conditions of eligibility, a statement of the needs which will normally be met if an applicant is eligible, and a description of the procedures the applicant must follow to obtain relief.⁵⁴ Additionally, the order required that trustees provide applicants with written notice of the decision reached on their application, including the reasons for that determination, and written notice of their right to appeal an adverse decision.⁵⁵

In *State ex rel. Van Buskirk v. Wayne Township*,⁵⁶ the Indiana Court of Appeals examined the substantive and procedural nature of standards established and enforced pursuant to the *Hopson* order. In *Van Buskirk*, the plaintiffs asserted that certain general assistance standards, comprised in part of broad, general statements,⁵⁷ reserved unlimited discretion to the trustee and thus rendered impotent the very due process protections the standards were meant to provide.⁵⁸ The court agreed with the plaintiffs, stating that the standards in question "indeed seem to vest standardless discretion in the Trustee."⁵⁹ To resolve this problem, the court required the trustee's standards to be reasonably complete and to include a description of the "needs that will normally be met" if an applicant is eligible for assistance.⁶⁰ Whether these are adequate safeguards to prevent unlimited discretion, however, remains open to question.⁶¹

In a more substantive vein, the plaintiffs in *Van Buskirk* argued that the trustee's financial eligibility guidelines were so unreasonably low as to preclude indigents from qualifying for relief even though they were not capable of providing themselves with basic necessities.⁶² The appellate court remanded this issue, stating that "a genuine issue of material fact remains as to whether the standards are reasonably calculated to meet the needs of the poor."⁶³ The court noted that the standards were not formulated with reference to any national, state, or local poverty income guidelines, and that the methodology

54. *Id.*

55. *Id.* at 3-4.

56. ___ Ind. App. ___, 418 N.E.2d 234 (1981).

57. An example of one such statement is: "The amount and length of assistance, when added to all other income and resources, shall be as determined by the Trustee." *Id.* at ___, 418 N.E.2d at 245.

58. *Id.*

59. *Id.*

60. *Id.* The language requiring the trustee to list the "needs that will normally be met" is identical to the language in the *Hopson* order and consent decree. See *supra* text accompanying note 54.

61. Arguably, the *Van Buskirk* decision has not been effective in eliminating broad and potentially dangerous statements from the standards. A 1983 examination of North Township standards reveals that the broad language, see *supra* note 57, is retained. See North Township Eligibility Standards, *infra* note 83, at IX (last paragraph).

62. *Van Buskirk*, ___ Ind. App. at ___, 418 N.E.2d at 244.

63. *Id.* at ___, 418 N.E.2d at 245.

used to establish the standards (if in fact any methodology was used) warranted an examination into its adequacy.⁶⁴

Perhaps the clearest substantive issue resolved in *Van Buskirk* was the invalidation of the trustee's policy that only renters were eligible for shelter assistance.⁶⁵ The court determined that the flat refusal of the trustee to evaluate an applicant's need for shelter assistance solely because the applicant was buying his or her home was an abuse of discretion.⁶⁶

Like Indiana, South Dakota has only recently begun administering general assistance pursuant to written standards. Prior to negotiations sparked by *Moe v. Brookings County*,⁶⁷ only one county had promulgated standards for the administration of general assistance.⁶⁸ Although the matter of *Moe v. Brookings County* was settled before adjudication,⁶⁹ the facts of the case illustrate abuses suffered by indigents when general assistance is administered without written standards.

On May 15, 1980, Mrs. Moe sent a letter to the Brookings County Board of Commissioners requesting financial assistance, and received no response.⁷⁰ Thereafter, an attorney for the East River Legal Services Corporation sent second and third letters which also elicited no response.⁷¹ On August 28, 1980, Mr. Moe requested that he be able to appear before the Commissioners. The appearance was granted September 4, 1980, almost four months after the initial letter.⁷² Standing before the Commissioners, Mr. Moe outlined his financial condition, was admonished for what the Board regarded as his wife's mismanagement of the food budget, and was warned he would receive no relief if the Board learned that he had been in any of the town's bars.⁷³ At this meeting, the Moes were granted \$100 in assistance, which was paid directly to their landlord.⁷⁴ One month later, Mr. Moe again appeared before the Board of Commissioners, which agreed to pay the Moe's landlord another \$100 for one month's rent. At that meeting, Mr. Moe was advised that this was the last time he could expect assistance.⁷⁵ When Mr. Moe again spoke with the

64. *Id.*

65. *Id.*

66. *Id.* In *Hopson*, Judge Eschbach abstained from ruling on the constitutionality of the interpretation of the Indiana statute premising eligibility for poor relief on whether an applicant had rent or mortgage obligations. *Hopson*, 418 F. Supp. at 1240-41. At the time of *Hopson*, ambiguities in the statute, IND. CODE § 12-2-1-10(b) (1982), had not been clarified by a state court. *Van Buskirk*, however, laid that issue to rest. See *supra* text accompanying note 65.

67. 659 F.2d 880 (8th Cir. 1981).

68. That county is Minnehaha. Wagner, *General Assistance in South Dakota: A Need for Written, Objective, and Ascertainable Standards*, 27 S.D.L. REV. 201, 209 (1982) [hereinafter referred to as Wagner].

69. See *infra* note 77 and accompanying text.

70. *Moe*, 659 F.2d at 882.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

County Auditor's Office on November 7, 1980, he was told that no relief request could be tendered until the November 20 meeting of the Board.⁷⁶

Soon afterwards, the Moes brought an action alleging that Brookings County violated fourteenth amendment guarantees by not administering county poor relief pursuant to public, written, ascertainable standards.⁷⁷ Eventually, the parties came to an agreement whereby Brookings County would adopt a County Poor Relief Ordinance, which provided written guidelines for the administration of general assistance.⁷⁸

Despite a state interest in the discretionary administration of general assistance, the above cases suggest that the due process clause requires general assistance to be dispensed pursuant to written, objective and ascertainable standards. As the final section of this Note argues, however, the mere existence and application of written standards is not enough to ensure that due process rights are being protected. Recently promulgated general assistance standards have ambiguities which administrators can manipulate to make invidious or arbitrary decisions.

IV. THE CONTINUUM OF STANDARDS: WHAT IS TOO FLEXIBLE AND WHAT IS TOO RIGID?

The purpose of most general assistance programs is to meet the financial needs of indigent persons who do not qualify for aid under a federal-state public assistance program, or whose federal-state assistance is inadequate.⁷⁹ Consequently, standards used to administer general assistance should not replicate the regulations used to administer federal-state assistance programs, because if significant overlap occurs, the persons falling "between the cracks" of federally aided programs might likewise find themselves ineligible for general assistance. Arguably then, the promulgation of reasonably flexible standards is an important goal in the administration of general assistance. Yet excessive malleability can lead to abuses which indigents, unrepresented by counsel, are not likely to challenge. While government agencies are far from perfect, "there is a human tendency . . . to assume that an action taken by a governmental agency in a pecuniary transaction is correct."⁸⁰ Consequently, stand-

76. *Id.*

77. *Id.* at 881.

78. Seven days after this action began, the federal district court abstained *sua sponte*, citing a need to "avoid needless conflict with administration by the State of South Dakota of its own affairs." *Id.* The Eighth Circuit reversed the district court's abstention order and remanded the case for further proceedings. *Id.* at 884. The case was later settled out of court. *Moe v. Brookings County*, No. 80-4188 (D.S.D. Sept. 7, 1982) (Adoption of Stipulation for Judgment by Joint Agreement). For a partial reproduction of the ordinance that was adopted, see *infra* note 98.

The attorney for the Moes has written an article detailing the case and advocates the promulgation of written, ascertainable standards and outlines factors which should be considered in the formulation of general assistance standards. See generally Wagner, *supra* note 68.

79. See *supra* note 2 and accompanying text.

80. *Vargas v. Trainor*, 508 F.2d 485, 490 (7th Cir. 1974), *cert. denied*, 420 U.S. 1008 (1975).

ards emerging pursuant to recent litigation must be examined with human tendencies and with due process considerations in mind.

The standards mandated by *Hopson v. Schilling* are the most malleable—and the most manipulatable—on the continuum of standards emerging from recent litigation. It should be noted that the actual language of Indiana's standards varies among townships because no state agency, including the Department of Public Welfare, has jurisdiction over the administration of poor relief in Indiana.⁸¹ The township is autonomous. However, the *Hopson* order⁸² required the drafting of model guidelines which have come to form the basis for most general assistance standards in Indiana.⁸³

81. IND. CODE § 12-1-20-1 (1982).

82. *Hopson v. Schilling*, No. L-75-30 (N.D. Ind. May 18, 1978) (unpublished consent decree). See *supra* notes 50-55 and accompanying text.

83. Excerpted below is a typical version of general assistance standards in Indiana, although the standards have been edited in the interest of brevity:

II. Application for poor relief assistance is started by filling out and signing an application and swearing to the accuracy of the facts on that application. You will be required to cooperate with an investigation of your personal finances, family responsibilities, and your eligibility to receive other types of assistance. This investigation may include a home visit

IV. (a) Your application will be reviewed immediately. Investigation and verification will be done as soon as possible by the trustee. A decision will be made only upon the completion of all investigation and verification. You will be given written notice of the decision and if any aid is denied, the reasons will be on a form called a P.R.-1A. That form will inform you that you have a right to appeal any denial of aid and will explain how to start your appeal

VI. Applicants who have not received the total current or projected gross monthly household income listed in the standards below in the previous month, and who are otherwise eligible, will be considered eligible for poor relief. Special emergencies, extraordinary expenses, or other unusual conditions may be considered in lieu of standard investigation procedures, requirements and the following minimum standards:

<i>Persons in Household</i>	<i>Total Monthly Income</i>
1	\$235.00
2	297.00
3	357.00
4	413.00
5	466.00
6	510.00
7	564.00
8	601.00
9	653.00
10	704.00
each additional person add	55.00

VII. Monthly income is defined as that total current and projected gross income which is available to the household from any source, including, but not limited to, non-monetary income, support payments, Social Security checks, Veterans Administration benefits, Welfare checks, Unemployment Compensation and sick benefits.

VIII. Resources available to you beyond those necessary for basic living needs and to earn a livelihood, will be considered as assets and may affect your eligibility. Except where it is reasonable to borrow money on the equity, resources that are exempt from this test will include a house where the household resides and a motor vehicle.

IX. If the trustee determines an eligible applicant has any of the following im-

Generally, an Indiana township's poor relief standards address the maximum income allowed in determining an applicant's eligibility for assistance. In the interests of malleability, these standards provide that special emergencies or extraordinary expenses may be considered in lieu of the maximum income requirements.⁸⁴ This provision works to the advantage of an applicant who is slightly over-income but suffering hardship due to an extraordinary expense.

Indiana's "flexible" standards, however, have many flaws. For instance, North Township's (Lake County, Indiana) standards state that investigation of an applicant's personal finances will be conducted "as soon as possible,"⁸⁵ and that a decision on the applicant's eligibility will be made only upon the completion of the trustee's investigation. A trustee's investigation can sometimes span a period of three or more weeks. This type of delay may cause severe hardship, as when an applicant is threatened with a utility shut-off or eviction. A lengthy investigation period violates the spirit of the poor relief statute,⁸⁶ and further, trustees who abuse the flexibility of the investigation period by drawing it out weeks or longer subvert and discourage meritorious claim-bringing by eligible indigents.

This problem could be averted by requiring the trustee to complete his or her investigation within a specified time period—perhaps three working days from the date of application.⁸⁷ Such procedural requirements would serve to protect an applicant's due process rights while sacrificing little of the trustee's substantive decisional flexibility.

mediate needs, the trustee has the authority and will provide in the most economical and practical manner:

(a) Food.

(b) Shelter. The trustee shall provide aid in whatever form is necessary to provide shelter or prevent the loss of shelter so long as such aid constitutes the most economical and practical method of relieving the applicant.

(c) Utility service and heating fuels.

(d) Clothing.

(e) Necessary household supplies (such as simple first aid and equipment, minimal household furnishings, utensils and appliances).

(f) Medical services, including doctor's fees, surgeon's fees, medical supplies, prescriptions, special dietary needs, nursing care and hospitalization unless available through a governmental program.

(g) School books and supplies.

(h) Burial expenses.

(i) Transportation assistance to obtain employment when there is a reasonable likelihood of being hired.

The Township Trustee may provide benefits beyond those enumerated above. The amount and length of assistance, when added to all other income and resources, shall be sufficient to meet the needs as determined by the trustee.

North Township Trustee, Lake County, Indiana, Poor Relief Eligibility Standards and Procedures (revised Aug. 1981) [hereinafter referred to as North Township Eligibility Standards].

84. See *supra* note 83, at VI.

85. See *supra* note 83, at IV(a).

86. "A trustee shall accept and promptly act upon an application from any person requesting assistance. IND. CODE § 12-2-1-6.2(a) (1982) (emphasis added).

87. Indeed, some standards in Indiana do have provisions which require the investigation to be completed in three working days. It is not known, however, whether that policy is regularly followed.

Another problem on the face of North Township's standards appears in the provision concerning an applicant's assets. The standards state that "assets . . . may affect . . . eligibility."⁸⁸ There is no indication, however, of the types of assets that will render an applicant ineligible, other than "[r]esources available . . . beyond those necessary for basic living needs and to earn a livelihood . . ."⁸⁹ The vagueness of this section leaves the trustee with "standardless" discretion in terms of assessing an applicant's assets. Whereas one trustee might consider an insurance policy with a loan value as an asset that renders the applicant ineligible, another trustee might not. The cumulative effect of such ambiguities may well abridge the applicant's due process right to the fair and consistent application of eligibility requirements.⁹⁰

Finally, most standards in Indiana grant the trustee unfettered discretion in determining the "needs" of an applicant. For instance, the North Township standards provide "[t]he amount and length of assistance . . . shall be sufficient to meet the needs as determined by the trustee"⁹¹ An applicant whose income level renders him or her "eligible" for assistance may nonetheless be denied assistance because the trustee determines the applicant to have no "needs." Such standards, directed only to income eligibility and not "needs," ultimately deny the applicant the opportunity to know beforehand what substantive criteria must be met in order to obtain general assistance.⁹² In *State ex rel. Van Buskirk v. Wayne Township*,⁹³ the plaintiffs challenged the "amount and length of assistance" provision, claiming such language vested the trustee with "standardless" discretion.⁹⁴ In dicta, the *Van Buskirk* court addressed the problem. The meaning of the language in question, the court said, "is very unclear. It does indeed seem to vest standardless discretion in the Trustee. The problems with such standardless administration of poor relief have been recognized."⁹⁵ Despite the fact that the *Van Buskirk* court frowned upon the ambiguous language, it did not require the sentence to be stricken from the trustee's standards. As a result, most general assistance standards in Indiana retain similar or identical language.⁹⁶

In settling *Moe v. Brookings County*,⁹⁷ Brookings County, South Dakota also adopted a County Poor Relief Ordinance which contained detailed, written standards for the administration of general assistance.⁹⁸ One unusual aspect of the Brookings County standards is that it commands the auditor to pro-

88. See North Township Eligibility Standards, *supra* note 83, part VIII.

89. See *id.*, *supra* note 83, at VIII.

90. *Accord Baker-Chaput v. Cammett*, 406 F. Supp. 1134, 1140 (D.N.H. 1976).

91. See North Township Eligibility Standards, *supra* note 83, at IX (last paragraph).

92. *Accord Baker-Chaput*, 406 F. Supp. at 1140.

93. ___ Ind. App. ___, 418 N.E.2d 234 (1981).

94. See North Township Eligibility Standards, *supra* note 83, at IX (last paragraph).

95. ___ Ind. App. at ___, 418 N.E.2d 234, 245.

96. See North Township Eligibility Standards, *supra* note 83, at IX (last paragraph).

97. 659 F.2d 880 (8th Cir. 1981).

98. The Brookings County Ordinance contains, inter alia, the following provisions:

vide the general assistance applicant with a written summary of eligibility

ARTICLE V

Application Process, Notice and Applicant Responsibilities

Any person has the right to apply for County Poor Relief assistance After the person has completed and signed the Application for County Assistance form, the Application shall then be submitted to the Auditor.

Once the Application has been made, the Auditor shall promptly inform the Applicant of:

(a) A summary of the eligibility requirements, which summary shall be given in writing to the Applicant;

(b) The Applicant's right to review if denied assistance, and the manner in which such a review may be obtained;

(c) The Applicant's responsibility for reporting all the facts necessary to determine eligibility;

(d) The necessity and types of verification needed;

(e) The fact that an investigation may be conducted in an effort to substantiate the facts and statements as presented by the Applicant and that this investigation may take place prior to, during, or subsequent to the Applicant's receipt of county assistance;

ARTICLE VI

Hearings

Insofar as possible the Board [of County Commissioners] shall review and consider an application at its next regularly scheduled meeting after such Application has been submitted to the Auditor If the Application is not for an "emergency need," the Board may continue the review and consideration of any Application from time to time in order to obtain verifying information, to acquire further information about an Applicant's eligibility or needs, or to apply for other sources of assistance to which the applicant would appear to be entitled. However, no determination and decision on an Application shall be continued beyond fourteen (14) days from the time of its initial consideration by the Board without the Applicant's consent

At the time that an Applicant submits a signed Application to the Auditor, the Applicant shall be entitled to request on the Application a decision within three (3) business days. In the event the Board does not meet as a body during such three (3) business days, then the Auditor shall submit the Application to one or more county commissioners who shall be entitled to render a decision on the Applicant's eligibility and need. If the commissioner or commissioners do not make a determination, the Applicant shall be entitled to a hearing before the Board as a whole at its next regularly scheduled meeting. If the commissioner or commissioners render a decision within such three (3) day period which denies the Application in whole or in part, the Applicant shall be notified that the Applicant shall be entitled to appeal such denial to the Board as a whole at its next regularly scheduled meeting. If an Applicant's need appears to be an "emergency need," the commissioner or commissioners may treat the application as a request for Emergency Relief under Article VII of this Ordinance.

ARTICLE VII

Emergency Relief

In case of an emergency need as hereafter defined any one commissioner shall be empowered to authorize assistance of up to \$100.00 to any person who to such commissioner, appears to be otherwise eligible for poor relief. Such commissioner may waive the requirement that such recipient fill out an Application prior to receiving such assistance, provided, however, that any such recipient must complete and sign an Application within five (5) business days of receiving such assistance

An "emergency need" . . . is a need going to the health or well-being of an individual and of such an immediate nature that the time ordinarily needed to follow standard procedures for poor relief would endanger or cause undue hardship to such person.

requirements.⁹⁹ This personal service of eligibility requirements is a preferable form of notice compared to the mere posting of standards, as is done by Indiana township trustees.

A more problematic part of the Brookings County standards states that an application may be reviewed and considered for up to two weeks after the time of its initial consideration by the board.¹⁰⁰ Given the nature of the needs of a poor relief applicant (requests often include items such as food and heat), the maximum two week period allowed for review of an application seems unduly long.¹⁰¹ Furthermore, the standards indicate that if the applicant consents, the board can continue consideration of the application for an even longer—in fact indefinite—period of time. Disparity of bargaining power exists here; a timid but needy applicant might be hesitant to demand speedy action on his or her application and risk raising the ire of the board.

The Brookings County Ordinance does provide the applicant the right to

ARTICLE VIII

Eligibility

A . . . 2) "Poor and Indigent." In meriting entitlement, each applicant must demonstrate the current status of being "poor and indigent" . . . This determination shall be made by examining, among other things, the Applicant's total economic resources (to include current assets and income) and total economic needs. Wherever appropriate (e.g. where there exists a legal duty of support among family members), that determination shall also include a review of family size, total family economic resources and total family economic needs. As a general policy, the Board in determining eligibility will apply the indigency standards set forth more completely in Appendix A, attached hereto; however, for good cause shown the Board shall have the right to make exceptions. . . .

APPENDIX A:

Indigency Standard for Brookings County

In order to qualify for assistance from the County, each applicant must satisfy both the following criteria simultaneously. . . .

1) *INDIVIDUAL RESOURCES:*

No Applicant for County Assistance shall own property in excess of \$5,000 fair market value; provided however, the Applicant may own a personal homestead . . . which shall be exempt up to the Applicant's equity interest in the maximum amount of \$30,000. . . .

["Emergency Case Hospitalization"]:

By declared policy, the County shall evaluate and accept its responsibilities . . . by considering the totality of circumstances surrounding each Application. With respect to claimed medical indigency, the Board shall consider as one circumstance, the protection which is otherwise available to its residents from the medical insurance industry. The County is not in the insurance business and does not consider itself to be the "major-medical" insurer of all County residents. Accordingly, the Board shall consider, in addition to all other circumstances, whether or not the Applicant, now claiming medical indigency might otherwise have purchased individual "major medical" insurance coverage, the Board shall award benefits in such light.

Brookings County, S.D., Ordinance Establishing Poor Relief Guidelines and Providing for Administration of Poor Relief in Brookings County (1981) (pursuant to S.D. CODIFIED LAWS ANN. § 28-13-16 (Supp. 1982) [hereinafter referred to as Brookings County Poor Relief Guidelines].

99. See Brookings County Poor Relief Guidelines, *supra* note 98, at Art. V(a).

100. See *id.* at VI.

101. Manchester, New Hampshire, standards are much more conducive to timely decisions. See *infra* note 110, at IV(A)1(b).

request a decision within three business days of the application.¹⁰² On close examination, however, this provision appears to be toothless. If the board does not meet as a body during those three days, a county commissioner *may* render a decision on the application if he or she is so inclined. But no one is required to render a decision in three days, even though the applicant may have a very good reason for requesting a speedy decision.

If the applicant is facing an emergency—"a need going to the health or well-being of an individual"—any one commissioner is empowered to grant up to \$100 and waive preliminary application requirements.¹⁰³ While this accommodation provides flexibility where it is needed most, the \$100 ceiling may be too low to meet many types of emergencies, such as a utility shut-off in January.

The eligibility requirements of the ordinance are generally praiseworthy. They state that as a general policy, the board will apply certain indigency standards, but will make exceptions for good cause.¹⁰⁴ Because one purpose of general assistance is to serve the needy who fall "between the cracks" of categorical assistance programs,¹⁰⁵ this amenable policy may well assist the needy who cannot qualify for federally assisted programs, but who nevertheless need financial assistance.

Finally, the Brookings County standards indicate that the commissioners can refuse to award assistance for medical costs if the applicant "might otherwise" have purchased major medical insurance coverage.¹⁰⁶ This "hindsight" determination by the commissioners contradicts the guarantees of the due process clause. It appears unfair to allow the commissioners to determine an applicant's eligibility for assistance based upon what they think the applicant "should have done" months or years ago. First, it would be extraordinarily difficult to appeal successfully a hindsight decision by the commissioners; second, a hindsight determination is by its nature tenuous, if not arbitrary. General assistance applicants have a procedural due process right to be free from arbitrary decisionmaking.¹⁰⁷

Pursuant to the mandate of *Baker-Chaput v. Cammett*,¹⁰⁸ Manchester, New Hampshire has also established written guidelines for the administration of general assistance.¹⁰⁹ These guidelines generally fall at the less discretionary end of the continuum.¹¹⁰ The guidelines are specific in regard to the timeliness of

102. See Brookings County Poor Relief Guidelines, *supra* note 98, at Art. VI.

103. See *id.* at Art. VII.

104. See *id.*

105. See *supra* note 2 and accompanying text.

106. See Brookings County Poor Relief Guidelines, *supra* note 98, at App. A.

107. See *White v. Roughton*, 530 F.2d 750 (7th Cir. 1976) (*per curiam*); *Baker-Chaput v. Cammett*, 406 F. Supp. 1134 (D.N.H. 1976).

108. *Baker-Chaput*, 406 F. Supp. 1134.

109. *Id.* at 1140.

110. Manchester's guidelines include, *inter alia*, the following provisions:

IV. *Determination of Eligibility*

A. *Legal Standard*

"Whenever a person in any town shall be poor and unable to support himself

eligibility decisions, and they also require that a welfare official be available each working day.¹¹¹

Nevertheless, certain provisions of the Manchester guidelines present subtle problems. For instance, the guidelines require that a decision on an applica-

he shall be relieved and maintained by the overseers of the public welfare of such town" [quoting N.H. REV. STAT. ANN. § 165-1].

1. "whenever" means at whatever time that person is unable to support himself or herself;

(a) the Welfare Official should be available each working day;

(b) eligibility should be determined at the time of application if an emergency, or within three working days;

(c) assistance should be granted as soon as eligibility has been determined.

2. "poor and unable to support" means an individual lacks money or material possessions to adequately provide necessities for himself or family (need [minus] income and available assets = general assistance).

3. "relieved" means a person shall be assisted to meet these basic needs.

4. "maintained" means to be continued on assistance as long as eligible. . . .

B. *Non-Financial Eligibility Factors*. . . .

4. *Eligibility for Categorical Assistance*

Applicants who are eligible for other forms of public assistance must apply for such assistance within one week after being advised to do so by the Welfare Official. Failure to do so will render a person ineligible for assistance. Only in extraordinary circumstances will a person receiving another form of public assistance also be considered as potentially eligible for General Assistance

V. *Eligibility Standards*

A. *Expenses*: to determine an applicant's standard of need, a budget sheet is figured, adding actual or allowable expenses, whichever is less, and subtracting net income. When there is no income, maximum amounts shall be provided as listed.

1. *Food*

. . . .
Amounts allowed for food on a weekly basis for zero income:

Family Size	Allotment	Family Size	Allotment
1	\$20.00	6	\$70.00
2	\$30.00	7	\$80.00
3	\$40.00	8	\$90.00
4	\$50.00	9	\$100.00
5	\$60.00	10	\$110.00

2. *Housing*

Arrearages will not be paid. Emergency means a situation not arising from any action or lack of action by the client. No deposits are assumed by the City of Manchester.

Rental assistance shall be provided up to the maximum limits set forth by City Welfare:

Housing Unit	All Utilities	Basic Rent
1-2 Rooms	\$50.00	\$35.00
3-6 Rooms	\$65.00	\$50.00

3. *Utilities*

The actual current cost for gas, electricity, oil, etc., shall be used when computing a budget sheet if not included in the rent. The City will not pay arrearages.

C. *Length of Eligibility*: assistance is authorized on an as-needed basis and is not continued automatically. The length of assistance varies from a few days to a week, depending on the need. The applicant is expected to contact this office each time the circumstances are reviewed to determine further eligibility.

Manchester, New Hampshire, Manchester Welfare Comm'r, General Guidelines for Manchester City Welfare (March 1, 1982) [hereinafter referred to as Manchester Welfare Guidelines].

111. See Manchester Welfare Guidelines, *supra* note 110, at IV(A)(a).

tion be made within three days of the application, and, in the case of an emergency, a grant or denial be made at the time of application.¹¹² The definition of "emergency," however, is ambiguous: emergency "means a situation not arising from any action or lack of action by the client."¹¹³ Manchester's guidelines also require that general assistance "be granted" as soon as eligibility is determined.¹¹⁴ While this provision, on its face, appears to be sound, it is not clear that the wording can be translated to mean that "vouchers shall be issued and paid" as soon as eligibility is determined. Imposing a deadline for the issuance of vouchers after a decision has been made would clarify this uncertainty. Otherwise, one who has shown a legitimate entitlement to general assistance might suffer hardship merely because of the belated issuance of a voucher.¹¹⁵

Moreover, in determining eligibility for general assistance, Manchester's guidelines contain a provision that renders an applicant ineligible for general assistance if he or she fails to apply for categorical assistance within one week.¹¹⁶ This provision may be harsh, especially if the person had good cause for failing to apply. Additionally, there is a clause which excludes categorical assistance recipients from eligibility for general assistance (except in "extraordinary" circumstances).¹¹⁷ This clause may contain equal protection problems, as it is arguably unfair to exclude indigents from eligibility for general assistance solely because they fall into a category that qualifies them for public assistance, albeit inadequate.¹¹⁸

Manchester's poor relief eligibility requirements evidence a method for dispensing general assistance different from procedures used by Indiana¹¹⁹ and South Dakota.¹²⁰ First, the Manchester standards use the following formula for measuring need: expenses (actual or allowable, whichever is less) minus income and available assets equals need.¹²¹ While this formula is theoretically sound, it does not specify the period over which expenses minus income will be measured. Presumably, the formula can be applied to any given period—perhaps a few weeks or months prior to the time at which the applicant first applies for assistance. The formula is too manipulatable to fulfill the mandate of the *Baker-Chaput* decision: an applicant must be afforded "the op-

112. *See id.* at IV(A)1(b).

113. *See id.* at V(A)2 (in the context of housing).

114. *See id.* at IV(A)1(c).

115. The problem with the tardy issuance of vouchers is also latent in the Indiana and South Dakota standards. It could be easily cured, however, by way of a provision requiring the timely issuance of vouchers.

116. *See* Manchester Welfare Guidelines, *supra* note 110, at IV(B)4.

117. *See id.*

118. An attorney for N.H. Legal Assistance, Ronald B. Eskin, has raised this issue (as well as many other issues) in a letter to the City Solicitor of Manchester. Letter from Ronald B. Eskin to City Solicitor of Manchester, New Hampshire (March 31, 1982).

119. *See* North Township Eligibility Standards, *supra* note 83.

120. *See* Brookings County Poor Relief Guidelines, *supra* note 98.

121. *See* Manchester Welfare Guidelines, *supra* note 110, at V(C).

portunity to know beforehand what substantive criteria [must be met] in order to obtain general assistance."¹²² Furthermore, Manchester has established maximum amounts for food and rental assistance when the applicant has had no income. These "absolute limits" might be challengeable if they in fact fail to "support and maintain" indigent Manchester citizens.

A final constitutional flaw in the guidelines derives from the provisions which indicate that general assistance will not be awarded on a continuing basis; recipients must reapply to determine further eligibility.¹²³ Because the statute is silent as to whether general assistance recipients must reapply every week in order to receive further assistance,¹²⁴ it is arguable that this section is constitutionally defective for procedural due process reasons. According to the holding in *Brooks v. Center Township*,¹²⁵ "if the state through its welfare program extends basic benefits to the needy, it must not take the benefits away in an arbitrary procedure. If it does so it has violated the constitutional right of the needy to due process . . ."¹²⁶ Should the applicant for Manchester general assistance be deemed eligible, perhaps the city is then required to "maintain" that individual until he or she becomes ineligible. At the point of ineligibility, the individual is entitled to receive notice of termination and a pretermination hearing.¹²⁷

CONCLUSION

Although the political jurisdiction charged with administering general assistance varies from state to state, it is clear that the due process clause of the fourteenth amendment requires general assistance to be administered pursuant to written, objective, and ascertainable standards. The written standards that have emerged from recent litigation form a continuum ranging from flexible to rigid. All standards examined contain provisions that are ambiguous and manipulatable. The more flexible standards, however tend to be more ambiguous, and therefore more likely to be administered in an arbitrary and capricious manner. These ambiguities, parading under the guise of flexibility, render illusory the due process guarantees the standards are intended to provide. Consequently, to provide indigents adequate insulation from arbitrary or prejudicial decisionmaking, the ambiguities at both ends of the continuum must be removed. Only by clarifying such uncertainties will general assistance guidelines guarantee that the due process rights of the indigent are being protected.

CYNTHIA J. REICHARD

122. *Baker-Chaput*, 406 F. Supp. at 1140.

123. See Manchester Welfare Guidelines, *supra* note 110, at V(C).

124. N.H. REV. STAT. ANN. § 165:1 (Supp. 1983).

125. 485 F.2d 383 (7th Cir. 1973), *cert. denied*, 415 U.S. 911 (1974).

126. *Id.* at 385-86.

127. *Id.* at 385. See also *Goldberg v. Kelly*, 397 U.S. 254 (1970).

