UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

Pamela Publicover, individually and on behalf of her minor children, Kenneth and Heather Publicover, and on behalf of all other persons residing in the Town of Pittsfield, New Hampshire, who are or will be in need of "pauper assistance"

v. Civil No. 77-110-D

Donald Golden, individually and in his official capacity as Overseer of Welfare in the Town of Pittsfield, New Hampshire;
Robert C. Charron,
Lester W. Emerson,
Floyd Carson,
in their official capacity as Selectmen of the Town of Pittsfield, New Hampshire

OPINION AND ORDER

In this case, the Court is once again presented with problems arising out of administration of general assistance under N.H. RSA 165:1, this time by officials of the Town of Pittsfield. In Baker-Chaput v. Cammett, 406 F. Supp. 1134 (D.N.H. 1976), we held that as a matter of due process such programs are to be administered in accordance with written,

objective, and ascertainable standards. Since our decision in Baker-Chaput, we have entertained other suits similarly concerned with the establishment of such standards. See, e.g., Krsnak v. DeGrace, No. 76-299 (D.N.H., filed Oct. 6, 1976) (dealing with general assistance when administered at the county level); Battaglia v. Keeney, No. 76-306 (D.N.H. filed Oct. 8, 1976); Stewart v. Steady, No. 77-56 (D.N.H., filed Feb. 23, 1977). Although presenting similar questions as to the establishment of standards, this case raises additional claims regarding other requirements of due process in the administration of general assistance programs as well as questions of state law. Jurisdiction over plaintiff's claims under 42 U.S.C. § 1983 is grounded upon 28 U.S.C. § 1343(3). As to the state claims raised herein, jurisdiction lies under this Court's pendent jurisdiction.

Plaintiff's claims are as follows:

1. Plaintiff and her infant children are poor and unable to support themselves, and are entitled, under RSA 165:1 to aid to town paupers for their relief and maintenance from the defendants and are entitled to such aid in accordance with reasonable standards.

2. It is settled law that administrators of general assistance are constitutionally compelled to administer aid

impartially and in accordance with written objective and ascertainable standards. Baker-Chaput v. Cammett, supra; White v. Roughton, 530 F.2d 750 (7th Cir. 1976). Defendants have failed to promulgate any ascertainable or reasonable standards to determine eligibility for "pauper assistance", the amount or form of such assistance, or the conditions for the continuation of assistance. Consequently, defendants administer "pauper assistance" with unfettered discretion in violation of the rights of the plaintiffs, and the class they represent, to the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3. Defendants fail to uniformly apply whatever unpromulgated standards of eligibility and assistance they may have. Such arbitrary and capricious administration of a governmental benefit violates the right of plaintiffs and the class they represent to due process of law pursuant to the Fourteenth Amendment to the Constitution of the United States.

4. Defendants' failure to give written notices of decision and/or notice of the right to a fair hearing to contest denial, reduction, suspension, or termination of assistance violates the right of plaintiffs, and the class they represent, to due process of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. Defendant Golden's requirement that plaintiff's husband be arrested prior to providing assistance imposes a condition of eligibility beyond the authority of the defendant and directly in conflict with RSA 165:1.

6. Defendant Golden's requirement that he meet with the Town Selectmen prior to any decision on plaintiff's request for assistance imposes a condition not required by RSA 165:1 and directly in conflict with plaintiff's due process right to a prompt determination of her request for assistance.

7. Defendant Golden's pattern and practice with respect to "pauper assistance" contravenes RSA 165:1 and the clearly established constitutional right to due process of law of plaintiff Publicover and all other persons who have sought such assistance from him since January 26, 1976.

The class aspects of the above claims are not here in question, as we denied plaintiff's motion for certification of this action as a class action. Moreover, since we denied the motion to intervene of one Bridget Jones, our Opinion here deals only with the claims of plaintiff Publicover, who filed suit individually and in behalf of her minor children.

I. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

As reflected in our Order of October 26, 1978, we granted partial summary judgment in plaintiff's behalf on all but the third of her above claims.[1] Our grant of partial summary judgment was based upon our finding that the pleadings, depositions, and affidavits on file showed that there was no genuine issue as to any material fact underlying the above claims (with the exception of the third) and that the plaintiff was entitled to judgment thereon as a matter of law. Rule 56(c) of the Federal Rules of Civil Procedure. See also 10 Wright & Miller, Federal Practice and Procedure § 2722. The following facts constituted the basis for our ruling.

On Tuesday, March 29, 1977, plaintiff Pamela Publicover, a three-year resident of Pittsfield, New Hampshire, telephoned Donald Golden, the Overseer of Welfare for the Town of Pittsfield, at the New Hampshire Savings Bank, where he was a loan officer, to seek assistance from him to meet expenses for necessities required by herself and her two children

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[1] Thus, the only issues remaining for trial, which was held before the Court on January 30, 1979, were plaintiff's third claim and her claim for damages against defendant Golden individually.

(then ages 3 and 1-1/2).[2] At the time, Mrs. Publicover had "separated" from her husband, who refused to provide these necessities, and she was unemployed, without assets, and therefore unable to meet these expenses herself. Their phone conversation proved unproductive on the subject of assistance, as it became sidetracked onto discussion of a past-due loan owed by the Publicovers to Mr. Golden's bank and of possible arrest of the husband for non-support as a prerequisite to granting of Town aid. Mrs. Publicover's subsequent inquiries on the same day to the Pittsfield Chief of Police's office regarding arrest of her husband and to the Merrimack County Welfare Office as to what help it could give in lieu of Town aid were similarly fruitless. At this point, she contacted New Hampshire Legal Assistance, which set up an appointment for her to meet with Mr. Golden at the Pittsfield Selectmen's Office on the night of Wednesday, March 30, 1977. On the way to this office for the meeting, the plaintiff saw defendant Golden coming out of the bank. He told her that the Selectmen had met the night before, that he did not have the keys to re-enter the bank, and that

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[2]Plaintiff had earlier called the Division of Welfare for the State of New Hampshire to request such assistance. Personnel there informed her that defendant Golden was the one responsible for helping her until she could obtain AFDC benefits.

nothing could be done to help her until the next morning. Defendant Golden once again made reference to the past-due loan owed by the Publicovers and told her that no assistance would be provided until Mr. Golden could meet with the Selectmen. On the next morning, March 31, 1977, when plaintiff telephoned defendant Golden he told her he would call her back in a couple of days after discussing her husband's situation with the Chief of Police and one of the Selectmen. Having no food in the house on Friday, April 1, 1977, Mrs. Publicover again contacted Legal Assistance, which phoned defendant Golden on her behalf and arranged to have her call him, which she did, to receive a $25 food order from a supermarket. A week later, she procured another food order from defendant Golden, again at the behest of Legal Assistance.

At no time did defendant Golden direct or offer plaintiff a chance to fill out a written application for Town assistance. Beyond representations made by defendant Golden at the Wednesday night encounter that plaintiff could not receive help for security deposits or past-due light bills, she was not made aware of the kinds of assistance that the Town would offer, nor was she informed as to the standards that would govern her oral request for aid. The defendant gave her no indication, in writing or otherwise, of the fate

of this request, nor did he ever instruct her on how to obtain review of such a decision.

Defendant Golden's dealings with plaintiff Publicover were the subject of a hearing held in this court on April 13, 1977, concerning plaintiff's motion for a temporary restraining order or preliminary injunction. During the hearing, plaintiff Publicover revealed that her electricity for lights, cooking, and heating had been cut off on the day before the hearing, and that she was facing eviction from her apartment. Defendant Golden responded that while he felt that the Town had a present responsibility for plaintiff's welfare, he thought plaintiff was asking for help with back debts or security deposits that were not part of that responsibility. In this regard, defendant cited and produced a copy (Defendant's Exhibit 1) of the "Town of Pittsfield Welfare Guidelines", which he had drawn up in response to this court's decision in Baker-Chaput, supra.

Following this hearing, the Court in its Order of April 15, 1977:

1. Found that plaintiff was entitled to relief under RSA 165:1;

2. Ruled that defendant Golden's welfare guidelines in Exhibit 1 "do not come close to meeting the constitutionally

mandated standards of due process guaranteed by the Fourteenth Amendment to the Constitution of the United States", citing Baker-Chaput; and

3. Ordered defendants to provide plaintiff and her children with necessities pending a hearing on the merits.

In light of the above facts, the Court was able to determine prior to trial that plaintiff was entitled to judgment as a matter of law on all but the third of her seven claims. With respect to the first claim, there appears no doubt that plaintiff and her two children were entitled on March 29, 1977, and thereafter to receive general assistance from defendants under N.H. RSA 165:1. That statute provides:

> Whenever a person in any town shall be poor and unable to support himself he shall be relieved and maintained by the overseers of public welfare of such town, whether he has a settlement there or not.

As this court has previously recognized, RSA 165:1 sets forth only two conditions of eligibility--financial need and inability to support oneself. Sullivan v. Ball, No. 79-197-D (D.N.H., filed June 12, 1979, Order of June 27, 1979, at 6) (appeal docketed July 12, 1979); Krsnak v. DeGrace, supra, Opinion and Order of August 8, 1977,

at 4; Baker-Chaput, supra, 406 F. Supp. at 1138. As we found in our Order of April 15, 1977, plaintiff had no money or assets as of March 29, 1977, was neither employed nor receiving any support from her husband who had left her, and was faced with providing for two young children. Plaintiff thus satisfied the requirements of RSA 165:1.[3] Under these circumstances, plaintiff had "a legitimate claim of entitlement" rooted in the legal obligation imposed by RSA 165:1, and thus had "a protectable Fourteenth Amendment interest". Baker-Chaput, supra, 406 F. Supp. at 1138-39, citing Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Thus, some form of due process was owed her. As the Court noted in Baker-Chaput (id., at 1139), determinations of what process is "due" involve weighing the private interest in being afforded a particular process against the effects which providing such process would have upon the governmental function. In Baker-Chaput we found that an "eligible" welfare applicant's interest in receiving benefits for which he is statutorily qualified, in being treated fairly by an administrative agency, and in believing that he has been treated fairly outweighs the traditional bureaucratic interests in expediency and efficacy that are sometimes

[3]Defendants did not object to granting partial summary judgment on this point.

served by standardless administration. Thus, we held that the establishment of written, objective, and ascertainable standards for the administration of a general assistance program under RSA 165:1 is "an elementary and intrinsic part of due process" (id., at 1140).* At the April 13, 1977, hearing re temporary restraining order, defendant Golden asserted that he was "operating under" a set of guidelines at the time when plaintiff requested assistance from him (Tr. at 34).[4] Plaintiff was never shown these guidelines,

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[4]These guidelines, as shown in Defendant's Exhibit 1 from that hearing, read as follows:

TOWN OF PITTSFIELD WELFARE GUIDELINES

1. Conform to State regulations relevant to residency and town obligation

2. Emergency needs are given special attention

3. In all cases, if applicant can work we try to make him gainfully employed for his own peace of mind

4. If the need arises and there is no other assistance available, then the town takes its position

5. Town welfare is not mandatory, it is an assistance the town renders as a convenience to its residents following State guidelines, town guidelines and the town budget

6. The Town in all cases will adhere to all regulations, providing applicants are eligible

nor was she put on notice of their existence. However, even if she had been provided with a copy of the guidelines, she would not have been able to learn what kinds of aid were available to her. The generality and brevity of the guidelines underscore defendant Golden's admitted practice of treating each case individually, with no particular standards of eligibility as determinative other than defendant's own subjective feelings as to the merits of a request. In this light, as we noted in our Order of April 15, 1977, defendant's administration of general assistance in Pittsfield according to such guidelines does not come close to affording an apparently eligible applicant such as plaintiff the process due her under the Fourteenth Amendment to the Constitution of the United States. Thus we granted plaintiff's motion for summary judgment on her second claim.

In effect, plaintiff's fourth claim alleges violations of the "traditional due process requirements of notice, hearing, and written statement of the reasons for denial" of her request for aid that we did not specifically address in Baker-Chaput, supra, 406 F. Supp. at 1139. In Goldberg v. Kelly, 397 U.S. 254 (1970), the United States Supreme Court held that as a matter of procedural due process, welfare recipients whose benefits (from both categorical and general assistance-type programs) are about to be terminated must be

accorded prior to such termination "timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally" (id. at 267-68). In so holding, the Court found that because a controversy over eligibility may deprive an eligible welfare recipient "of the very means by which to live", countervailing governmental interests "in conserving fiscal and administrative resources" were overridden (id. at 264-66). However, the Court did not address in Goldberg what aspects of procedural due process, if any, are owed an applicant for general assistance, and indicated in Daniel v. Goliday, 398 U.S. 73 (1970) (per curiam Opinion) that such extensions of the Goldberg rationale into other aspects of welfare law would best be performed in the first instance at a lower court level.

Lower court resolutions as to welfare applicants' due process rights have split into two distinct camps. On the one hand, state and federal courts in California have refused, although on different grounds, to extend to welfare applicants due process guarantees of the kind implicated in plaintiff Publicover's fourth claim. In Zobriscky v. Los Angeles County, 28 Cal. App. 3d 930, 105 Cal. Rptr. 121

(1972), the California District Court of Appeal weighed the interests involved and determined that extending the right to an evidentiary hearing to each denied applicant for general assistance (under Welfare and Institutions Code, Section 1700) would be overwhelmingly burdensome to local governments. By contrast, finding that such an applicant had no "property interest" or "legitimate claim of entitlement" to the benefits of the general relief program, the United States District Court for the Southern District of California in Griffeth v. Detrich, 448 F. Supp. 1131 (S.D. Cal. 1978), disposed of a claim to a full evidentiary hearing prior to denial of an application for aid on the threshold step of the analysis employed in Board of Regents v. Roth, 408 U.S. 564 (1972).

On the other hand, two federal courts which have engaged in a balancing of interests in the welfare context have opted to extend traditional due process safeguards to applicants for general assistance. Finding no distinction for entitlement purposes between summary denial and summary termination of statutorily created welfare benefits, the court in Barnett v. Lindsay, 319 F. Supp. 610 (D. Utah 1970) (three-judge court) held that "the right to the procedural protections described in Goldberg must be applied at all stages of the welfare process whenever the proposed administrative action

contemplates the denial or termination of ... benefits" (id. at 612). Thus, defendants were enjoined from terminating, altering, or denying aid to a welfare applicant or recipient prior to the granting of notice and opportunity for hearing. Similarly citing the irrationality of holding that an individual's entitlement to welfare should turn on his status as recipient or applicant, the court in Alexander v. Silverman, 356 F. Supp. 1179 (E.D. Wisc. 1973), extended the right to a statement of reasons and an administrative hearing post denial to all applicants "who submit applications which do not on their face indicate that they are ineligible for relief" (id. at 1180). Similar reasonings have led to extensions of the due process right to an evidentiary hearing to an applicant for compensatory relief for injuries arising out of employment within a federal prison hospital (Davis v. United States, 415 F. Supp. 1086 [D. Kan. 1976]) and to an applicant for public housing (Davis v. Toledo Metropolitan Housing Authority, 311 F. Supp. 795 [N.D. Ohio 1970]).

In light of the desperate need of plaintiff for general assistance, and the "humanitarian purpose"[5] of the statute under which she is apparently entitled to relief, this Court is persuaded of the wisdom of the holdings of

[5] Derry v. County of Rockingham, 64 N.H. 499, 500, 14 A. 866 (1888).

the latter line of cases. In granting plaintiff's motion for partial summary judgment on her fourth claim, we do not deny that there is some merit in the Zobriscky court's concern with placing burdensome requirements on part-time local officials. However, we find that standardless administration of general assistance programs represents a greater evil, particularly in cases where applicants show prima facie eligibility for assistance. Moreover, while we acknowledge, as did the court in Griffeth, supra, the advantages of flexibility in administering a general assistance program that must respond to local needs and capabilities, we note the growing consensus among New Hampshire welfare administrators on a more even-handed approach to operation of such programs. See "Welfare Guidelines for New Hampshire Local Officials", Second Edition, May 1976, drafted by the New Hampshire Municipal Association.[6]

Plaintiff's fifth claim asks the Court, under its pendent jurisdiction, to rule that defendant Golden's imposition of a requirement that plaintiff's husband be arrested before assistance could be provided her was beyond defendant's authority and in conflict with state law. Dispo-

[6]The guidelines were used as the basis for our final order dated April 2, 1976, in Baker-Chaput v. Cammett, No. 75-133 (D.N.H., filed May 16, 1975).

sition of this claim requires examination of the interaction between N.H. RSA 165:1, as set forth above, and RSA 165:19, 165:20, and 165:32.[7]

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> 165:19 Liability for Support. The relation of any poor person in the line of father, mother, stepfather, stepmother, son, daughter, husband, or wife shall assist or maintain such person when in need of relief. Said relation shall be deemed able to assist such poor person if his weekly income is more than sufficient to provide a reasonable subsistence compatible with decency and health. Should said relation refuse to render such aid when requested to do so by a county commissioner, selectman, or overseer of public welfare, such person or persons shall upon complaint of one of said officials be summoned to appear in court. If upon hearing it is found that the alleged poor person is in need of assistance, the court shall enter a decree accordingly and shall fix the amount and character of the assistance which said relation shall furnish. If said relation shall neglect or refuse to comply with said order, without good cause as determined by the court at a hearing, or by refusing to work or otherwise shall voluntarily place himself in a position where he is unable to comply, he shall be deemed to be in contempt of court and shall be imprisoned not more than 90 nor less than 60 days. If such poor person has no such relation of sufficient ability, the town wherein he has a legal settlement shall be liable for his support.

RSA 165:20, as worded prior to amendments effective August 5 and 31, 1977 (which are not here relevant) stated, in pertinent part, that

RSA 165:19 provides an overseer of public welfare with the authority to request assistance for a needy person and certain relatives of that needy person, and to file a complaint in court against these relatives if they are able to render such aid but refuse to do so. On the facts of this case, it is clear that defendant Golden had the right to proceed under that statute against plaintiff Publicover's

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[7](continued)

> [i]f a town spends any sum for the support ... of a pauper having relations able to support him under RSA 165:19 such sum may be recovered from the ... relation so chargeable.

RSA 165:32 provides, in pertinent part, that:

> [n]o person who is otherwise eligible for support under this chapter shall receive such support unless and until all able-bodied males, under the age of 65 years, ... related to such person, and regularly residing in the same household as such person, and legally liable to contribute to the support of such person and not prevented from maintaining employment and contributing to the support of such person by reason of physical or mental disability or other substantial or justifiable cause, are employed on a full-time basis. The amount or amounts earned by the persons obligated to maintain employment hereunder shall be taken into consideration in determining the level of need for town support. Nothing in this section shall be construed to deny to any minor dependent child any needed support to which he would otherwise be entitled.

husband at some point after he learned of the husband's non-support. However, RSA 165:19 and 165:20, the first two statutory provisions that make up that portion of RSA 165 entitled "Liability for Support, and Recovery Over", send out arguably conflicting signals as to whether an overseer can require the summoning of a non-supporting relative as a prerequisite to a granting of RSA 165:1 assistance.

Both the language of the last sentence of RSA 165:19 and its position in this section relative to the above-prescribed judicial procedure indicate that the liability of a town to support a poor person arises only after a determination has been made that such person has no relations of sufficient ability to provide for his needs. And under the statutory scheme, findings as to sufficiency of ability are to be made in court following the filing of an official complaint. However, RSA 165:19 does not provide that an overseer of welfare must utilize the above complaint and summons procedure. Indeed, the following section, RSA 165:20, contemplates that the town may first provide general assistance to a poor person and then, upon discovery of qualified relations able to support the poor person, recover from them any aid previously granted.

As noted above, we have recognized that RSA 165:1 does not provide for any exception to the mandate that a poor person, unable to support himself, has a right to general assistance. See Sullivan v. Ball, supra, Order of June 27, 1979, at 6; Krsnak v. DeGrace, supra, Opinion and Order of August 8, 1977, at 4; Baker-Chaput, supra, 406 F. Supp. at 1138. Under such mandate,

> it makes no difference, so far as regards the obligation upon the town, whether a person be reduced to necessity by his own misconduct or fault, or by the wrongful or careless act of another, or by pure accident or misfortune.

Hollis v. Davis, 56 N.H. 74, 86 (1875). Accord, Amherst v. Hollis, 9 N.H. 107, 109 (1837). Reading the provisions of RSA 165:19 and 20 in light of the language and purposes of RSA 165:1, and bearing in mind the desperate circumstances facing an applicant for general assistance, this Court finds as a matter of statutory construction that Golden's imposition of a requirement that plaintiff's husband be arrested prior to granting of town aid was both beyond his authority and in conflict with RSA 165:1. Legislative recognition that the urgency of the needs of RSA 165:1 applicants dictates a render-aid-first/ask-questions-later approach (at least for minors who can demonstrate prima facie eligibility) is found in the language of RSA 165:32: "Nothing

in this section shall be so construed as to deny any minor dependent child any needed support to which he would otherwise be entitled."

On its face, RSA 165:32 offers some support to an overseer of public welfare who wishes to deny aid to an applicant for 165:1 assistance until a non-supporting relative is arrested. Enacted in 1969 with the purpose of "limiting abuses of the welfare system ...,"[8] RSA 165:32 provides that no otherwise eligible applicant for RSA 165:1 assistance can receive such aid "unless and until all able-bodied adult males" falling into a prescribed status "are employed on a full-time basis."[9] The section goes on to

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[8]The full title of House Bill 929 was "re Limiting Abuses of the Welfare System: Amending Certain Statutes Re Public Assistance: And Establishing a Work Incentive Program in the Department of Employment Security."

[9]As drafted, the RSA 165:32 requirement that all able-bodied males be employed on a full-time basis extends only to those males who meet each of the following conditions:

> [1] ... under the age of 65, ...
> [2] ... related to such person, ...
> [3] ... and regularly residing in the same household as such person, ...
> [4] ... and legally liable to contribute to the support of such person ...
> [5] ... and not prevented from maintaining employment and contributing to the support of such person by reason of physical or mental disability or other substantial or justifiable cause ...

(Emphasis added.)

say that "the amount or amounts earned by the persons obligated to maintain employment" under the above provision are to be "taken into consideration in determining the level of need for town support." Because it contains a classification based upon gender, RSA 165:32 may well be constitutionally suspect under the equal protection standard enunciated in Craig v. Boren, 429 U.S. 190, 197 (1976), rehearing denied 429 U.S. 1124 (1977): "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."[10] In this regard, a statute that discriminates on the basis of gender can no longer withstand constitutional scrutiny on the basis of outdated notions that "'generally it is the man's responsibility to provide a home and its essentials'" Orr v. Orr, 97 S.Ct. 1102, 1112, quoting from Stanton v. Stanton, 421 U.S. 7, 10, 14-15. "'No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.'" Id. However, we need not decide here whether RSA 165:32 passes constitutional muster since the statute, by its terms, does not apply to plaintiff. At the time when plaintiff applied

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[10]Note that RSA 165:32 itself commands, in its last sentence, that "[i]f anything in this section conflicts with federal law or regulation related thereto, the federal law or regulation shall take precedence."

to defendant Golden for assistance, she had been separated from her husband for three weeks and has continued to be so. Therefore, plaintiff's husband did not qualify as an adult male "regularly residing in the same household" with her.[11]

In sum, defendant Golden's withholding of immediate assistance to plaintiff on the basis that her husband must first be arrested for non-support was not in accordance with state law.[12] Like her fifth claim, plaintiff's sixth claim complains of another prerequisite imposed by defendant Golden upon her receipt of RSA 165:1 assistance: A "requirement" that defendant Golden meet with the Town of Pittsfield Selectmen prior to rendering a decision on plaintiff's request for aid. She alleges first that this "condition" was "not required" by RSA 165:1, and second that the delay in processing her application entailed by observing the condi-

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[11] In deposition, defendant Golden noted his observations that plaintiff's husband's truck had been parked in front of the apartment house where plaintiff and her children lived and that the husband had been "in and out of that house". (Defendant Golden's deposition at 62.) However, defendant could not swear that the husband was actually living in her apartment as opposed to one of the other apartments in the house, which plaintiff testified was the case. (Hearing on April 13, 1977, Tr. at 23-24.) Apparently, plaintiff and her husband have been separated on a number of occasions during their years of marriage.

[12] RSA 460:23 (repealed effective September 16, 1977) cited by defendant's counsel at the April 13, 1977, hearing re temporary restraining order, does not address the order of precedence between a grant of general assistance and the imprisonment of a non-supporting husband or father.

tion denied her due process of law. Defendant Golden readily admits that when he perceives that requests for aid will involve prolonged assistance, he consults the Selectmen prior to making his decision. (Golden deposition at 7, 34.) Evidently, he felt that the nature of plaintiff's need warranted following this procedure in her case. (Hearing of April 13, 1977, Tr. at 40, 41; Golden deposition at 65.) Such a "requirement" differs in kind from the condition alleged in plaintiff's fifth claim in that it has little bearing on the substantive conditions of her eligibility. Rather, it raises once again questions as to what administrative procedures are permissible in light of the purposes of RSA 165:1 assistance. That RSA 165:1 does not "require" such a procedure does not mean that the statute prohibits it. In providing Selectmen with the same authority under RSA 165:19 as overseers of public welfare to request aid for a poor person from certain of his relations, the Legislature has enabled Selectmen to become involved in the administration of general assistance programs at least to that extent. Moreover, in practice, in close to two-thirds of New Hampshire towns, the boards of selectmen, or one of their members, actually serve as the overseers of public welfare.[13] As a matter of statutory construction, this court is not prepared to hold that defendant Golden's "requirement" was per se violative of RSA 165:1.

[13] Kravit, "Standards for General Assistance in New Hampshire: An Analysis and Proposal", 16 N.H.B.J. 136, 147 (1974).

However, because defendant Golden's consultation procedure in this particular instance delayed determination of critical issues in plaintiff's request, we granted summary judgment on her sixth claim on due process grounds. Having determined that plaintiff has shown prima facie eligibility for general assistance, we engage in the same process of interest balancing (here, of plaintiff's interest in prompt determination of her claim against defendant's interest in not providing a prompt determination) that we utilized in deciding plaintiff's motion on her second and fourth claims. In so doing, we consider the following factors: (1) the immediacy of plaintiff's need; (2) admissions by defendant that requests for assistance can usually be handled within 72 hours (Golden deposition at 34); and (3) the relatively light caseload facing defendant Golden in his everyday administration of the general assistance program.[14] The Welfare Guidelines for New Hampshire Local Officials (2d ed.,

[14] At deposition, defendant Golden indicated that he had considered approximately 20 requests for aid in the preceding year (August 1976 to August 1977) and that only the plaintiff had contacted him regarding aid within the preceding month (Golden deposition at 20). We contrast this caseload with that which caused the City of St. Louis office of the State Division of Welfare in Like v. Carter to estimate that up to 182 days processing time was necessary to determine eligibility on a categorical assistance claim. 318 F. Supp. 910, 912 (E.D. Mo. 1970), rev'd 448 F.2d 798 (8th Cir. 1971), cert. denied, 405 U.S. 1045 (1972).

1976) of the New Hampshire Municipal Association suggest at page 4 that a welfare official should make a determination as to the eligibility of an applicant for RSA 165:1 assistance within 72 hours of the filing of a request. In light of the desperate straits in which applicants such as plaintiff find themselves, we hold that an official's failure to act comprehensively upon an RSA 165:1 request within that time would amount to an unconstitutional delay. Defendant Golden's requirement that he meet with the Selectmen prior to rendering a decision on plaintiff's initial request of March 29, 1977, meant taking no action on her case (beyond issuing two food orders), even up until the hearing before this Court on April 13, 1977 (see Tr. at 41). By that time, power for the lights and cooking facilities in plaintiff's apartment had been shut off. This critical need should have been inquired into and ruled upon at the time when defendant Golden became aware that plaintiff was generally in need of assistance. Such failure cannot be excused on the basis that plaintiff's specific requests related only to food orders--under the circumstances outlined above, plaintiff had no way of knowing what forms of aid might be available to her. We reiterate that our granting of summary judgment on plaintiff's sixth claim does not hold that an overseer of public welfare cannot consult with the Selectmen prior to

determining eligibility; we hold only that if such consultation produces the kind of delay that occurred here in processing a request from a prima facially eligible applicant, such delay is violative of due process.

In light of our findings and holdings on plaintiff's preceding claims, and defendant Golden's admissions that the above deficiencies are typical of his practice in general,[15] we granted summary judgment, at least as to plaintiff's case, on her seventh claim--that defendant's pattern and practice with respect to general assistance contravenes RSA 165:1 and plaintiff's due process rights under the Fourteenth Amendment to the Constitution of the United States.

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[15]This pattern and practice included not explaining or publicizing what relief might be available (Golden deposition at 24, 25) or when one might apply for it (id. at 18); not providing written applications (id. at 47); not utilizing any set, ascertainable policy regarding income or eligibility (id. at 40); and never issuing written decisions on applications or informing in writing of rights of appeal (id at 35, 54).

II. CLAIMS PRESENTED AT TRIAL[16]

A. Plaintiff's Third Claim

After further consideration of the record in this case, as supplemented by the testimony introduced at trial before the Court on January 30, 1979, we find that the plaintiff has proved by a preponderance of the evidence sufficient facts to enable her to prevail on her third claim--that defendants have failed in her case to follow whatever unpromulgated standards of eligibility they purported to apply at the time of her request for assistance, and thus violated her due process rights.

As noted earlier in discussion of plaintiff's second claim, the "Town of Pittsfield Welfare Guidelines" (see note 4, above) do not come close to satisfying plaintiff's due process right, as articulated in Baker-Chaput, supra, to be informed by established written standards about

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[16] For purposes of resolving these claims, the Court rules, pursuant to Rule 32(a)(2) of the Federal Rules of Civil Procedure, that the deposition of defendant Golden is admissible for all purposes so far as is allowed by the Federal Rules of Evidence. See Wright & Miller, Federal Practice and Procedure § 2145. Note that plaintiff's counsel has submitted with the deposition a Rule 30(e) affidavit sufficiently explaining why the deposition as filed was not signed by defendant Golden. At trial, the parties stipulated that the depositions of defendant Selectmen Lester Emerson and Robert Charron, to which Rule 30(e) affidavits are attached, could be admitted as exhibits. Moreover, during the course of ruling on the claims presented at trial, the Court will also utilize testimony rendered in the course of the April 13, 1977, hearing on injunctive relief. Rule 65(a)(2) of the Federal Rules of Civil Procedure.

the substantive criteria that would govern her application for assistance.[17] Moreover, it is evident from the testimony adduced at trial that these guidelines, which were drawn up by defendant Golden himself, were neither submitted for formal review by the Selectmen nor adopted by them.[18] Only former Selectman Gordon Weldon's comments were sought prior to the Guidelines' being filed with the Town records (see Golden deposition at 60).

However, the language in Guideline #5 as to following "State guidelines" arguably refers to the Welfare Guidelines for New Hampshire Local Officials (2d ed., May 1976) drafted by the New Hampshire Municipal Association (NHMA), copies of

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[17] Nowhere in the record does it appear that defendant Golden even referred to these guidelines in considering plaintiff's request. At trial, defendant stated that he did not recall when the Town Guidelines were drawn up, but offered that they could have been drafted between the time of plaintiff's March 29, 1977, request for assistance and the court hearing on April 13, 1977, at which they were introduced. On the basis of defendant Golden's recollections at deposition (1) that he wrote up the guidelines "when the law (Baker-Chaput) came out that you had to have a set" (Golden deposition at 57), (2) that he had drafted these guidelines with the help of a selectman who was no longer serving as such by the time of plaintiff's March 1977 request (Golden deposition at 60; Charron deposition at 3), (3) that the guidelines were in existence before the beginning of that year (Golden deposition at 58), and (4) that one Clarence Willett had asked for and was given a copy of the guidelines in connection with his request for aid in the winter of that year (id. at 27, 42, and 58), we find that the Town Guidelines existed prior to the time plaintiff Publicover requested assistance.

[18] N.H. RSA 41:8 charges the selectmen of a town with the management of its "prudential affairs".

which were received by defendant Golden from the welfare office for the County of Merrimack (id. at 4-6) at the beginning of the year 1977 (id. at 53). Both at trial and in deposition, defendant Golden stated that he attempts to follow the Municipal Association Guidelines (id. at 53), and that those guidelines govern what he should be doing in his administration of Pittsfield's general assistance program (id. at 69).[19] Yet he also admitted that, at least before August of 1977, "I don't think we just conform to every guideline in there every time someone comes in" (id at 55), and stated that "you have to handle each case individually, you can't just say this pertains to this one or that pertains to that one." Whatever the extent of defendant Golden's application of the Municipal Association Guidelines in other cases, it is clear that he did not follow them to any significant extent in plaintiff's case. Although defendant's reluctant agreement on April 1, 1977, to issue plaintiff a $25 food order meant that he had acted to some extent on her request within 72 hours (see NHMA Guideline D.1., at 4) of its making (on March 29, 1977), such action hardly lived up to the responsibilities imposed by those guidelines. Indeed, had defendant Golden required that plaintiff fill out a

[19] Defendant Golden admitted at deposition (at 55) that he has not spoken to the Selectmen about the Municipal Association Guidelines. See Emerson deposition at 8-9; Charron deposition at 13-14.

written application, informed her of eligibility requirements, notified her of a right to review of any adverse decision, and explored with her facts concerning her eligibility, needs, and resources (NHMA Guidelines B.1, 2, 3, and 5, respectively), it is likely that plaintiff would not have been placed in the precarious position in which she found herself as of the April 13, 1977, hearing before this court.

Implicit in our Baker-Chaput, supra, holding that the establishment of written, objective standards is an intrinsic part of due process, was our understanding that such standards, once established, should be followed consistently. See White v. Roughton, 530 F.2d 750, 754 (7th Cir. 1976). Were this not so, plaintiff's "interest not only in being treated fairly by an administrative agency, but, just as important, in believing that she has been treated fairly" (Baker-Chaput, 406 F. Supp. at 1140), would be rendered a nullity. A fair reading of the recent decision of the United States Supreme Court in United States v. Caceres, 99 S.Ct. 1465, 1470 (1979), indicates that one whose interests are sought to be protected under regulations whose establishment is mandated, as they are here, by the Constitution, is entitled as a matter of due process to insist upon their observance. See, in particular, dissenting

Justice Marshall's analysis (and cases cited therein) of the majority opinion in Caceres. Id. at 1474-76 (Marshall, J., dissenting). In this light, regardless of the label (e.g. guidelines, rules, regulations, etc.) one attaches to standards adopted to comply with our holding in Baker-Chaput, such standards must be followed uniformly.[20] This does not mean that the facts of an individual case cannot be considered--only that a welfare official must apply the same written, objective criteria of eligibility and afford the same procedural safeguards to each case. That varying, individual factors may be processed effectively through a single set of objective standards is aptly demonstrated by the guidelines proposed by the New Hampshire Municipal Association to which we have earlier referred.

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[20] At the hearing of April 13, 1977, defendant Golden stated that

> we treat each case individually. It has to be that way. There is a guideline, and that is just what the Federals point out. It is a guideline and not a bible. That is why I am sure, if you read ours compared to other towns', you see we all don't agree.

Tr. at 43. We hasten to point out that the choice of the title "guideline" was not ours, but the New Hampshire Municipal Association's (whose guidelines represent a recommended format for its individual members) and defendant Golden's.

B. DAMAGES

While plaintiff in her complaint has sought declaratory and injunctive relief, whose form will be addressed in the final section of this Opinion, from each of the defendants in his official capacity, her claim for compensatory and punitive damages runs only against defendant Golden individually. See Scheuer v. Rhodes, 416 U.S. 232 (1974).[21] Although a court may find, as we have above, that a defendant official acting under color of state law has violated a plaintiff's constitutional rights, that official may be entitled in his individual capacity to a degree of immunity from damages under 42 U.S.C. § 1983, depending upon the scope of discretion and responsibilities of his office. Id. at 247. However, even an official entitled to assert such immunity will be subject to liability for damages under § 1983

> if he knew or reasonably should have known that the action he took within [his]

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[21] Under Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 690-91 (1978), decided after plaintiff filed her complaint, local governing bodies, as well as local government officials sued in their official capacities, can be sued directly under § 1983 for monetary damages where the action that is alleged to be unconstitutional implements or executes official policy or where the constitutional deprivation is visited pursuant to governmental "custom". Plaintiff has not sought to amend her complaint to reflect the holdings of Monell, and we do not perceive that the amount of her recovery here would be different had she done so.

> sphere of ... official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the [plaintiff] .... A compensatory award will be appropriate only if the [defendant] ... acted with such an impermissible motivation or with such disregard of the [plaintiff's] clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith.

Wood v. Strickland, 420 U.S. 308, 322 (1975) (emphasis added).

At the outset, we note that we need not address (and the parties have not argued) the question whether the nature of defendant Golden's official duties afford him the above-qualified immunity defense, since at any rate it is clear that defendant Golden knew or should have known that the actions he took within the sphere of his official responsibility would violate certain clearly established constitutional rights of plaintiff. Cf. Wood, supra, 420 U.S. at 318-22 (examining common law principles and public policy reasons for extending qualified immunity to school board members); Downs v. Sawtelle, 574 F.2d 1, 13-16 (1st Cir.) (availability of good faith defense to social workers), cert. denied, 99 S.Ct. 278 (1978). Our holding in this regard refers in particular to violations of rights alleged in plaintiff's second and third claims.

At trial, as well as at the hearing of April 13, 1977 (Tr. at 35), and upon deposition (Golden deposition at 57), defendant Golden has acknowledged that he knew about this court's decision in Baker-Chaput, supra, at all times relevant in this case. Moreover, his statements that the law requires that every town have a set of "guidelines" indicate that defendant at least partially understood that decision. (Hearing of April 13, 1977, Tr. at 34-35; Golden deposition at 56-57). Indeed, his admission that his guidelines (Exhibit 1) "probably wouldn't hold up in court" (Golden deposition at 57), as well as his own counsel's observation that "these are rather summaries or brief guidelines, are they not?" (hearing of April 13, 1977, Tr. at 35) provide strong indication that the full import of our holding in Baker-Chaput was grasped and consciously side-stepped.[22] At any rate, given the responsibilities of his office and the fact that counsel was evidently available to him throughout the period here in question, defendant Golden has no

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[22]In an article from the February 3, 1976, edition of the "Concord Monitor" produced at trial (Plaintiff's Exhibit 12), defendant Golden is quoted as saying the following when asked about our holding in Baker-Chaput: "If standards were set by being written down, welfare cases would come out of the woodwork. I'm going to wait to see if this is tested." Although not recalling whether he spoke those exact words, defendant Golden acknowledged at trial and at deposition that he spoke with a "Concord Monitor" reporter about this subject and that the above statement "sounds like me". (Golden deposition at 66-68.)

excuse for not knowing that his "guidelines" did not even come close to measuring up to what we required in Baker-Chaput.

Moreover, in line with our discussion of plaintiff's third claim, we feel that defendant Golden should have known that once he established or purported to adopt certain guidelines for his practice, it was incumbent upon him to follow such guidelines in each case. Besides being implicit in our holding in Baker-Chaput, the proposition that constitutionally mandated standards must be observed as a matter of due process has long been established. See the line of cases cited in both the majority and dissenting opinions to United States v. Caceres, 99 S.Ct. 1465 (1979). In this light, as defendant Golden has been assisted by counsel at all times relevant to this case, his misperception of the law as quoted above in note 20 can readily be characterized as a knowing disregard thereof. Having thus determined that plaintiff is entitled to recover damages from defendant Golden for his violations of those constitutional rights alleged in her second and third claims, we now turn to discussion of the nature and measure of her damages.[23]

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[23]Because the scope of plaintiff's recovery would not be increased by considering as additional grounds therefor the other violations of constitutional rights made out in

In Carey v. Piphus, 435 U.S. 247, 254-57 (1978), the United States Supreme Court held that, aside from the possibility of awarding punitive damages under proper circum-

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this case, we need not consider whether a qualified immunity is available to defendant Golden with respect to those remaining constitutional claims.

Because we granted plaintiff summary judgment on her pendent state claims as well as on her constitutional "causes of action", it is conceivable that damages could also be awarded to her for violations thereof. However, neither party to this case had addressed that question. Prior to the case of Merrill v. Manchester, 114 N.H. 722, 332 A.2d 378 (1974), it was the general rule in this state that municipalities were immune from liability for the acts of their agents in the performance of governmental functions. See Hurley v. Hudson, 112 N.H. 365, 296 A.2d 905 (1972) (alleging improper approval by a town planning board of a subdivision plot); Gossler v. Manchester, 107 N.H. 310, 221 A.2d 242 (1966) (suit for damages arising out of fall on a city sidewalk); Hermer v. Dover, 106 N.H. 534, 215 A.2d 693 (1965) (alleging mistake, negligence, or misconduct on the part of a city building inspector in administering a zoning ordinance); Opinion of the Justices, 101 N.H. 546, 134 A.2d 279 (1957) (and cases cited therein). As an aside to its finding that the defendant municipality in the Hermer case had a valid defense by reason of governmental or municipal immunity, the Supreme Court of New Hampshire noted that such immunity would also apply to its building inspector who was performing a governmental function. Arguably, then, when that court in Merrill abrogated the immunity of municipalities from tort liability except when the acts or omissions in question constituted "(a) the exercise of a legislative or judicial function, and (b) the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by a high degree of official judgment or discretion," the immunity of municipal governmental officials themselves was also so circumscribed. However, for purposes of determining damages in this case, the violations of state law for which we have here granted summary judgment had no more effect than the constitutional violations presented. Therefore, because we have determined that plaintiff is entitled to damages flowing from violations of certain of these latter claims, we need not determine the extent of immunity from damages possessed by defendant Golden for the violations alleged in plaintiff's pendent claims.

stances, damages awards under 42 U.S.C. § 1983 should be cast in such a way as to compensate persons for injuries caused by deprivations of constitutional rights. In this regard, the court noted that

> the rules governing compensation for [such] injuries ... should be tailored to the interests protected by the particular right in question--just as the common-law rules of damages themselves were defined by the interests protected in the various branches of tort law.

Id. at 259. At the outset, it may be observed that the rights here in question--to have written, objective, and ascertainable standards both established and followed--serve a number of interests. As we stated in Baker-Chaput, 406 F. Supp. at 1140, members of society have an interest not only in being treated fairly by an administrative agency, but, just as important, in believing that they have been treated fairly. See also Carey v. Piphus, 435 U.S. at 262. Moreover, the presence and observance of standards ultimately tend to serve a general assistance applicant's paramount interest in receiving those benefits for which he is statutorily qualified. Baker-Chaput, 406 F. Supp. at 1140; see also Carey v. Piphus, 435 U.S. at 259.

Unlike the public school students suspended without hearing for apparent violations of school rules in Carey, plaintiff here not only was denied procedural due process

by defendant Golden's treatment of her March 29, 1977, request for assistance, but also, at least up until this court issued its Order of April 15, 1977, was deprived of certain benefits for which she was unquestionably qualified. As noted earlier, had defendant followed the Municipal Association guidelines he purported to follow, he would have learned of plaintiff's immediate problems with her electricity bill and could have headed off the cut-off of her power for heat, lights, and cooking facilities. Thus, the scope of our inquiry into what damages were suffered by plaintiff as a result of defendant Golden's violations of the two constitutional rights here in question includes examination not only of the consequences flowing from the denial of the rights themselves, but also of what injuries were incurred as a result of the temporary, partial deprivation of the underlying statutory entitlement. However, under neither kind of deprivation can injury be presumed to have occurred: as in most tort actions, plaintiff here cannot recover compensatory damages without evidence that the injury claimed actually occurred and was caused by such deprivations. Carey, supra, 435 U.S. at 262-64.

In the case at bar, evidence adduced at trial in support of an award of compensatory damages concerned only the mental and emotional distress allegedly suffered by plaintiff as a

result of her dealings with defendant Golden.[24] Testimony in this regard was given primarily by clinical psychologist Ethel I. Hull, who interviewed plaintiff on two occasions. From her review of plaintiff's social history as well as from her own observations, Doctor Hull testified that plaintiff was a basically isolated individual lacking "interpersonal support systems" and personal resilience. In addition, Doctor Hull noted that at the time plaintiff sought aid from defendant Golden in March of 1977, she was in her first trimester of pregnancy with a third child, wherein she would have been all the more emotionally unstable. Combining these factors with plaintiff's lack of monetary resources, Doctor Hull concluded that plaintiff had a limited ability to respond to stress during the time when she needed assistance from defendant. Against this background, plaintiff's expert stated that defendant's actions would have significantly increased the stress felt by plaintiff in that period. In particular, Doctor Hull singled out the disorienting lack of formal structure given plaintiff's application for assistance. Further, from her observations of the volatility of plaintiff's emotions

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[24] In this light, it is not necessary for us to determine what economic consequences were visited upon plaintiff as a result of her eviction in the summer of 1977 from her Carroll Street apartment and subsequent inability to obtain an apartment on Chestnut Street owned by one Metcalf.

ment of New Hampshire Legal Assistance in her behalf. (Hearing of April 13, 1977, Tr. at 37-38, 42-42.) Third, from that same testimony, it is obvious that defendant Golden's approach as to the Town's obligation to assist plaintiff was colored to a significant degree by his personal disapproval of her past choice of lifestyle. (Id. at 36, 44-45.) Finally, despite knowing that plaintiff had no money and had to care for two small children, defendant Golden deliberately adopted a wait-and-see attitude toward her request, initially acting only under pressure from Legal Assistance and taking no significant action until compelled to do so by this court's Order of April 15, 1977, by which time plaintiff's electricity had been turned off. In light of all these factors, and because we conclude from our observations of defendant Golden's attitude in these proceedings that our above award of compensatory damages will not suffice to deter further wrongdoing on his part,[28] we assess punitive damages against defendant in the amount of $2,500.

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[28]Despite representations made during the course of his deposition that he was going to make certain changes in his administration of Pittsfield's general assistance program, defendant Golden at the time of the trial herein still was not using written applications nor was he issuing written decisions on requests for aid. Moreover, he testified once again that he felt guidelines are merely a guide and that each case must be treated individually. As such, his practice is demonstrative of rule by fiat rather than by law. Baker-Chaput, supra, 406 F. Supp. at 1140.

The findings of fact set forth at various points in the above Opinion, and the conclusions of law thereon, shall constitute the Court's findings of fact and conclusions of law in this case for purposes of Rule 52(a) of the Federal Rules of Civil Procedure.

III. ORDER

A. Consistent with the above Opinion, and pursuant to this Court's authority under 28 U.S.C. §§ 2201, 2202, the Court hereby declares that the pattern and practice of the administration of the general assistance program in the Town of Pittsfield, including defendants' failure in plaintiff's case (1) to promulgate any written, objective, and ascertainable standards to determine eligibility for such assistance, (2) to follow uniformly whatever unpromulgated standards are being utilized, and (3) to give written notices of decisions and/or notice of the right to a fair hearing to contest denial, reduction, or termination of assistance represent violations of her right to due process of law under the Fourteenth Amendment to the Constitution of the United States. Further, we declare that defendant Golden's requirement that plaintiff's husband be arrested prior to providing her with assistance imposed a condition of eligibility beyond his authority and directly in conflict

with RSA 165:1, and that where, as here, his requirement that he meet with the Selectmen results in a delay in the rendering of a comprehensive decision on assistance beyond 72 hours, such a delay is also violative of due process.

B. Therefore, in the above matter, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That defendants and successors in office shall administer the General Assistance Program of the Town of Pittsfield (N.H. RSA 165:1), with regard to all present and future applicants for and recipients of general assistance, in accordance with and pursuant to the attached Welfare Regulations which are hereby incorporated by reference.

2. That in the Town Hall, in the office of the Overseer of Public Welfare and in any other location where persons in Pittsfield apply for general assistance from said Town, defendants and their successors in office shall post a notice stating that the Welfare Guidelines for the Town of Pittsfield are available for public inspection. Said notice shall be prominently displayed and shall be of such design as to notify potential applicants of the availability of the guidelines and shall specify their location.

3. That for six months subsequent to the effective date of this Decree, plaintiff's counsel shall, with notice to the defendant's counsel and without violating the confiden-

tiality of any applicants for or recipients of general assistance from the Town of Pittsfield, review at reasonable times and places the records of the administration of the General Assistance Program of the Town of Pittsfield to ensure that the defendants are in compliance with this Decree. The Court will retain jurisdiction of this case during these six months to ensure that the provisions of this Order are being complied with.

4. That Pamela Publicover is awarded $500 in compensatory damages and $2,500 in punitive damages, to be paid by defendant Golden in his individual capacity.

C. As it is apparent from all the above that plaintiff is the "prevailing party" in this case, having established that her due process rights have been violated by the wrongful actions of the defendants, an award of attorney's fees as part of the costs is appropriate under the Civil Rights Attorneys' Fees Award Act, 42 U.S.C. § 1988 (the "Fees Act"). Unlike an award of punitive damages, an award of counsel fees is not intended to punish the defendants in any way. Rather, its purpose is to remove financial impediments that might preclude or hinder "private citizens", such as plaintiff, from being able to enforce their civil rights. Perez v. University of Puerto Rico (1st Cir. No. 78-1541, June 19, 1979, slip op. at pp. 2-3). In this regard, it is clear

that counsel employed by a public interest firm or organization are entitled to an award of fees on the same basis as are private practitioners. Reynolds v. Coomey, 567 F.2d 1166, 1167 (1st Cir. 1978); Perez v. Rodriguez Bow, 575 F.2d 21, 24 (1st Cir. 1978); Lund v. Affleck, 587 F.2d 75, 76 (1st Cir. 1978). Therefore, plaintiff's counsel are requested to submit to the Court within 30 days, with copies to counsel for the defendants, affidavits consistent with the standards set forth in King v. Greenblatt, 560 F.2d 1024 (1st Cir. 1977), cert. denied, 438 U.S. 916 (1978); Reynolds v. Coomey, supra; and Souza v. Southworth, 564 F.2d 609 (1st Cir. 1977), showing the time spent on the case, the nature of the work done, and the requested hourly rate. Perez v. University of Puerto Rico, supra, slip op. at 3. As the successful pendent claims in this case arose from the same nucleus of operative facts that provided the basis for recovery on plaintiff's claims under 42 U.S.C. § 1983, no differentiation need be made between the time spent on the former as opposed to the latter claims. Lund, supra, 587 F.2d at 77.

SO ORDERED.

Chief Judge
United States District Court

August 8, 1979

cc: Bjorn Lange, Esq.
Frederic T. Greenhalge, Esq.