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Social Welfare–Effect of Eligibility for Unemployment Compensation on A.F.D.C. Benefits

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SOCIAL WELFARE—EFFECT OF ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION ON A.F.D.C. BENEFITS

The Aid to Families with Dependent Children [hereinafter AFDC] program is the largest and most controversial of the four "categorical" assistance programs established by the Social Security Act of 1935' [hereinafter cited as the Act]. It is based upon a plan of federal-state cooperation, with each state administering its own AFDC program in accordance with a federally approved plan.\(^2\) The federal government, in turn, carries a large share of each program's cost through a complex system of matching grants.\(^3\)

In order to qualify for AFDC benefits a family must first establish the presence of a "dependent child" in their home.\(^4\) Prior to 1961, a child could be dependent only if he had been deprived of parental support by reason of the death, continued absence from home, or physical or mental incapacity of a parent.\(^5\) However, in 1961, Congress added a fourth category of dependency by expanding § 606(a) so that a child in need "by reason of the unemployment . . . of his father" was also deemed to be dependent.\(^6\) Under a 1968 amendment to the Act, this expanded definition could not be incorporated into a state plan under the AFDC program unless the state agreed to deny aid to a dependent child so defined "with

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5 The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment . . . .

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respect to any week for which such child's father receives unemployment compensation."

In order to qualify for funding under this unemployed father program, Vermont promulgated a regulation under its participating "Aid to Needy Families with Children" (ANFC) program\(^8\) disallowing benefits during any week in which the father received unemployment compensation.\(^9\) Mr. Glodgett and other Vermont parents of minor children became unemployed and applied for welfare benefits under the state's ANFC program. Their ANFC benefits were either terminated or denied because of the receipt of unemployment compensation by the father in each of the families,


\(^{9}\) 42 U.S.C. § 607(b)(2)(C)(ii) (1970). This is known as the "AFDC-U option." It allows, but does not require the states to make assistance available to children made dependent by virtue of their father's unemployment. Once a state adopts an AFDC-U program it remains free to terminate it. United Low Income, Inc. v. Fisher, 340 F. Supp. 160 (S.D. Me. 1972), aff'd 470 F.2d 1074 (1st Cir.); Cheley v. Burson, 324 F. Supp. 678 (N.D. Ga. 1971), appeal dismissed sub. nom. Cheley v. Parnham for failure to docket within proper time, 404 U.S. 878 (1971); Henry v. Betit, 323 F. Supp. 418 (D. Alaska 1971). The effect of this amendment was to change the 1961 amendment which provided that a state could choose to deny all or any part of an AFDC stipend to a family during any month in which the father received unemployment compensation. Instead, the 1968 amendment mandated denial of benefits to a family during any week in which the father received unemployment compensation, thus foreclosing the states' privilege of having the option of providing full, partial, or no benefits where the father received unemployment compensation. See Glodgett v. Betit, 368 F. Supp. 211 (D. Vt. 1973).

\(^{10}\) "The name of the federal program was changed in 1962 to 'Aid and Services to Needy Families with Children,' and the name of the assistance thereunder became 'Aid to Families with Dependent Children' (AFDC). Pub. L. 87-543, 76 Stat. 185. Vermont has chosen to call its participating program 'Aid to Needy Families with Children' (ANFC)." Philbrook v. Glodgett, 95 S. Ct. 1893, n.1 (1975).

\(^{11}\) Vermont Welfare Regulation 2333.1, which provides in part:

An 'unemployed father' is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike) for at least 30 days prior to receiving assistance, provided that:

1. . . .

2. . . .

3. He is not receiving Unemployment Compensation during the same week as assistance is granted."

even though the amounts receivable under unemployment compensation were substantially less than those available under ANFC. The affected families filed a class action in the United States District Court for the District of Vermont to enjoin the Commissioner of the Vermont Department of Social Services and the Secretary of HEW from enforcing the state regulation and the federal statute. A three-judge district court concluded from the language of the federal statute that the disqualifying factor was actual payment of, rather than mere eligibility for unemployment compensation. Under this construction of the statute, a father who otherwise qualified had an option to receive either unemployment compensation or state welfare assistance, whichever was greater, and the Vermont regulation was to be construed accordingly. On appeal, the United States Supreme Court unanimously affirmed, holding that the district court correctly concluded "that a family eligible for ANFC benefits under [42 U.S.C. § 607(b)(2)(C)(ii)] can be excluded only for each week in which unemployment compensation is actually received by the father." Philbrook v. Glodgett, 95 S. Ct. 1893 (1975).

The Philbrook decision is commendable in that it will result in an overall increase in the level of the benefits paid to families who previously relied solely upon unemployment compensation, but were otherwise eligible for AFDC-U payments. In many states the average monthly AFDC-U payment is greater than the payment obtainable under unemployment compensation for the same period. For example, in West Virginia, as of April, 1974, the average AFDC-U payment was $210.83 per month, while the average unemployment compensation was $193.50 per month. From a literal interpretation of the statute in question, i.e., 42 U.S.C. § 607(b)(2)(C)(ii), made in isolation from other provisions of the Act, a court could justifiably conclude that the disqualifying factor is actual receipt of unemployment compensation benefits rather than mere eligibility for unemployment compensation benefits. However compelling such a conclusion may be, the fact remains that permitting AFDC payments to entirely supplant unemployment compensation benefits...

10 "The amount receivable under ANFC was $176.00 per month greater than that receivable under unemployment compensation in the case of Mr. Glodgett, $238.00 greater in the case of Mr. Percy and $338.00 greater in the case of Mr. Derosia." Glodgett v. Betit, 368 F. Supp. 211, 213 (D. Vt. 1973).
12 Id. at 218.
13 Public Assistance Statistics, April 1974 (HEW).
compensation benefits whenever the amounts receivable under AFDC are greater than those receivable under unemployment compensation is contrary to the intent of Congress as evidenced by the Social Security Act, the legislative history of the Act, and consistent administrative construction of the Act. Furthermore, the Philbrook decision reverses the only other Supreme Court case on point\textsuperscript{14} and is at cross purposes with basic concepts of prudent resource management and economic efficiency.

The root of the problem is the anomalous statutory treatment of unemployment income. Under the Act, receipt of income other than unemployment compensation does not render a family per se ineligible for AFDC.\textsuperscript{15} If the amounts received are insufficient to bring the family's income up to the state-determined "standard of need,"\textsuperscript{16} then welfare payments are reduced proportionately so that the total of outside income plus AFDC payment will be equal to the standard of need.\textsuperscript{17} However, as has been seen, the 1968 amendment expressly provides for termination of AFDC benefits upon the receipt of unemployment payments.\textsuperscript{18} That Congress has, in


\textsuperscript{16} See also, King v. Smith, 392 U.S. 309 (1968). The states are responsible for setting the standard of need, subject to certain requirements imposed by HEW forbidding discrimination by the states in setting their standards and providing for some regularity in the standard-determining process. See King v. Smith, 392 U.S. 309 (1968), n. 14. The standard of need is simply the state-determined amount which an eligible family with no resources or income would need for support.

\textsuperscript{17} Once the state has established a standard of need, it must subtract from this amount the family's available resources (including income) to arrive at a "budgetary deficit." This budgetary deficit is referred to in the Act as the recipients' "need." Thus the Act provides that "the State agency shall, in determining need, take into consideration any other income or resources of any child or relative claiming aid to families with dependent children ..." 42 U.S.C. § 302(a)(10)(A), § 602(a)(7), 1201(a)(8), 1352(a)(8) (1970). In some instances the AFDC grant is not reduced pro tanto, but only by a percentage of the amount of income. These are the "income disregard" provisions of 42 U.S.C. § 602(a)(8) (1970). The major disregard provision of the statute excludes the first thirty dollars from a person's total monthly earned income and also eliminates one-third of the remainder of such income. 42 U.S.C. § 602(a)(8)(A)(ii) (1970).

fact, provided such special treatment for unemployment compensation income and not for other forms of income strongly suggests that there must have been some purpose behind this treatment.\(^9\)

In order to discern this purpose it is necessary to examine 42 U.S.C. § 607(b)(2)(C)(ii) in context with other pertinent sections of the Act and with due regard for its legislative history.

The history behind the enactment of § 607(b)(2)(C)(ii) quite clearly indicates that it was Congress' intent to exclude from AFDC-U eligibility those fathers who were "qualified to receive" unemployment compensation as well as those who actually received unemployment compensation. In the House Conference Committee's report of the January, 1968 amendments to the Social Security Act, both the Senate version (which was not enacted) and the House version (which was enacted) were explained as follows:

"Unemployed Fathers under AFDC" Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, and fathers who receive (or are qualified to receive) any unemployment compensation under state law. (emphasis added). The Senate Amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month.\(^0\)

The fact that the words "or are qualified to receive" were enclosed within parentheses suggests that the House Conference Committee realized that the word "receives" included both the actual receipt and the qualification for such receipt.\(^1\) In addition, at the time the

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\(^9\) That there may be a different treatment between different classes of income is recognized in 45 C.F.R. § 233.20(a)(1) (1974), which states that a state plan for AFDC must provide that "all types of income will be taken into consideration in the same way, except where specifically authorized by Federal statute." (emphasis added).

\(^0\) Brief for Appellant Philbrook at 19, Philbrook v. Glodgett, 95 S. Ct. 1893 (1975).

\(^1\) Insight into the legislative intent concerning the original, temporary 1961 amendment which gave birth to the AFDC-U program is provided by President Kennedy's message proposing AFDC-U legislation in which he stated: "Under the
1968 amendment was passed, Congress was primarily concerned with reducing the number of welfare recipients and not with permitting recipients to refuse to accept an available resource.22 Finally, HEW regulations clearly provided that all potential resources of income were to be exhausted before an applicant could avail himself of AFDC benefits. These regulations require that the state plan must "[p]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability."23

Not only is the Supreme Court's decision baffling in view of the congressional intent surrounding the enactment of § 607(b)(2)(C)(ii), but, by encouraging unemployed fathers to enlist their families on the welfare roles rather than receive unemployment compensation, it effects a result which is contrary to the purpose of the unemployment compensation program. Unemployment compensation and AFDC are two distinct and mutually exclusive programs. The purpose of unemployment compensation is to provide unemployment insurance for temporarily unemployed workers so that they will not have to turn to welfare in order to support their families.24 Unemployment compensation was to be a "first line of defense" to carry workers over temporary periods of unemployment "without resort to any other form of assistance."25

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22 See H.R. Rep. N. 544, 90th Cong., 1st Sess. 2 (1967), in which the House Committee on Ways and Means stated: "Third, the bill would make reforms in the aid to families with dependent children programs:

(1) To give greater emphasis in getting appropriate members of families drawing aid to families with dependent children (AFDC) payments into employment and thus no longer dependent on the Welfare roles, the bill would require the States . . . [to] modify the optional unemployment requirements throughout the United States."


25 California Department of Human Resources Development v. Java, 402 U.S.
"Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise he would have nothing to spend,' serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity." Of course, once unemployment compensation has been exhausted, a person could then turn to AFDC.

If Congress was concerned with reducing the welfare roles during the time in which § 607(b)(2)(C)(ii) was enacted, and did intend that eligibility for, rather than actual receipt of unemployment compensation be the disqualifying factor, and if Congress regards AFDC and unemployment compensation as separate and distinct programs, then why did the enacted 1968 amendment use the troublesome word "receives" rather than the phrase "qualified to receive"? One possible reason for this puzzling choice of words lies in the administrative implications behind the word "eligibility." A person may be "eligible" for unemployment compensation, but still not receive any benefits for several weeks, due to state inefficiency and bureaucratic red tape. It is not unreasonable to presume that Congress wanted to make AFDC-U benefits available during the period between ascertainment of a father's eligibility for unemployment compensation and the actual payment of unemployment compensation benefits some time later, but that it did not intend to permit a father to turn down the unemployment compensation when payment was finally made. Reflecting the congressional purpose that AFDC be a program of last resort, the Supreme Court noted in Shea v. Vialpando, that "Congress has been careful to ensure that all of the income and resources properly attributable to a particular applicant be taken into account . . . ."27

The Philbrook decision will encourage unemployed fathers to reject unemployment compensation benefits in favor of AFDC-U benefits whenever the AFDC-U benefits are greater. A recipient, even if he wanted to, could not obtain unemployment compensation benefits supplemented by reduced AFDC-U benefits to bring him up to the standard of need. As has been suggested, there is no discernable basis for the conclusion that Congress intended to employ AFDC benefits as a substitute for an unemployment com-

121 (1971).
27 Id. at 131-32.
pensation check which an individual qualified for, but refused to accept.

On the basis of Philbrook, a state which has been participating in the AFDC-U program may do one of two things: it may elect to simply terminate its AFDC-U participation (thus depriving many families with fathers who are unemployed but ineligible for unemployment compensation of any assistance whatsoever), or it may choose to remain in the program by revising its eligibility requirements in conformance with Philbrook.

There are many reasons why a state would choose not to terminate its AFDC-U program. Termination of the program would result in the loss of substantial federal funds. While it would also result in the saving of some state funds, this saving may not be worth the loss of federal funds. Further, termination of a state's AFDC-U program would deprive many truly needy families who are not eligible for unemployment compensation benefits of a necessary source of assistance, and could also be an incentive for more fathers to abandon their families, permitting the family to qualify under the "absence from home" provision of AFDC.

Given these consequences, most states are likely to continue to participate in the AFDC-U program. However, permitting this circumvention of the obligation to exhaust unemployment compensation will result in shifting the burden of supporting families of unemployed fathers from the private sector (unemployment compensation) to the public sector (AFDC). The total burden will be forced upon the already strained welfare budgets supported by public tax revenues, while the former employers of those unemployed fathers become the primary beneficiaries of this decision by virtue of a reduction in the amounts paid out of the state's unemployment fund. These employers would benefit through reduced

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28 The federal government will reimburse five sixths of the money a state expends, subject to limitations on maximum dollar amounts. In addition, the federal government assumes 75 per cent of the administrative cost of the program. See 42 U.S.C. §§ 603(a)(1)(A)-(B) (1970).

29 At present, there are 25 states which have elected to participate in the AFDC-U program. They are: California, Colorado, Delaware, Dist. of Columbia, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia and Wisconsin.


31 Unemployment compensation benefits are paid out of state unemployment
rates of contribution, with those employers who exercise irresponsible hiring and layoff policies reaping the greatest benefit. Companies who hire excessive numbers of workers in order to fully exploit periods of strong economic growth, and who discharge a similarly large number of employees when the economy falters, would be given even more incentive to continue this practice. Many employers of seasonal workers would also be benefited. In the past, the practice of some seasonal employers to pay substandard wages during work months followed by cyclical periods of unemployment in which employees were supported by unemployment compensation has been mitigated by the direct effect of employee claims on employer contributions. The effect of the Philbrook decision will be to encourage increasing use of public monies as a wage supplement. It will cost employers less to discharge workers for short periods since the workers will probably be supported by AFDC-U rather than unemployment compensation. By virtue of astute manipulation of hiring and layoff policies these employers may be able, in effect, to obtain subsidies provided by the taxpayers.

Additionally, although it is widely assumed that most of those who collect unemployment compensation are poor or near-poor, studies have shown that, in fact, middle and upper income families receive most of the unemployment compensation. Among the possible reasons advanced for this surprising conclusion are that the poor are often ineligible for unemployment benefits because they are more likely to have worked in uncovered occupations, to have worked for too short a period to qualify for benefits, to have quit their last job, or to have remained unemployed long enough to exhaust their benefits. Therefore, the decision in Philbrook will provide more benefits to the middle class than to the truly needy poor and near-poor.

Finally, the total burden on public revenues will be increased in an even greater amount than by the increase in AFDC-U payments alone. In many states, by virtue of their becoming AFDC recipients, families would become automatically eligible for Medi-

compensation trust funds. These funds are collected from private employers. The amount of money an employer is required to pay into the state fund is determined by the amount paid out to employees discharged by each particular employer. See California Department of Human Resources Development v. Java, 402 U.S. at 125.

33 Id. at 237.
caid and Food Stamp benefits,\textsuperscript{31} thus creating a dual burden on public revenues. First, by increasing the total package of “AFDC-U option” benefits which an individual must weigh against the “unemployment compensation option” benefits, it will cause more people to choose the former. Second, the cost for each AFDC-U recipient will be increased by the amount of the additional benefits provided.

The Philbrook decision, while tending to increase the level of benefits available to families with unemployed fathers, interferes with the intended functions of state unemployment compensation programs. By shifting the burden of support from the private to the public sector, Philbrook creates what is, in effect, a public subsidy for unconscionable employers. In the absence of a complete revision of welfare laws, Congress should at least pass legislation amending 42 U.S.C. § 607(b)(2)(C)(ii) to require an individual to accept unemployment compensation which he is entitled to receive. If the amount obtainable under unemployment compensation is less than the amount which he would receive under AFDC-U, then he should be permitted to obtain this additional amount from the AFDC-U program. This solution would provide the recipient with the same level of benefits which he would receive now under Philbrook, but would increase the public burden only slightly, while the private burden remained the same.

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\textsuperscript{31} Brief for appellant Philbrook at 27, Philbrook v. Glodgett, 95 S. Ct. 1893 (1975).