Recent Developments in the Washington Old Age Assistance Program

Vern Countryman

Follow this and additional works at: https://digitalcommons.law.uw.edu/wlr
Part of the Social Welfare Law Commons

Recommended Citation
Vern Countryman, Recent Developments in the Washington Old Age Assistance Program, 21 Wash. L. Rev. & St. B.J. 189 (1946). Available at: https://digitalcommons.law.uw.edu/wlr/vol21/iss4/1

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.
More than 60,000 persons over 65 years of age in the State of Washington now receive old age assistance totaling in excess of $3,500,000 per month. With the progressive advancement of life expectancy and the decline of employment opportunities for the aged in the postwar years, these figures can be expected to increase until by 1950 more than 75,000 aged persons in this state will receive assistance which, under present standards, will approximate $5,000,000 per month. Administration of this huge program of public assistance has been carried out under laws which are models of benevolent purpose and obscure meaning.

In an earlier article the writer discussed the history of old age assistance in this state prior to the enactment in 1940 of Initiative 141, the changes effected by the initiative measure and the problems arising out of conflict between the provisions of the initiative and those of the Federal Social Security Act, under which matching funds up to $20 per recipient were secured from the federal treasury. To recapitulate briefly, Initiative 141 provided for old age assistance grants of "not less than $40 per month minus income from other sources" to persons 65 years of age who met certain residence requirements and were "without resources." But the Federal Social Security Board had ruled that section 3(g) and 3(h) of the initiative, which defined "income" and "resources" to exclude certain material items, were in

---

1 For the period October, 1942, through September, 1944, the average monthly expenditure for old age assistance was $2,213,416 in cash grants and $322,874 for medical and institutional care. State Dept of Social Security, Biennial Report (1942-1944) pp 59-60. Since that time, the average cash grant has increased from $38 to $55 per month.

2 Ibid., pp 43-45.

3 Countryman, Old Age Assistance in Washington (1941) 16 Wash L Rev 95.


5 Ibid. § 9998-36(g): "Income" shall mean regular or recurrent gains in cash or kind, excepting therefrom:
   (1) the value of the use or occupancy of the premises in which the applicant resides
   (2) Foodstuffs, livestock, fuel, light or water produced by or donated to applicant or applicant's family exclusively for the use of applicant or applicant's family
   (3) Casual gifts in cash which do not exceed $100 in any one year
   (4) Casual gifts in kind which do not exceed $100 in any one year.
conflict with the requirement of the federal act that "other income and resources" of an applicant should be considered "in determining need" and that Section 9,8 which provided for judicial review of administrative action and authorized the court to receive "additional evidence" and to "fix the amount of assistance" was inconsistent with the provision in the federal act that the state plan should provide for administration by a single state agency.10 Thereafter, the State Department of Social Security drew up a revised plan which disregarded sections 3(g) and 3(h) and limited the function of the court on appeal to a review of the record to determine whether the department had acted within its powers, had employed an honest judgment, and had acted neither arbitrarily nor capriciously. This plan was approved by the federal board11 and was put into effect May 1, 1941.12

ELIGIBILITY; AMOUNT AND NATURE OF ASSISTANCE

The legal problems arising out of this administrative construction of an initiative measure to meet federal requirements13 came before the state supreme court in Morgan v Dept of Social Security14 There it was held that, in view of the declaration of intent "to provide for Washington's Senior Citizens over 65 as liberally as possible under the terms of the Federal Social Security Act for securing matching funds"

(5) The proceeds from the sale of property which is not a resource provided such proceeds are used for the purchase of property which is not a resource

* Ibid § 9998-36(h): "'Resources' shall mean any property which the applicant owns legally or beneficially excepting therefrom:

(1) The ability of relatives or friends of the applicant to contribute to the support of the applicant

(2) Insurance policies, the cash surrender value of which does not exceed $500

(3) The homestead, home or place of residence of applicant or the spouse of applicant

(4) Intangible property or personal property, the cash value of which does not exceed $200

(5) The personal effects of the applicant, including clothing, furniture, household equipment and motor vehicle

(6) Foodstuffs, livestock, fuel, light or water produced by the applicant, applicant's spouse or family, exclusively for the use of applicant or applicant's family"

7 42 U S C A § 302
8 Rem Rev Stat (1941 supp) § 9998-42 "The applicant and the director shall have the right to present any additional evidence which the court shall deem competent, relevant or material to the case. The Superior Court shall decide the case on the record and on any evidence introduced before it. The court may affirm, modify or reverse the decision of the director and shall fix the amount of assistance to which the applicant shall be entitled under this act"

9 Supra note 7
10 Minutes of Meeting of Social Security Board, Washington D C November 15 1940
11 Document No 6164, Order of Social Security Board, January 28 1941
12 State Dept of Social Security, Staff Memorandum No 104, January 30, 1941
13 See Countryman, supra note 3, pp 98-99, 104
14 14 Wn (2d) 156, 127 P (2d) 686 (1942)
contained in Section 2 of the initiative and the provision in Section 12 thereof that if "any portion, section or clause of this act shall for any reason be declared not in accordance with the provisions of the Federal Social Security Act, such adjudication shall not affect the remainder of the act," the department, in refusing to give effect to Sections 3(g) and 3(h), had "merely followed the directions contained in Initiative 141 itself, by disregarding certain provisions of the act, so as to bring the act in harmony with the federal statute." To the contention that the initiative, as construed, constituted an unconstitutional delegation of legislative power to the executive branch, the court replied that no more had been done than to authorize the executive to suspend the operation of certain sections of the act upon determination of a given fact or status, and that such a delegation was clearly valid. That a state constitutional question might have arisen had the initiative not been construed to fit the requirements of the federal act was indicated by the further holding that, inasmuch as the initiative as construed extended benefits only to persons in actual need, it did not violate prohibitions in the state constitution against special privileges.

The court also upheld the department's system of "budgetary guides" used in fixing the amount of assistance to be given eligible senior citizens. By these guides, the department had taken the $40 grant provided for by Section 5 of the initiative as "the maximum allowance" and had divided it into fixed amounts for food, fuel, housing, light, water, cloth-

---

29 Ibid § 9998-54.
30 Appellants did not raise the question of delegation of state legislative or judicial power to a federal administrative agency. Their only contention with respect to the action of the federal board was that there had been no "adjudication" of inconsistency with the federal act within the meaning of § 21 of the initiative. The theory of the court's disposition of this point is not clear. It was said that "Whether or not the action of the federal board was definitely an administrative adjudication of the matter is immaterial." But the court went on to provide an "adjudication" of its own: "We now hold that § 3, subparagraphs (g) and (h), of Initiative 141, are not in accord with the provisions of the Federal Social Security Act, and that the federal board correctly held that these subparagraphs 'are in violation' of that act." Cf dissenting opinion of Simpson, J: "The majority's approval of the department's actions constitutes a transfer of the power vested in the judicial branch in that it allows a federal administrative agency to construe a law of this state." The statement in Note (1943) 18 Wash. L. Rev. 42, that the majority opinion answered this objection by holding, inter alia, "that the federal agency in its definition of terms had not usurped the power vested by the Constitution in the judicial branch of the government" attributes to the Morgan decision a ruling on a phase of the problem which the majority expressly declined to consider: "Within the four corners of these cases, we find no question properly before us for determination, which concerns the department's negotiations or administrative relations with the federal department or any federal authority.

31 Wash. Const Art I § 12: "No law shall be passed granting to any citizen . . . privileges or immunities which, upon the same terms, shall not equally belong to all citizens."
ing, incidentals and household replacements. A separate determination was made for the sharing of household expenses through "combined living" of applicants. For each of such items available to the applicant at no cost the allocated amount was deducted from $40 to fix the amount of the award. Applicants in the Morgan case objected that this system disregarded the directive in Section 5 of the act that grants should be awarded "to each eligible applicant in the sum of not less than $40 per month, minus income from other sources," but the court, without expressly considering this statutory language, held that use of the budgetary system was a permissible exercise of administrative discretion, indicating that if such factors were not taken into consideration so as to insure equality in the fixing of grants, constitutional questions might arise.

The net effect, then, of administrative and judicial interpretation of Initiative 141 with respect to eligibility for and the amount of assistance is this: Where the initiative provided that each senior citizen "without resources" who has an income of less than $40 per month (and defined "income" and "resources" to exclude such items as housing, food, fuel, light and water) should receive an award of not less than $40 per month, minus income from other sources, $40 was actually taken as the maximum award in any case, subject to reduction for such available items as housing, food, fuel, light and water.

While this seems clearly to be the effect given to the initiative, the exact status of Sections 3(g) and 3(h) thereof after the Morgan decision is not so clear. In upholding the department's system of budgetary guides, the court placed some reliance on a provision in Section 17 of the general Public Assistance Act of 1939 that:

"Such [federal-aid] assistance may be granted only to such persons as are in need. A person shall be considered to be in need if he is not in excess of $40 a month for those without income or resources. The $40 basic need grant of Initiative 141 is a minimum grant. But the department treats it as a maximum grant."
need within the meaning of this act who does not have re-
sources sufficient to provide himself and dependents with food,
clothing, shelter and such other items as are necessary to
afford a reasonable subsistence"

Resort to this statute is perfectly consistent with a holding that
Sections 3(g) and 3(h) are inoperative, hence would not operate to
repeal prior inconsistent legislation, and would seem to settle the ques-
tion previously raised as to the status of the further provision of
Section 17 of the 1939 act that:

"'Resources' are hereby defined to include ability of
relatives within the classes hereinafter described (husband,
wife, parent, child, brother and sister) to contribute to such
support: Provided, That where such relative or relatives shall
refuse to so contribute the administrator may in his discretion
and upon written findings of fact filed by him, determine that
ability of a relative or relatives to so contribute shall not
constitute a resource sufficient to render the applicant ineli-
gible to assistance "

But when the question of a wife's ability to contribute to the sup-
port of an applicant by virtue of her ownership of separate property
came before the court, no reference was made to the above-quoted
statute Instead, it was said that:

"Initiative 141 controls this case The act itself
defines resources Section 3(h) reads: 'Resources shall
mean any property which the applicant owns legally or benefi-
cially, excepting therefrom: (1) The ability of relatives or
friends of the applicant to contribute to the support of the
applicant' (The: e are five other enumerated exceptions which
are not material here)

"Under the quoted provisions of the initiative, respondent
is without resources unless he can be said to own, legally or
beneficially, some portion or share of, or interest in, his wife's
separate property"

The court then concluded that, inasmuch as the husband had no
legal or beneficial interest in the property, the department erred in
refusing to allow his application for assistance

Within the next year the court reviewed another case wherein the
department had ruled that a contract for sale of real property, on
which eleven yearly payments of $100 each remained due and which
had a present cash value of $800, constituted a present resource of
$800 which rendered the applicant ineligible for assistance The

---

25 Countryman, supra note 3, p 104
26 Christiansen v Dept of Social Security, 15 Wn (2d) 465, 131 P (2d)
189 (1942)
27 "A husband's separate property is regarded as available for the sup-
port of his legal dependents including the spouse since the law requires
him to support her and provides a means by which she can secure such
support" State Dept of Social Security, Staff Memorandum No 46-47,
May 22, 1946, par. II (A)
28 Cerenzia v Dept of Social Security, 18 Wn (2d) 230, 138 P (2d) 888
(1943)
opinion of the court quotes Section 3(g) and 3(h) in full, notes that the Morgan decision had found these sections not in accord with the federal act, quotes the department's rule that "all income and resources without substantial exception, shall be taken into consideration both in determining eligibility and in fixing the amount of the grant," and without any reference to the 1939 act concludes:

"We are satisfied that the department was authorized to classify the contract as a resource, either under the rule promulgated by the department, or under the statutory definition of resources, or under the definition given in Webster's New International Dictionary."

What, then, is the present effect of the statutory definitions of "income" and "resources" contained in Sections 3(g) and 3(h) of Initiative 141 and of the previous definition of "resources" contained in Section 17 of the 1939 act? One plausible explanation, consistent with the holdings if not with the language of the above-cited cases, can be offered: Some of the exceptions contained in Section 3(g) and 3(h)—at least the one pertaining to ability of relatives to contribute to the support of the applicant—are not inconsistent with the federal act and will be given effect; only insofar as the provisions of Section 17 of the 1939 act are in conflict with these effective portions of Sections 3(g) and 3(h) are they repealed. But if this is the meaning of the decisions, it would be as easy as it is desirable for the court in express terms to say so.

Additional confusion on this point was created by the action of the 1945 legislature. That body amended two of the exceptions to the definition of income contained in Section 3(g) and, in so doing, re-enacted Section 3(g) and 3(h) in their entirety. It may be argued that this is indicative of no particular legislative intent, but is merely an unconsidered formal compliance with the requirement of Article II, Section 37, Washington Constitution, that "the section amended shall be set forth at full length." On the other hand, re-enactment of these provisions might be construed as a legislative adoption of the view of the dissenting judges in the Morgan case that the people intended

---

29 This seems to be the interpretation adopted by the department. See Biennial Report supra note 1, p 49: "The department is fully satisfied with both the principle and the application of [Initiative 141] in removing relative responsibility for the aged."

30 Compare similarly indecisive treatment by the court of a statute once held unconstitutional, discussed in Jaffe, Status of Picketing in Washington (1940) 15 Wash L Rev 47.

31 Subdivisions (3) and (4) of § 3(g), quoted in note 5, supra, were amended and consolidated into one subdivision reading: "Gifts in cash or kind of a casual and non-recurring nature which do not materially affect the Senior Citizen's income."

32 Rev Rev Stat (1945 supp) § 9998-36. Add to this legislative action the fact that representatives of the federal board met with the legislative committee and helped draft the 1945 amendment, and the confusion engendered by the amendment is compounded.
Initiative 141 to apply in its full terms regardless of the action of the federal board and the availability of federal matching funds. The Attorney General has adopted a still different view and advised the department that, inasmuch as the declaration of intent in Section 2 to go as far as possible under the terms of the federal act was not amended, that "dominant expressed intent" must still be given effect and "such conflicting parts are again rendered inoperative".

Meanwhile, the 1943 legislature adopted a new approach in an attempt to increase the amount of assistance which could be awarded consistent with federal matching-fund requirements. The basis of eligibility for awards was amended to make eligible not only the 65-year-old without resources who had a yearly income of less than $480 and a monthly income of less than $40, but also one who had "income insufficient to meet his or her needs." And to the section of the initiative prescribing grants of "not less than $40 per month minus income" (and resources, in the 1943 amendment) was added the proviso:

"That in the event an applicant's needs are in excess of $40 per month, in determining the amount of his or her grant, any income or resource which applicant may have shall be utilized as a credit against his or her total monthly need; but no grant as so computed shall exceed such sum of $40 per month."

This amendment merely provided by indirection for a result prescribed directly in Initiative 141. Under its provisions, if an applicant had, say, $20 in income or resources which the initiative had said should be disregarded in awarding a $40 grant, but which the federal board and state supreme court had held must be considered in fixing the amount of the award, the department could now find that the needs of the applicant were such that a $60 income was required and, applying the applicant's $20 from other sources against his total needs rather than against the amount of his grant, could still award him the full $40. Since it was a rare case in which the needs of an applicant, by any humane standard, did not exceed $40 per month, the effect of the 1943 amendment was to accomplish substantially the same result as would have been achieved by giving full effect to those provisions of Initiative 141 which were disapproved by the federal board and state court. Of course, in that rare case where an applicant's need did not exceed $40 per month, income and resources were still de-

---

23 ADVANCE Ops ATT'Y GEN (1945-1946) p 439
24 REM REV. STAT. (1943 supp) § 9998-37
25 Ibid § 9998-38
26 Witness the department's Biennial Report, supra note 1, at p 48: "[N]eeds of an aged individual's living alone with all common expenses and with nothing provided to him without cost from any other source, fall somewhere between $43 and $75 per month, or for man and wife, somewhere between $65 and $100."
27 Ibid: "As a result of the 1943 change, average grants throughout the state increased from slightly less than $34 per month to almost $38 per month with more than 3/ of all recipients receiving $40."

---
ductible from the $40 award under the 1943 act, and in that respect the result differed from that provided for by Initiative 141. This difference proved enough to satisfy the federal board and it approved the department's plan embodying the provisions of the 1943 amendment.

After a period of operation under this plan, the department reported that, inasmuch as the 1943 amendment "did not permit the department to pay grants in amounts larger than $40," but did permit payment of the full $40 to persons with other income and resources, recipients without other income and resources were "placed at a disadvantage under the law." This interpretation of the statute seems extremely dubious, but in 1945 the legislature nonetheless acted to remedy the situation reported by the department and to increase the general level of awards in all cases. The provision in the 1943 amendment for awards of $40 minus income and resources unless the department could find needs in excess of $40 from which income and resources could be deducted was replaced in its entirety by a provision for awards:

"To each eligible Senior Citizen sixty-five years of age or over for the purpose of assisting him to meet his needs: Provided, That such grant when added to his income shall equal not less than $50 per month."

The 1945 statute also expressly authorized the use by the department of budgetary guides "to determine a Senior Citizen's need," thus confirming what had been established administrative practice since 1935.

A plan based on the 1945 act, removing the maximum payment limitation entirely, was submitted to the federal board and was put

---

38 Conversation with J M Wedemeyer, Supt of Public Assistance, State Dept of Social Security
39 Biennial Report, supra note 1, p 48
40 The 1943 amendment did not change the language of Initiative 141 providing for grants of "not less than $40 per month." It was only within the proviso authorizing deduction of income and resources from total needs rather than from the amount of the award in cases where total needs were found to be in excess of $40 that the statute provided that "no grant as so computed shall exceed such sum of $40 per month." But even prior to the 1943 amendment, the department seems to have construed the phrase "not less than $40" to mean "not more than $40." See discussion of the system of budgetary guides, supra pp 191-192.
41 Rec Rev Stat (1945 supp) § 9998-38 The eligibility requirement was also amended to make eligible a 65-year-old without resources who "has a yearly income which is less than $600 and a monthly income which is less than $50 or has income insufficient to meet his or her needs." Ibid § 9998-37.
42 The general Public Assistance Act of 1939 had provided that the amount of assistance to be granted on any federal-aid program should be determined in each individual case on a "budgetary basis." Rec Rev Stat (1939 supp) § 10007-117a and had defined "budgetary basis" to mean "a basis taking into consideration an applicant's need and resources measured in relation to a basic minimum family budget determined by the department." Ibid § 10007-101a.
43 Prior to 1941, the guides had been used to measure the applicant's total need. Under Initiative 141 they were used only to measure the amount to be deducted from the $40 award for available income and resources.
into effect in March, 1945, pending federal approval. Before that approval could be secured, however, the superior court for Walla Walla County construed the statute to mean that a husband and wife living together without other income or resources were entitled to minimum cash awards of $50 each, with no deduction for savings secured through "combined living." Inquiry to the Social Security Board revealed that it found no inconsistency between this result and federal requirements, and a revised plan which took no account of "combined living" was accordingly prepared and submitted for approval. The board then discovered, apparently for the first time, that the new plan, like those approved in 1941 and 1943, took no account of income and resources secured by an applicant at "some cost" to himself, and rejected it on that ground. The plan was thereupon revised to provide that the net value of income and/or resources available to the applicant (i.e., gross value, as determined by budgetary guides, less cost to the applicant) should be deducted in fixing the amount of the grant, and as revised was approved by the board. The average cash grant paid under this plan is now $55 and it is anticipated that, with the continuing rise of price levels, that average will reach $60 by 1950.

While this extensive revision of methods and measurements was being undertaken with respect to the amount of the cash award to

But, since the enactment of the 1943 amendment giving the department greater latitude in measuring and attempting to meet actual needs of applicants, the guides have again been used to measure total need. J. M. Wedemeyer, supra note 38. By another 1945 enactment, the budgetary guides used to determine need for purposes of old age assistance are also required to be used to determine the need of applicants for all types of public assistance. Rem Rev Stat (1945 supp) § 10007-301

"Myers v Dept of Social Security, Docket No 32223


"State Dept. of Social Security, Staff Memorandum No 46-36, April 10, 1946. With reference to the disregard of "combined living," compare the provision made in the 1945 Act for the use of budgetary guides: "In order to determine a Senior Citizen's need the Department shall establish objective budgetary guides based upon actual living cost studies. Such living cost studies shall be renewed or revised at least once a year; and whenever there is a change of five per cent (5%) or more in the cost of any of the items of the budget common to any category of Senior Citizens such change shall be reflected in the determination of his need. For the purposes of this section the term 'category' shall mean such distinction as prevails between single Senior Citizens living alone, husbands and wives living together, and any other sizable group of Senior Citizens who can by determination of the Department be placed in separate categories. Provided, That Senior Citizens found to be without any resources and income shall receive a grant of not less than $50 per month." Rem Rev Stat (1945 supp) § 9998-38. (Italics supplied)

"Letter from Oscar M. Powell, supra note 45, dated May 10, 1946

"Staff Memorandum No 46-47, supra note 27. "No deduction is made, however, if the value is found to be inconsequential, or when the value represents only a saving achieved through the management of the assistance payment." Ibid par III(B) (1)

"Letter from Oscar M. Powell, supra note 45, dated June 28, 1946
be paid to recipients, the provisions of Initiative 141 for other types of assistance received little attention. The section providing for medical, dental, surgical, optical, hospital and nursing care "by a doctor of recipient's own choosing" has been construed to include the services of a licensed sanipractor. The further provision in that section for artificial limbs, eyes, hearing aids and other appliances remains unchanged. Section 13, providing that "Upon the death of any recipient under this act, funeral expenses in the sum of $100 shall be paid by the department," has been held unconstitutional as applied to a deceased recipient whose estate is sufficient to defray the costs of the funeral over and above the expenses of last sickness and of administration.

The 1945 legislature included in the section authorizing awards measured by the need of the applicant the specific provision that "To each Senior Citizen residing in a county hospital the department shall award a grant to meet his needs of a personal and incidental character." The board advised that no federal funds would be forthcoming to match such payments with respect to recipients committed for other than temporary care, but the department is nonetheless making payments of from $5 to $8 per month to eligible applicants residing in the county hospitals.

Administration and Procedure

Previous reference has been made in this review to the confusion engendered by the overlapping of the administrative provisions of Initiative 141, which applies only to old age assistance, and those of the general Public Assistance Act, which by its terms applies to all forms

---

61 One change made in federal standards was never incorporated into the Washington plan. By joint resolution enacted in 1943 (57 Stat 72 125) and reenacted in 1944 (58 Stat 15), the states were authorized, during the period of the war emergency, to disregard "any income and resources of [an old age assistance recipient] arising from agricultural labor performed by him as an employee, or from labor otherwise performed by him in connection with the raising or harvesting of agricultural commodities" if such action did not result in payment of assistance "at a rate in excess of the rate for old-age assistance paid during the month of July, 1943.

62 Rem Rev Stat (1941 supp) § 9998-48
63 Martin v Dept of Social Security, 12 Wn. (2d) 328, 121 P (2d) 394 (1942)
64 State v Guaranty Trust Co, 20 Wn. (2d) 588, 148 P (2d) 323 (1944)
65 Letter from Oscar M Powell, supra note 45, dated June 26, 1945. Although the federal act does not require the state plan to exclude assistance to applicants in public institutions as a condition to receiving any federal assistance for the state program, 42 U S C A. § 302, it provides for federal matching funds only with respect to assistance rendered "to each needy individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution." 42 U S C A. § 303, as amended by Public Law No 719, 79th Cong, 2d Sess, infra note 79
66 J M Wedemeyer, supra note 38
67 Sholley Social Security (1941) 16 Wash. L Rev 78; Countryman, supra note 3, p 103
68 Rem Rev Stat (1939 supp) § 10007-10a et seq, as amended by Wash Laws 1941, c 128, and Wash Laws 1943, c 172
of public assistance. By a 1945 enactment, the legislature has directed that applicants for all types of public assistance "shall be entitled to a fair hearing under the terms and conditions established for fair hearings for Senior Citizens under Sections 7, 8 and 9" of Initiative 141, but the corresponding sections of the general act were neither amended nor repealed so that the duplicitous coverage remains. The department, however, has attempted by its rules and regulations to effect a maximum of correlation between the two acts.

Where Section 7 of the initiative measure provides that applications for old age assistance shall be made to, investigated by, and ruled upon by the department "or an authorized agency of the department," the rules adopt the county welfare department, which the general statute establishes to handle local administration of all public assistance, as the authorized agency of the department. Where the general statute provides for appeal from the county welfare department's decision to the Department of Social Security "in the manner prescribed by the department," the rules adopt the procedure contained in Section 8 of the initiative for a hearing before the director of the department, or the acting supervisor thereof, or an examiner appointed by the director. The initiative measure provides that it is the duty of the department, upon receipt of notice of appeal, "to set a date for the fair hearing, such date to be not more than thirty days after receipt of notice," and it is now established by the decision in Bowen v Dept of Social Security that if the department fails to grant the hearing within the thirty-day period, the applicant may take his appeal directly to the superior court.

The rules of the department, however, do not cover the matter of judicial review, and in this respect the inconsistency between the two acts remain. But perhaps because of uncertainty as to the applicability of the provisions for appeal to the superior court by certiorari contained in the 1941 amendment to the general statute, or, in the earlier cases, because of the more favorable procedure provided by the initiative,
all appeals thus far taken by applicants for old age assistance have been under the provisions of Section 9 of the initiative. 70

To the extent that this practice was influenced by the opportunity given appellants by Section 9 to introduce "additional evidence" and to persuade the court to "fix the amount of assistance," the reason for taking appeals under Section 9 was considerably diminished by the supreme court's treatment of that section in the Morgan case. 71 Although the federal board had ruled that these features of the section were inconsistent with the federal requirement that the assistance plan be administered by a single state agency, the court did not deal with the problem on the basis of federal requirements. Rather, in rejecting a contention that Section 9 was invalid as an unconstitutional transfer of executive power to the judiciary, the court said:

"We find nothing in Section 9 which purports to invest the courts with executive functions. The section does no more than provide for review by the courts upon questions of fact and law, which have been determined by the department. If the courts should attempt to exercise executive functions in connection with the administration of the statute, the courts would be undertaking to transcend the powers vested by the statute. Under the act, it is the duty of the judicial department to review departmental orders from which appeals have been taken in accordance with the statute, and determine by the application of appropriate legal principles whether or not the plans, standards, or methods adopted by the department violate some statutory provision because directly contrary thereto, or are in some measure inadequate or unlawful, in that they exceed or restrict the departmental action contemplated by the statute. Such review by the courts does not constitute the exercise of any executive function. To determine whether or not an appellant has been deprived of a statutory right by the department, whether the department has acted by way of the adoption of a general plan or by some decision in a specific case, constitutes a proper matter for judicial review.

Although this language is not addressed specifically to the terms of Section 9 upon which the federal board based its objection, those same terms constituted the basis for the objection on constitutional grounds which the court did consider, 72 and a construction of the section which avoids the latter objection would appear also to avoid the former.

70 Rem Rev Stat (1941 supp) § 9998-42
71 Supra note 14
72 It was argued by the Attorney General, for the department that "An interpretation of § 9 which would permit the unlimited introduction of new evidence offered on the merits of any claim and a de novo determination of the claim by the court would be of doubtful constitutionality as an unconstitutional delegation of administrative power to the courts" and that the court should therefore construe the section to mean "that the court has only a right of review of the action taken by the director and is authorized only to inquire in the individual cases whether the administrative determination is wholly without evidentiary support or wholly dependent upon
That the court did construe Section 9 to eliminate anything which it considered a delegation of executive power to the judiciary is obvious from its holding, but just what that construction was is far from explicit in the opinion. Apparently, the courts may not hear “additional evidence” (their function is to “review questions of fact and law, which have been determined by the department”), nor “fix the amount of assistance” (they are to determine the legality of “plans, standards, or methods adopted by the department”). But if that is the meaning of the decision, it amounts to more than statutory construction. It constitutes a holding that those provisions of the statute which expressly authorize the courts to hear additional evidence and to fix the amount of the award cannot, because of constitutional requirements, be given effect—in other words, those provisions are unconstitutional. Here again, an express holding to that effect seems eminently preferable to the obtuse rhetoric employed by the court to dispose of the constitutional objection. For it is the function of a court of last resort not only to dispose of the case before it, but also to determine and to enunciate the legal principles which govern that disposition. Clarity in the enunciation of those principles is particularly essential “in our judicial system, where opinions have the function not only to decide cases between litigants but also to furnish a guide for the future action of all citizens.” The citizenry, and particularly future litigants and trial judges, will have considerable difficulty with the “guide” furnished them in the Morgan decision.

Subject, therefore, to considerable uncertainty as to the effect of that decision, the procedure by which the state program of old age assistance operates can be described as follows: Original applications for assistance are made to the county welfare department. That agency considers, investigates and rules upon the application. An applicant “feeling himself aggrieved” by such ruling may, within 60 days after receiving notice of the ruling, file with the director of the Department of Social Security a question of law, or clearly arbitrary or capricious.” Appellant’s Brief, Supreme Court Docket No. 28637 pp 53-54, 69.

The Attorney General seems to have come to about the same conclusion. He has advised the Department that the Morgan decision “settled the de novo features in appeals to the courts.” Advance Ops Att’y Gen, supra note 33, p 437. Prior to receipt of this advice, the Department seems to have entertained a somewhat different notion as to the status of § 9. In its biennial report to the governor for 1942-1944, supra note 1, at p 9, it recommended extension of the appeal provisions of the general Public Assistance Act “to cover Old Age Assistance, or amendment of certain portions of § 9 [of Initiative 141].” At present the latter section is in conflict with the Social Security Act and inoperative as far as the federal plan is concerned. Thus in OAA there is no operative statute governing appeals to courts.

That function is expressly imposed upon our supreme court by WASH. Const Art IV, § 2: “In the determination of causes, all decisions of the court shall be given in writing, and the grounds of the decision shall be stated.”

a notice of appeal. Within 30 days after receipt of such notice, the department must grant the applicant a hearing and upon its failure to do so, the applicant may appeal directly to the superior court. The department will base its decision "wholly upon evidence introduced in the hearing" by the applicant and the county administrator and must within 30 days after hearing notify the applicant of the decision, failure to give such notice constituting an affirmation of the decision of the county welfare department. If the applicant again "feels himself aggrieved" by the decision of the department, he may within 60 days after such decision appeal to the superior court. On such appeal the court, apparently, is limited to a review of the record made at the hearing, and may consider only whether the department's determinations on questions of fact are supported by such record and whether the department has correctly followed and applied the applicable legal principles. From the decision of the superior court, either party may take an appeal to the supreme court in the manner provided by law for civil appeals.

The current Washington plan for old age assistance represents the most realistic approach yet taken in the measurement of cash awards to be made to the needy aged. Initiative 141 was construed to fix a $40-minus-income-and-resources maximum and the award could be made to provide for the recipient's actual needs only to the extent that they did not exceed that limit. Under that plan, while an applicant became eligible for assistance on the basis of his need, the amount of assistance awarded was seldom adequate to meet that need. The 1943 amendment was interpreted only to provide a means of disregarding income and resources within the $40 maximum and thus to allow the department fully to meet the needs of a comparatively few additional persons whose requirements actually did not exceed $40 plus their available income and resources. But, under the 1945 statute and plan, the maximum amount of the award is to be measured by the actual needs of each recipient as determined by the department, and the assistance re-

---

26 Rules and Regulations, supra note 60, Rule 46. Whether or not the court may hear additional evidence, or must confine its review to the record prepared by the county administrator, in cases where the appeal is taken directly from the county welfare department to the superior court because of the state department's failure to grant a hearing within 30 days after application therefor, was not decided in the Bowen case. After the appeal to the court had been taken in that case, the director held a hearing and granted the applicant's contentions in full, and the court thereafter dismissed the appeal as moot. The federal requirement that the state plan be administered by a single agency would operate here also to prevent the taking of additional evidence by the court, and if the Morgan decision means that state constitutional requirements forbid such procedure on review of a state department decision the same limitation would apply to judicial review of a county department decision.

27 The needs of the recipient include those of his dependent spouse, not herself eligible for an award and those of his legal dependents. Staff Memorandum 46-47, supra note 27, par. V: Rules and Regulations supra note 60, Rule 10.
ceived will fail to correspond with those needs only in the rare case where they are less than the statutory minimum award of $50 less income and resources. The considerable increase in the cost of the old age assistance program as a result of this change in the measurement of assistance will be offset in part by recent Congressional action which will increase the federal matching fund contribution to this state from its present level of approximately $16,000,000 to about $20,000,000 annually, but the amount left to be borne locally establishes Washington as one of the most generous states in the nation in providing for the welfare and security of its aged citizens.

While the present plan, as evolved by the department and approved by the federal board, constitutes a great improvement over previous plans, much of that improvement has not been carried over into the statutes, but has been accomplished by disregarding certain provisions of those statutes. Whatever may be their present legal status, as a practical matter the substance of subdivisions (1), (2) and (4) of Section 3(h), excluding the ability of relatives to contribute support,

---

78 It is not assumed that an applicant's needs, as measured by the department, would correspond with the estimate which any reader of these pages would make of his own needs. The department's measurement is necessarily a compromise between what is socially desirable and what is fiscally possible. Washington's "senior citizens" of the twentieth century have not reached the millennium. But they have progressed to a considerable extent beyond the status of the English "senior subject" of the eleventh century who competed with all other indigents for assistance from a third of the church tithes.

79 J M Wedemeyer, supra note 38. This estimate is based on an heroic computation under Public Law No 719, 79th Cong., 2d Sess., which amended the existing law providing for maximum federal contributions of $20 per recipient to provide for contributions in "an amount which shall be used exclusively as old-age assistance, equal to the sum of the following proportions of the total amounts expended during such quarter as old-age assistance under the state plan with respect to each needy individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution, not counting so much of such expenditures with respect to any such individual for any month as exceeds $45—(A) Two-thirds of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $15 multiplied by the total number of such individuals who receive old-age assistance for the month, plus (B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A).

80 Comparative figures for the present time are not yet available. As of July 1, 1945, the average monthly payment in all of the states was $29.46, with state averages ranging from a low of $11.42 in Georgia to a high of $42.29 in Washington. Federal Social Security Board, Annual Report (1945), p. 94; Altmeyer, The First Decade in Social Security (1945) 8 Soc Sec Bul. No 6, at p. 35. After 1945 legislative changes in the states, the District of Columbia, Hawaii and Alaska, 21 jurisdictions now have no statutory maximum, 5 have maximums above $40, 20 have a $40 maximum and 5 have maximums below $40. Berman and Jacobs, Legislative Changes in Public Assistance (1945), 9 Soc Sec Bul. No 4, at p. 9.

81 26 Rev Stat (1945 supp) § 9998-36(h)

82 The income of a dependent spouse and of legal dependents (whose needs are also included in measuring the recipient's needs) is considered deductible income of the recipient. Rules and Regulations, supra note 60, Rule 11.
insurance policies with cash surrender values of $500 or less, and other property worth $200 or less from consideration as resources, is embodied in the plan, but subdivisions (3), (5) and (6), excluding home ownership, personal effects, foodstuffs and utilities, are disregarded. Similarly, subdivisions (3) and (4) of Section 3(g), excluding casual gifts and proceeds from the sale of non-resource property when reinvested in non-resource property from consideration as income, are substantially included in the plan, but subdivisions (1) and (2), excluding the rental value of the recipient's home, foodstuffs and utilities, are disregarded. These non-operative subdivisions of the statute should certainly be deleted, and it may well be doubted whether the other provisions serve any useful purpose. They were designed originally to implement the general policy of Initiative 141 "to provide for Washington's Senior Citizens over sixty-five as liberally as is possible under the terms of the Federal Social Security Act for securing matching funds." Despite the handicap of a muddled statute which neither the supreme court nor the legislature seems willing to clarify, the State Department of Social Security has for five years demonstrated a conscientious and persistent effort to carry out that policy to the fullest extent, and has demonstrated also that the necessary accommodation of the state program to federal requirements is better handled by continuous administrative planning and revision than by biennial legislative action. The result of that demonstration is a compendium of precise definitions of those items which must be considered and those which may be excluded from consideration in assisting the aged citizen "to meet his needs" "as liberally as is possible under the terms of the Federal Social Security Act," beside which the inadequacy of the statutory definitions is glaringly obvious. Hence, it seems desirable that the legislative authority, having prescribed the liberal policy and fixed the standard of measurement, should leave the implementation of that policy and the application of that standard to the department, subject in both respects to judicial review.

Also in need of revision are the provisions of the statute defining the scope of judicial review. The exact status of Section 9 after the Morgan decision cannot be determined with any certainty, but it is probable that as therein construed it does not mean what it says. And it is certain that, to comply with federal requirements, those provisions authorizing the

---

83 Rem Rev Stat (1945 Supp) § 9998-36(g)
84 On September 3, 1941, the Attorney-General advised the department that while the then current state plan had been approved by the federal board, it was the department's duty under Initiative 141 "to submit the most liberal plan possible to the Federal Social Security Board" and that the department "should without delay give serious consideration to the desirability and legal necessity of making further bona fide efforts immediately to liberalize the 'state plan.'" Ops Att'y Gen (1941-1942) p 49
86 Staff Memorandum 46-47, supra note 27, pars II and III; Rules and Regulations, supra note 60, Rules 10, 11, 12, 25, 27, 30 and 33
court to receive additional evidence and to fix the amount of the award cannot be given effect, and should be deleted Considerations of orderly procedure seem further to require that the court’s function in reviewing the case on the record be more precisely defined That function would be clarified, and its performance facilitated, by amendment of Section 9 expressly to provide that the only questions subject to review by the courts are the fairness of the departmental hearing, the presence of evidence in the record to support the department’s findings on issues of fact, and the correctness of the department’s rulings on issues of law.

86 The scope of judicial review of administrative decisions is defined in the proposed Uniform Administrative Procedure Act as follows: “The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon shall be taken in court The court may affirm reverse or modify the decision of the agency The decision shall be reversed or modified if the court finds that the substantial rights of the appellant have been prejudiced as a result of the administrative findings, inferences, conclusions or decisions being: (1) contrary to constitutional rights, or privileges; or (2) in excess of statutory authority or jurisdiction of the agency, or affected by other error of law; or (3) made or promulgated upon unlawful procedure; or (4) unsupported by substantial evidence in view of the entire record as submitted; or (5) arbitrary or capricious. Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it” Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings (1942), p 276. See also the provision for judicial review in § 10 of the new Federal Administrative Procedure Act, Public Law No 404, 79th Cong., 2d Sess