

A Case of Compassion: Justice O'Hern's Opinion in *L.T. v. New Jersey Department of Human Services*

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In 1993, New Jersey's homeless poor and their advocates cheered the New Jersey Supreme Court's unanimous opinion in *L.T. v. New Jersey Department of Human Services*.¹ The opinion, authored by Justice O'Hern, essentially established that the Department of Human Services (DHS) had an affirmative obligation to effectively assist its homeless clients in resolving the problems that led to their homelessness and in ultimately maintaining housing independent of DHS assistance. In the opinion, Justice O'Hern stated:

Undoubtedly, DHS wishes that it had more funds in order to supervise the far-flung operations of the [municipal welfare departments] that shelter the homeless, as well as more funds to feed the hungry, care for the children and elderly, and heal the sick, because all needy people are deserving of the agency's attention. However, although there are no rankings in the "catalog of human suffering," . . . surely homelessness represents something uniquely devastating to the human spirit.²

Our clients, the five petitioners in the case, experienced that devastation firsthand. Four of them were forced to return to that devastation when DHS stopped their rental assistance because of an arbitrary time limit, causing their eviction. Justice O'Hern ensured that such a result would not occur again, stating "we do not read the legislation as contemplating that at the end of the year [Emergency Assistance] recipients shall be returned to the streets even though they have made every effort to turn their lives around."³

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¹ *L.T. v. New Jersey Dep't of Human Serv.*, 134 N.J. 304, 633 A.2d 964 (1993).

² *Id.* at 324, 633 A.2d at 974-75 (quoting *Rodgers v. Gibson*, 218 N.J. Super. 452, 457, 528 A.2d 43, 45 (App. Div. 1987)).

³ *Id.* at 323, 633 A.2d at 974.

L.T. involved a challenge to the twelve-month cap placed on rental subsidies provided General Assistance (GA) recipients.⁴ The gravamen of the case was whether New Jersey's General Public Assistance Law,⁵ as interpreted by *Williams v. New Jersey Department of Human Services*,⁶ prohibited an arbitrary time limit on all shelter assistance. I was one of the attorneys representing the petitioners, five Paterson GA recipients who were either homeless or facing eviction because of the twelve-month limit on "temporary rental assistance."⁷ DHS argued that providing twelve months of temporary rental assistance, often after five months of shelter or motel housing, fully complied with the *Williams* Court's order that DHS create programs to make "reasonably certain that the individuals previously housed in motels will find shelter and eventually housing elsewhere."⁸ The appellate division agreed with this rationale.⁹

During oral arguments before the New Jersey Supreme Court, Justice O'Hern asked me whether the Court had not said in *Williams* that "despite the best of efforts, some people will indeed slip through the net."¹⁰ The question was not unexpected. While preparing for oral argument, our legal team had discussed at length that statement in *Williams*,¹¹ an opinion that Justice O'Hern authored.¹² I responded that the petitioners had not slipped through the net; they, in fact, were being pushed through it.¹³

Two months later, our legal staff learned from Justice O'Hern's opinion that the Court refused to permit DHS to abandon the homeless.¹⁴ Justice O'Hern, writing for the Court, found that the

⁴ See *id.* at 306, 633 A.2d at 965.

⁵ N.J. STAT. ANN. §§ 44:8-107 to -145 (1997) (presently referred to as Work First New Jersey General Public Assistance Act); *L.T.*, 134 N.J. at 310, 633 A.2d at 967.

⁶ 116 N.J. 102, 561 A.2d 244 (1989); see also *L.T.*, 134 N.J. at 312, 633 A.2d at 968.

⁷ See *id.* at 308, 633 A.2d at 966.

⁸ *Id.* at 314-15, 311, 321, 633 A.2d at 968, 970.

⁹ See *id.* at 311, 633 A.2d at 968 (citing *L.T. v. New Jersey Dep't of Human Serv.*, 264 N.J. Super. 334, 338, 624 A.2d 990, 993 (App. Div. 1993)) (stating that the appellate division reasoned that "the shelter scheme which appellants now attack was thoroughly explored by the [administrative law judge] and the Commissioner and approved by the Supreme Court in *Williams*'").

¹⁰ *Id.* at 321, 633 A.2d at 973.

¹¹ See *Williams*, 116 N.J. at 123, 561 A.2d at 255 ("We realize that government cannot achieve the impossible and that despite the best efforts, some people will indeed slip through the net.").

¹² See *id.* at 104, 561 A.2d at 245.

¹³ See *id.* at 321, 633 A.2d at 973.

¹⁴ See *L.T.*, 134 N.J. at 325, 633 A.2d at 975 ("[W]e believe that the Legislature intends that the GA program be administered in such a way as to provide temporary shelter for the most needy of our citizens. A regulation that terminated TRA without

General Public Assistance Act indeed required DHS to provide GA recipients with shelter as long as needed.¹⁵

The New Jersey Supreme Court has frequently referred to GA as the program of last resort for needy single persons and couples without minor children.¹⁶ Those individuals come to the GA program out of desperation, usually with no other income or resources. They rarely have family or friends on whom they can rely for support; their family and friends may themselves be struggling. In some cases, while the recipient may be able to work, he or she lacks the education, skills, or means to secure employment. Also, if health problems interfere with keeping a job, the recipient may have become mired in the lengthy process of obtaining disability benefits from the Social Security Administration.

The \$140 monthly individual GA grant,¹⁷ however, is hardly enough in most cases to cover even shelter costs. According to a DHS "standard of need," promulgated pursuant to a New Jersey Supreme Court mandate,¹⁸ a one-person GA household needs a monthly income of \$582 "to maintain a safe and decent life."¹⁹ GA grants, however, have remained unchanged since 1987.²⁰ While most GA recipients also receive food stamps, a one-person household would still fail to meet the standard of need by more than \$300 a month.

Unable to pay their rent because of inadequate income, most GA recipients face homelessness. As a result, GA recipients come to rely upon Emergency Assistance (EA), a supplemental GA program intended to meet a recipient's emergent shelter needs.²¹ Initially, DHS limited EA to three months of shelter or motel placement and permitted relief only when there had been no notice of imminent loss of shelter.²² The appellate division, however, invalidated the "fault standard" and, in *Rodgers v. Gibson*, ordered DHS reassessment

a fall-back provision for shelter conflicts with that purpose.").

¹⁵ See *id.*

¹⁶ See, e.g., *Williams*, 116 N.J. at 107, 561 A.2d at 248 (citing *Pascucci v. Vagott*, 71 N.J. 40, 44, 362 A.2d 566, 569 (1976)).

¹⁷ See *L.T.*, 134 N.J. at 308, 633 A.2d at 966. The monthly grant is increased to \$210 if the recipient is considered "unemployable." See N.J. ADMIN. CODE § 10:85-4.1(b) (repealed 1998); N.J. ADMIN. CODE §§ 10:90-3.5, -3.6 (1998).

¹⁸ *In re* Petitions for Rulemaking, N.J.A.C. 10:82-1.2 and 10:85-4.1, 117 N.J. 311, 314, 566 A.2d 1154, 1155 (1989).

¹⁹ See N.J. ADMIN. CODE § 10:85-4.1(d) (repealed 1998).

²⁰ 19 N.J. REC. 1095(a) (June 15, 1987).

²¹ See, e.g., *L.T.*, 134 N.J. at 308, 633 A.2d at 966 (noting that petitioners often relied on EA grants to avoid homelessness).

²² See N.J. ADMIN. CODE § 10:85-4.6 (repealed 1998).

of the three-month time limit.²³ Subsequently, DHS amended its regulations to require that the recipient lack "a realistic capacity to plan" for the housing emergency and to permit an additional two months of EA.²⁴ This new five-month limit was challenged in *Williams*.²⁵ The *Williams* Court held that it would confirm the validity of the Department's five-month limit on EA upon a showing that other programs were in place to make "reasonably certain that [EA claimants] previously housed in motels will find shelter and eventually housing elsewhere."²⁶ The matter, thus, was remanded to DHS for the development of an adequate record by the Office of Administrative Law.²⁷ The department adopted the administrative law judge's finding that DHS must promulgate regulations that establish the manner in which GA recipients can obtain continuing shelter upon termination of the five months of motel or shelter placement.²⁸ New DHS regulations included temporary rental assistance, a rental subsidy for up to twelve months in permanent housing.

In Paterson, the largest congregate shelter was open only during the winter months and closed by Easter. Consequently, the Paterson Municipal Welfare Department relied heavily upon the downtown Paterson YMCA for sheltering its clients, first under Emergency Assistance, then under temporary rental assistance. Because rent at the YMCA shelter was \$352 a month, the Paterson Municipal Welfare Department considered the YMCA the least expensive housing available to its clients.²⁹

Following the New Jersey Supreme Court's decision in *Williams*, the New Jersey Administrative Code provided that "EA is designed to provide, with reasonable certainty, for the initial and/or continuing emergency shelter needs of otherwise eligible [General Assistance]

²³ 218 N.J. Super. 452, 459, 528 A.2d 43, 47 (App. Div. 1987).

²⁴ See 19 N.J. REG. 1715(a); N.J. REG. 1716 (proposed Sept. 21, 1987) (amending N.J. ADMIN. CODE § 10:85-4.6(a)(3) (adopted Jan. 4, 1988)).

²⁵ See *Williams v. New Jersey Dep't of Human Services*, 116 N.J. 102, 104, 561 A.2d 244, 245 (1989).

²⁶ *Williams*, 116 N.J. at 114, 561 A.2d at 251.

²⁷ See *id.* at 119, 561 A.2d at 253; *Williams v. New Jersey Dep't of Human Serv.*, 121 N.J. 589, 589-90, 583 A.2d 297, 297 (1989) (ordering remand to the DHS and subsequent referral of the matter to the Office of Administrative Law to resolve factual disputes).

²⁸ See *Williams*, 121 N.J. at 667-68, 583 A.2d at 351 (setting forth the administrative law judge's findings and noting the substantial adoption by the DHS of those findings).

²⁹ See *L.T. v. New Jersey Dep't of Human Serv.*, 134 N.J. 304, 308, 633 A.2d 964, 966 (1993).

recipients.”³⁰ Nevertheless, twelve months after the temporary rental assistance regulation took effect, GA recipients living at the Paterson YMCA received notice that their temporary rental assistance was being terminated and that they had exhausted their right to further GA shelter support.³¹ Thus, the post-*Williams* DHS regulations had failed to address the availability of shelter assistance after the expiration of temporary rental assistance, despite the fact that the Human Services Commissioner had adopted the finding of the administrative law judge that this “nagging question” needed to be resolved.³²

Many General Assistance recipients requested hearings under section 10:85-4.6(d)4i of the Code, which provided that a GA recipient facing temporary rental assistance termination had the right to request a fair hearing and receive continued temporary rental assistance pending a final hearing decision.³³ In most cases, the administrative law judge recommended an individualized extension of temporary rental assistance in light of the Commissioner’s safety net assurances in *Williams*.³⁴ In some instances, the administrative law judge suggested that the Municipal Welfare Department and aid recipient reexamine the “plan of action aimed at working toward resolving the circumstances that contributed to his or her emergency situation.”³⁵

Recipients in Paterson, however, rarely received such personalized help. For example, L.T., who was in his late fifties and had trouble walking,³⁶ had been denied disability benefits.³⁷ Because of extensive work experience as a truck driver, L.T. potentially qualified for Social Security benefits far in excess of those available under the Supplemental Security Income program. Our office assisted L.T. in reapplying for his Social Security. His Social Security disability case required minimal development and his long work

³⁰ N.J. ADMIN. CODE § 10:85-4.6(e) (repealed 1998).

³¹ See *L. T.*, 134 N.J. at 306, 633 A.2d at 966.

³² See *Williams v. New Jersey Dep’t of Human Serv.*, OAL No. HPW 38-90, at 6 (March 1, 1990).

³³ N.J. ADMIN. CODE § 10:85-4.6(d)4i (repealed 1998).

³⁴ See, e.g., *L.T. v. Paterson MWA*, OAL No. HPW3904-92 (May 29, 1992); *L.M. v. Paterson MWA*, OAL No. HPW 3659-92 (May 22, 1992); *L.McK v. Paterson MWA*, OAL No. HPW 6120-92 (Aug. 19, 1992); *J.W. v. Paterson MWA*, OAL No. 3658-92 (May 22, 1992); *J.W. v. Paterson MW*, OAL No. HPW 6722-92 (Sept. 4, 1992).

³⁵ See, e.g., *M.M. v. New Jersey Dep’t of Human Serv.*, OAL No. HPW 6722-92 (Sept. 4, 1992).

³⁶ See *L.T. v. New Jersey Dep’t of Human Serv.*, 134 N.J. 304, 308, 633 A.2d 964, 966 (1993).

³⁷ See *id.*

history and longstanding disability meant substantial retroactive benefits. This was a simple fee-generating case that any lawyer with a Social Security practice would have handled. I asked a supervisor at the Paterson Municipal Welfare Department why no one had encouraged L.T. to pursue his Social Security claim as part of his service plan. The supervisor responded that "he can work" and "you have to be on death's doorstep before you get [Social Security Income]."

After the residents of the Paterson YMCA were denied additional temporary rental assistance, notices of appeal were filed with the appellate division. Subsequently, when the Paterson YMCA initiated eviction proceedings, four petitioners sought emergent relief from the appellate division. In two instances, divided panels ordered continued temporary rental assistance, indicating concern over the failure to develop an adequate service plan.³⁸ L.T. was granted a stay.³⁹ In two other cases, the panels denied stays, as did the New Jersey Supreme Court.⁴⁰ The Court, however, ordered expedited hearings in these two cases.⁴¹ The appellate division consolidated our first five appeals as *L.T.*⁴²

The appellate division panel that eventually heard *L.T.* included one judge who had dissented in the granting of stays and another who had participated in panels that unanimously denied stays. During oral argument, the panel indicated unease at ordering perpetual temporary rental assistance. Our response was that L.T. would not have needed continuing temporary rental assistance had the Municipal Welfare Department assisted him with his Social Security disability claim as part of the service plan required under section 10:85-4.6(c)(5) of the Code.⁴³

Within days of the appellate division oral argument, L.T. received a letter from Social Security approving his claim. I informed the panel members that L.T. now would have sufficient monthly income to pay his own rent. In a footnote to its opinion, the panel

³⁸ See *L.T. v. New Jersey Dep't of Human Serv.*, No. A-5166-91T3 (June 12, 1992); *L.W. v. Dep't of Human Serv.*, No. A-5244-91t3 (June 12, 1992).

³⁹ See *L.T. v. New Jersey Dep't of Human Serv.*, 264 N.J. Super. 334, 343 n.1, 624 A.2d 990, 995 n.1 (App. Div. 1993).

⁴⁰ See, *L.T. v. Dep't of Human Serv.*, 264 N.J. Super. 334, 343 n.1, 624 A.2d 990, 995 n.1 (App. Div. 1993).

⁴¹ *McK v. New Jersey Dep't of Human Serv.*, No 35, 975 (Oct. 20, 1992); *J.W. v. Dep't of Human Serv.*, No. 35,874 (Oct. 20, 1992).

⁴² Order of Consolidation, No. A-5166-91T3, A-5244-91T3, A-0098-92T3, A-0584-92T3 (Nov. 13, 1992).

⁴³ See N.J. ADMIN. CODE § 10:85-4.6(c)(5) (repealed 1998).

acknowledged L.T.'s receipt of Social Security,⁴⁴ but missed its significance:

Finally, we agree with appellants' basic premise that there is nothing in the record to indicate that shelter is available to them in light of their severely limited incomes of \$140 per month, plus food stamps. Consequently, we conclude that the record does not demonstrate a nexus between the alleged violation of *N.J.A.C.* 10:85-4.6(c)(5) and the appellants' status as homeless persons.⁴⁵

In the New Jersey Supreme Court's opinion, however, Justice O'Hern saw the nexus.

Justice O'Hern's opinion clearly established that homeless General Assistance recipients had a right under the General Public Assistance Act to continued shelter as long as a need existed.⁴⁶ Significantly, the Justice ordered that this continued aid take the form of temporary rental assistance.⁴⁷ Therefore, GA recipients would not be returned to the streets solely because they had received twelve months of temporary rental assistance. The Municipal Welfare Department was obligated under DHS regulations to develop, with the GA recipient, an effective plan to secure and maintain housing independent of Emergency Assistance. Moreover, the recipient could not be penalized by the Municipal Welfare Department's failure to develop such a sufficient plan.

Justice O'Hern's opinion refused to denigrate, stereotype, or depersonalize the petitioners. Each petitioner had a name. The Justice recognized that "[f]or the most part, they were working men who were experiencing difficult times."⁴⁸ Each had his own set of problems and misfortunes resulting in his becoming homeless. The fact that each petitioner had become homeless only exacerbated those problems. In contrast, the Paterson Municipal Welfare Department had handled all six cases exactly the same way. Everyone was simply required to search for permanent housing less expensive than the Paterson YMCA. Unfortunately, there was no such housing and the effort was futile. This "strategy" was destined to fail.

Justice O'Hern recognized that what had become a cynical, demoralizing exercise for the petitioners should have real meaning:

⁴⁴ See *L.T.*, 264 N.J. Super. at 344 n.2, 624 A.2d at 996 n.2 ("On the eve of the filing of this opinion counsel informed us that L.T.'s claim for disability benefits has been approved by the Social Security Administration and as a result 'he now has monthly income sufficient to cover his rent at the . . . YMCA.'").

⁴⁵ *Id.* at 344, 624 A.2d at 996.

⁴⁶ See *L.T.*, 134 N.J. at 325, 633 A.2d at 975.

⁴⁷ See *id.* at 307, 633 A.2d at 966.

⁴⁸ *Id.*

That requirement of an "individualized plan of action" contemplates more than mere formalism. The regulations contemplate a wise counselor examining the individual needs of the EA recipient, mapping out a plan to resolve the circumstances that produced the individual's homelessness, and steering the client through the bureaucratic thickets of other programs.⁴⁹

The justice asserted persuasively that DHS emphasis on developing appropriate service plans could more effectively conserve resources than any arbitrary time limit on assistance.⁵⁰ Yet, Justice O'Hern also recognized that there were currently few administrative incentives for the Municipal Welfare Department to do this.⁵¹ The time limit on temporary rental assistance had itself been a disincentive; every case, with or without a service plan, could be closed after twelve months of the assistance. The twelve-month milestone would still remain significant, but now as a gauge on the effectiveness of the service plan.

Moreover, the fact that the Court ordered continued temporary rental assistance, as opposed to some other form of aid, was particularly welcome. Shelter life offered little privacy or decency, often little more than a cot to sleep on during the night. Most shelters were only open at night. Apartment placement, on the other hand, brought some stability back to the lives of the homeless and gave them permanent addresses. Unlike motel or shelter placement, it did not stigmatize the person as being homeless and was far less costly.

As an immediate result of Justice O'Hern's opinion, two petitioners, M.M., who had spent that summer homeless in a downtown park, and L.W. were returned to the YMCA. Each eventually qualified for federal Section 8 housing subsidies, obviating any further need for temporary rental assistance. J.S., another petitioner who had sought emergent relief from the Court shortly after oral argument in *L.T.*, was able to pay his rent after his landlady was persuaded to await the Court's decision. He eventually found employment and left the General Assistance rolls. L.T. had never been evicted from the YMCA because the lifting of the appellate division stay had coincided with his receipt of Social Security disability benefits.⁵²

⁴⁹ *Id.* at 317, 633 A.2d at 971.

⁵⁰ *See id.* at 322, 633 A.2d at 974.

⁵¹ *See id.* at 318, 633 A.2d at 972.

⁵² *See L.T. v. New Jersey Dep't of Human Serv.*, 264 N.J. Super. 334, 344 & n.2, 624 A.2d 990, 996 & n.2 (App. Div. 1993).

These men, however, were not the only beneficiaries of Justice O'Hern's decision. The decision resulted in the settlement of a dozen or so remaining appeals in our office alone. In Paterson, the onslaught of temporary rental assistance terminations stopped, while the Municipal Welfare Department continued to place clients at the Paterson YMCA under temporary rental assistance. The *Star-Ledger* estimated that the case would affect hundreds statewide. Aid to Families with Dependent Children (AFDC)⁵³ recipients began to argue that under *L.T.* their families also remained eligible for continued temporary rental assistance.

The Department of Human Services was not pleased with the decision; the Commissioner's official response was that "the decision turns a program designed as a temporary bridge into a 'permanent benefit.'" The Commissioner further commented that his agency "'cannot solve the state's low-income housing problem' on its own, but the Court's ruling 'move[s] the Department one step closer to the role of primary funder of housing services, a role beyond its primary mission, expertise and budget.'"⁵⁴ The Director of the Division of Family Development was quoted as stating, "We are not the housing agency. More and more we are becoming the housing agency in the state. I don't think that responsibility ought to exist in human services."⁵⁵ Within months, legislation limiting temporary rental assistance to twelve months for AFDC families as well as for General Assistance recipients was introduced.⁵⁶ Welfare recipients packed meetings of the committees considering the legislation. Recipients testified to being placed in transitional housing or undergoing job training only to have the gains threatened by the arbitrary time limit on temporary rental assistance. Ultimately, the legislation died. The DHS continually resisted an extension of the *L.T.* ruling to AFDC recipients until the appellate division ordered such an expanded application of the rule in 1996.⁵⁷

Later in 1996, the United States Congress repealed the AFDC program,⁵⁸ replacing it with the block-grant time-limited Temporary

⁵³ 42 U.S.C. §§ 601-610 (repealed 1996).

⁵⁴ Jeffrey Kanige, *Limit Stricken on Housing Assistance for Homeless*, N.J. L.J., Dec. 20, 1993, at 13.

⁵⁵ Donna Leusner, *Senate Panel Endorses One-Year Limit on Housing Aid After Sharp Debate*, THE STAR-LEDGER (Newark, N.J.), June 3, 1994, at A12.

⁵⁶ *Id.*

⁵⁷ See *B.N. v. Dep't of Human Serv.*, 287 N.J. Super. 270, 670 A.2d 111 (App. Div. 1996).

⁵⁸ 42 U.S.C. §§ 601-610 (repealed 1996).

Assistance to Needy Families program.⁵⁹ Legislation creating Work First New Jersey, which consolidated the state GA and AFDC programs, was enacted the following year.⁶⁰

Work First New Jersey contained a twelve-month limit on Emergency Assistance.⁶¹ Exceptions to the twelve-month limit included their own time limits.⁶² Justice O'Hern had indicated in his *L.T.* opinion that there might come a time "when our society can no longer afford to shelter the homeless."⁶³ It is troubling that that time appears to have arrived during a period of prosperity.

Justice O'Hern's opinion in *L.T.* posited an even-handed, coherent, and compassionate response to the problem of homelessness. It demanded the best efforts of all the parties. It ensured assistance for those truly in need. Whether New Jersey's most needy and vulnerable will continue to be protected without *L.T.* remains to be seen.

⁵⁹ 42 U.S.C. §§ 601-619 (1997).

⁶⁰ N.J. ADMIN. CODE §§ 10:90-6.1 to -6.10 (supp. 1999).

⁶¹ See N.J. STAT. §§ 44:10-51(a) (1997); N.J. ADMIN. CODE §§ 10:90-6.4(a) (1998).

⁶² See N.J. STAT. §§ 44:10-51, 53 (1997); N.J. ADMIN. CODE §§ 10:90-6.4, 6.9, -6.10 (1998).

⁶³ *L.T. v. Dep't of Human Serv.*, 134 N.J. 304, 325, 633 A.2d 964, 975 (1993).