

No. 30494 - State of West Virginia ex rel. K.M., a minor child, by her mother and next friend, Katrina M., et al., individually and as class representatives of similarly situated persons v. West Virginia Department of Health and Human Resources and Paul Nusbaum, Secretary

FILED

December 9, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 11, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, concurring in part, and dissenting in part:

I concur with the conclusions of the majority opinion that a pre-termination hearing is not required before ending TANF cash assistance due to the expiration of the five-year time limit; the Secretary's policies for granting extensions to victims of domestic violence or abuse do not violate the letter or spirit of the state or federal legislation; and the Secretary's choice of a six-month time limit for extensions is not unduly restrictive and in conflict with the legislative intent. I also agree with the Court's adoption of the Special Commissioner's recommendations to modify the Fair Hearing Process to provide the Fair Hearing Examiner with the authority to reverse or remand the decision of the Extension Committee. Finally, I concur with the Court's granting of the writ of mandamus as moulded so that those recipients who applied for and were denied an extension under the former process can have their applications reconsidered.

I dissent, however, to new syllabus point 4 which holds that "government has a

moral and legal responsibility to provide for the poor,” as well as the entire portion of the majority opinion that discusses this holding. Not only is this new syllabus point wholly unnecessary to the disposition of this case, but there simply is no support for the holding.

This Court does not have the authority to impose a moral or legal responsibility on government in the absence of a clear expression in the Constitution or in any statutory law that such a responsibility exists. The entire textual basis for the majority’s holding is a single, isolated reference to “overseers of the poor” found in Art. IX, § 2 of the Constitution. According to the majority, the mere mention of “overseers of the poor” grants to the poor of this State a constitutional right to subsistence. I notice that Art. IX, § 2 also says that the county court shall appoint “surveyors of roads.” Using the majority’s method of analysis, does this mean that the State now has a moral and legal constitutional duty to provide every citizen of the State with a sufficient highway? This is doubtless good news to the large number of rural West Virginians who regularly travel on simply awful roads. In light of the majority opinion, all of these folks can now file a petition for a writ of mandamus with this Court, invoking their right to adequate roads found in Art. IX, § 2 of our Constitution, and this Court will be obliged to direct the Commissioner of Highways to build new roads for the petitioners which meet a minimum level of quality.

I am also troubled by the fact that new syllabus point 4 gives this Court so much power over State welfare policy and funding levels. Simply by declaring that poor people are

being deprived of their constitutional right to subsistence, this Court can now mandate changes in State welfare eligibility rules or compel funding increases. Needless to say, such action would have a significant impact on overall State spending.

Finally, I wish to emphasize that while I certainly support government assistance to the poor, I also strongly support and applaud government efforts, such as the Personal Responsibility and Work Opportunity Reconciliation Act and the WV WORKS Act, to break the welfare cycle and restore welfare recipients to a place of independence and productivity in our society.

In conclusion, I agree with the majority that the petitioners have an interest in the fairness of the extension process, and I concur with that portion of the majority opinion that sets forth new Fair Hearing procedures. For the reasons stated above, however, I dissent to the majority's holding in new syllabus point 4. Accordingly, I concur in part and dissent in part.