

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY OHIO

CUYAHOGA COUNTY	)	
BOARD OF COMMISSIONERS,	)	Case No. 448900
	)	
Plaintiff,	)	JUDGE DAVID T. MATIA
	)	
vs.	)	
	)	
THE STATE OF OHIO, et al.,	)	
	)	
Defendants.	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. INTRODUCTION**

1. This action was initiated when the Cuyahoga County Board of Commissioners (the “County”) filed a Complaint against the State of Ohio, Governor Robert Taft, the Ohio Department of Job and Family Services (“ODJFS”), Thomas Hayes, as the Director of ODJFS, and Thomas Johnson, as the Director of the Office of Budget and Management. (The defendants are hereinafter collectively referred to as the “State.”)

2. The County alleged two counts against the State in its complaints. Both counts relate to the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), which was signed into law by President Clinton on August 22, 1996. PRWORA authorized a

block grant to states called Temporary Assistance for Needy Families (“TANF”). *See* 42 U.S.C. § 601 *et. seq.* TANF dramatically changed the Nation’s welfare program into one that requires recipients to work in order to receive time-limited assistance.

3. Bench trial commenced on May 28, 2003. The Court, after the County finished the presentation of its case in chief, granted the State’s motion for Directed Verdict on Count I of the Complaint.

4. Count II of the County’s Complaint alleges that the State’s illegal diversion of TANF dollars violates Ohio law governing the proper use of the funds. Pursuant to Section 5101.46(H) of the Ohio Revised Code, the State, through ODJFS and its Director, may distribute TANF funds to the county department of jobs and family services or use the funds for services that benefit individuals eligible for services under Title IV-A of the Social Security Act. The County alleges in Count II that, by using the TANF funds to balance the State’s budget, the State has violated Section 5101.46(H).

## **II. FINDINGS OF FACT**

5. Pursuant to the TANF block grant, the State receives \$728 million each year from the federal government. Under federal law, the State is permitted to transfer a portion of its TANF block grant to Title XX. *See* 42 U.S.C. § 604(d)(2). In State Fiscal Year (“SFY”) 1997 through SFY 2001, the State transferred approximately \$72.8 million in TANF dollars each year from TANF into Title XX.

6. The State’s biennial budget for SFY 2002 and SFY 2003 authorized the transfer of \$72.8 million in TANF funds each year into Title XX. (*See* Plaintiff’s Exhibit 400.) During SFY 2002, \$72.8 million was transferred from TANF to Title XX. (*See* Plaintiff’s Exhibit 611.)

7. The State's biennial budget for SFY 2002 and SFY 2003 also directs ODJFS to transfer \$60 million in TANF funds out of Title XX and into a Special State Fund, called "Fund 5Q8." (*See* Plaintiff's Exhibit 400.) On or about July 13, 2001, Robert Lewis, Deputy Director of ODJFS' Fiscal Office, directed the transfer of the \$60 million of TANF funds that had been transferred into the State's Title XX account into Fund 5Q8. (*See* Plaintiff's Exhibit 609.)

8. The \$60 million lay dormant in Fund 5Q8 for approximately one year. On or about May 9, 2002, Director Thomas Johnson directed that all \$60 million be transferred out of Fund 5Q8 and into the State's General Revenue Fund. (*See* Plaintiff's Exhibit 608; Plaintiff's Exhibit 611.) This transfer took place on or about May 10, 2002. (*See* Plaintiff's Exhibit 608.) The \$60 million transferred from Fund 5Q8 into the General Revenue Fund was used to balance the State's budget. (*See id.*)

9. The State admits that these transfers took place, and the State concedes that the \$60 million was used to balance the State's budget. The State further admits that the \$60 million was neither used by the State for TANF programs, nor distributed to the county departments of job and family services.

10. As its justification for the transfer, the State contends that the \$60 million constitutes "earned federal dollars" that reimburse the State for excess Title XX expenditures that were incurred in prior years, including as far back as SFY 1997. The State provided insufficient evidence to support this alleged justification. Indeed, one of the documents introduced as evidence indicates that the State did not incur any Title XX expenditures in SFY 1997, SFY 1998 or SFY 1999. (*See* Plaintiff's Exhibit 611.) That same document also shows that the State is projecting a surplus of Title XX dollars in SFY 2003 in the amount of

approximately \$49 million. (*See id.*) The State did not offer any documentary evidence to rebut or explain that document.

11. In addition, the evidence at trial demonstrated that, to the extent that there were excess Title XX expenditures, some of these expenditures were incurred at the local level. (*See* Plaintiff's Exhibit 614.) In reporting these excess expenditures, the State apparently took credit for local expenditures, yet the State did not reimburse the localities for the excesses.

12. Moreover, in its report to the federal government on Title XX spending for SFY 2002, the State did not reveal that the \$60 million was not used to fund Title XX programs, but was used instead to balance the budget. (*See* Plaintiff's Exhibit 615.) This fact suggests that the State's proffered justification is a pretext.

13. Finally, the State's use of the \$60 million to balance its budget has irreparably harmed the County. The County's TANF funding from the State has been reduced by almost 50% from SFY 2001 to SFY 2002. These reductions have caused the County to eliminate or substantially curtail many of the successful programs that enabled the County's neediest citizens to move from welfare into steady jobs. For example, the County has reduced its outreach efforts by cutting the number of "Neighborhood Centers" from 11 to 7. The funding cuts have also forced the County to reduce significantly the number of "self-sufficiency coaches" employed by the County. The "self-sufficiency coaches" are an integral component of welfare reform in the County. The County has also been forced to reduce or eliminate funding for other vital programs, such as the Cuyahoga Work and Training Alliance, The Training Academies at Cuyahoga Community College, and other welfare-reform programs that were designed and implemented in Cuyahoga County with the support of the State.

### **III. CONCLUSIONS OF LAW**

14. As indicated above, federal law authorizes the State to transfer up to 10% of its annual TANF block grant into its Title XX Social Services account each year. *See* 42 U.S.C. § 604(d)(2). The State transferred 10% of its TANF grant, approximately \$72.8 million, into Title XX in SFY 1997, SFY 1998, SFY 1999, SFY 2000, SFY 2001 and SFY 2002.

15. Title XX provides that Title XX funds may only be spent for specific purposes. Those purposes, set forth in 42 U.S.C. § 1397, are:

- (1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
- (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
- (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;
- (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and
- (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

16. Section 5101.46(B) of the Ohio Revised Code addresses the administration of Title XX social services in the State of Ohio. It provides that ODJFS, the Department of Mental Health, and the Department of Mental Retardation and Developmental Disabilities “shall administer the provision of social services funded through grants made under Title XX.” Ohio Rev. Code § 5101.46(B).

17. Section 5101.46(B) also provides that “[t]he social services furnished with Title XX funds shall be directed” to achieve five specific goals. These goals are identical to the goals

set forth in the federal Title XX statute, namely, 42 U.S.C. § 1397, set forth above. *See* Ohio Rev. Code § 5101.46(B)(1)-(5).

18. Section 5101.46(C)(1) of the Ohio Revised Code provides for the allocation and distribution of Title XX funds. This statute provides that:

All federal funds received under Title XX shall be appropriated as follows:

- (a) Seventy-two and one-half percent to the department of job and family services;
- (b) Twelve and ninety-three one-hundredths per cent to the department of mental health;
- (c) Fourteen and fifty-seven one-hundredths per cent to the department of mental retardation and developmental disabilities.

Ohio Rev. Code § 5101.46(C).

19. Against this backdrop of statutory authority, Section 5101.46(H) provides that, if TANF funds are transferred to Title XX, ODJFS may do one or both of the following with the transferred funds: “(1) Distribute the funds to the county departments of job and family services; [or] (2) Use the funds for services that benefit individuals eligible for services consistent with the principles of Title IV-A of the ‘Social Security Act’.” These two options are in addition to the distribution formula contained in subsection Section 5101.46(C). Section 5101.46 does not provide the State with other options to use Title XX funds.

20. Title IV-A of the Social Security Act, codified at 42 U.S.C. 601 *et seq.*, is the TANF program. Title IV-A provides that TANF funding shall be used to achieve the purposes of TANF. By the express terms of the federal statute, monies received by states under TANF are to be used only in operating programs that are designed to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

42 U.S.C. § 601(a)(1)-(4).

21. “[I]t is the duty of courts to see that the beneficial object of the law is accomplished.” *State, ex rel. Coles, Jr. v. Shook* (1918), 97 Ohio St. 164, 169.

22. Despite the plain language and the socially-beneficial intent of Section 5101.46(H), the State’s biennial budget for SFY 2002 and SFY 2003, set forth in H.B. 94, provides that:

The Department of Job and Family Services shall in each fiscal year of the biennium transfer the maximum amount of funds from the federal TANF Block Grant to the federal Social Services Block Grant as permitted under federal law. Not later than July 15, 2001, the Department of Job and Family Services shall draw \$60,000,000 in receipts from TANF funds that were transferred into the Social Services Block Grant into State Special Revenue Fund 5Q8, in the Office of Budget and Management. Not later than June 1, 2002, the Director of Budget and Management shall determine the amount of funds in State Special Revenue Fund 5Q8 that is needed for the purpose of balancing the General Revenue Fund, and may transfer that amount to the General Revenue Fund. Not later than June 1, 2003, the Director of Budget and Management shall determine the amount of funds in State Special Revenue Fund 5Q8 that is needed for the purpose of balancing the General Revenue Fund, and may transfer that amount to the General Revenue Fund. Any moneys remaining in State Special Revenue Fund 5Q8 on June 15, 2003, shall be transferred not later than June 20, 2003, to Fund 3V6, TANF Block Grant, in the Department of Job and Family Services.

23. The evidence offered at trial demonstrates, and the State does not dispute, that ODJFS, under the direction of Director Hayes, transferred approximately \$72.8 million from TANF to Title XX in SFY 2002. The evidence further demonstrates that, on or about July 13, 2001, Mr. Robert Lewis, Deputy Director of ODJFS' Fiscal Office, directed the transfer of \$60 million of the TANF funds out of Title XX and into the State's Special Revenue Fund 5Q8. The funds lay dormant in Fund 5Q8 for approximately one year. Then, on or about May 9, 2002, Director Johnson authorized the transfer of the \$60 million out of Fund 5Q8 and into the State's General Revenue Fund. This transfer took place on or about May 10, 2002. The \$60 million that was transferred into the State's General Revenue fund was used to balance the State's budget.

24. The intent of Section 5101.46(H) is twofold. First, Section 5101.46(H) grants the State some additional, limited flexibility in the use of TANF funds that are transferred to Title XX beyond the five goals identified in Section 5101.46(B). Second, Section 5101.46(H) grants the State flexibility in the allocation of the transferred TANF dollars by allowing the dollars to be allocated in a manner other than pursuant to the strict percentages set forth in Section 5101.46(C).

25. The State argues that, because the statute, in one subsection, i.e., "(H)", uses the word "may", as opposed to "shall", the entire Section 5101.46 is discretionary. This Court disagrees with that interpretation. The use of "may" instead of "shall" indicates some flexibility; but will not be read as giving the State unbridled discretion in the allocation of these funds. Read in its entirety, Section 5101.46 provides limited options for the use of Title XX funds. Those uses not listed in subsections (C) and (H) are impermissible.

26. The State's other arguments are equally unavailing. It is contended that the

monies were legitimately transferred since there had been excess Title XX expenditures which the State had incurred. However, there was insufficient evidence at trial that the \$60 million dollars served as reimbursement for previous excess Title XX expenditures at the State or local levels. Next, the State asserts that Section 5101.46 is not controlling as the biennial budget reflected in H.B. 94 “trumped” it as “temporary law”. In truth, the only witness called by the State testified that there was no consideration given to the operation of Section 5101.46 in the context of the enactment of H.B. 94 and the authorization of the \$60 million budgetary transfer. More importantly, the bill tracking report for H.B. 94 reveals that the amending legislation did not mention nor reference Section 5101.46 at all. Therefore, the State violated the Ohio Constitution which recites in pertinent part at Article II, Section 15(D): “No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.” Had H.B. 94 properly amended Section 5101.46, this Court would have been authorized to sustain the transfer and allocation of the \$60 million to the General Fund of the State of Ohio. However, the plain wording of Section 5101.46 and of the amending legislation H.B. 94 compel this Court to rule otherwise.

27. By any reading of Section 5101.46, neither subsection (B) nor (C) nor (H) gives authority to the State to transfer TANF grant monies to the General Fund or to non-Title XX or non-Department of Job and Family accounts.

28. In SFY 2002, \$60 million dollars was neither distributed to the county departments of job and family services nor used for services that benefit individuals eligible for services consistent with the principles of Title IV-A of the Social Security Act. Ohio Revised Code Section 5101.46 was violated by the creation of the 5Q8 special account, by the transfer of

Title XX monies into the 5Q8 account and, ultimately by the transfer to the State's General Fund to help balance the budget.

**IV. ORDER**

The Court hereby orders, decrees and declares as follows:

1. Judgment is entered in favor of Plaintiff Cuyahoga County Board of Commissioners on Count II of its Complaint;
2. The State violated Ohio Revised Code Section 5101.46 and the Ohio Constitution;
3. The May 10, 2002 transfer into the State of Ohio's General Fund is hereby declared null and void; and
4. The \$60 million shall be returned to the State's Title XX account to be used for the purposes contemplated by TANF and Section 5101.46, and under the control of ODJFS. Such transfer shall be accomplished prior to August 15, 2004

IT IS SO ORDERED.

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JUDGE DAVID T. MATIA

**CERTIFICATE OF SERVICE**

A copy of the foregoing Findings of Fact and Conclusions of Law and Order was sent via first class mail, postage prepaid, this 10th day of February, 2004 to:

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JUDGE DAVID T. MATIA