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"What Welfare Reform Did to Them . . .
and Why Legal Services is Needed to Help"

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RuthPseudonyms have been used, and other identifying information has been omitted. is a slight, nervous woman with chronic pain and blackouts most likely caused by her mental state. When she is not appearing in hospital emergency rooms, she spends most of her life huddled in her home, scared of even going outside by herself. But Social Security decided she was healthy enough to work and denied her SSI disability benefits, while Wisconsin Works (W-2), this state's welfare reform program, cut back her checks when she became too fearful to go to the assignments they insisted she attend.

As a child, Sara was sexually abused by a relative. Now she contends with severe depression as well as physical health problems while also caring for her children, two of whom are disabled. Due to computer errors, W-2 stopped sending her checks. Then her worker decided Sara hadn't proven she couldn't work, and closed her case. With no money to pay the rent, she and her children ended up homeless.

Unlike Wisconsin's governor Tommy Thompson, Angie wouldn't tell you welfare reform is a success. In fact, she probably doesn't know much about what the governor is saying at all. All she knows is, the check didn't come. And 15 minutes after meeting her face to face, I can see why. She gets confused easily, and is not even able to remember such details as whether or not she got her food stamps this month. Her mother joins the conversation to make sure I know that Angie was in special classes the whole time she went to school.*****

I've never met Barbara, who is confined to bed by a high-risk pregnancy, but we've talked on the phone often. If she gets out of bed, even to care for her older children, the baby she is carrying could be born so prematurely it might die. The state's policy manual says that Barbara can get child care. W-2, however, told her that because she isn't working it won't authorize the funding.

When Jessie was on W-2, she found a part time job. A few months later, she gladly got off the program. W-2, however, wasn't ready to leave her alone. Even though she did everything her worker told her to do, her W-2 agency decided it had given her too much in benefits and demanded

thousands of dollars back. Jessie's income is so low that she still gets food stamps and Medicaid, but if she doesn't pay back hundreds of dollars a month, the state will keep her tax refunds. And under a new law passed while her case was pending, the state also could seize and sell her property and garnish her wages to pay back the money the W-2 agency now claims to have mistakenly given her.

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Out in Washington, politicians vilify legal services staff who work on welfare issues, claiming it is the attorneys who cause the problems with welfare reform. But for women such as these five, and thousands more women and men like them, legal services can be the only barrier standing between them and the street. It should not be that way. A poor woman should not need a lawyer to get the monthly checks she's supposed to receive or the services that the system claims it will provide her. Increasingly, however, women like the ones mentioned here can't make it without legal help. And in many parts of the country, including Milwaukee, about the only place they can find that assistance is from a legal services program.

Programs like Legal Action of Wisconsin win real victories for the families we serve, and our presence holds the system far more accountable than it would be if we weren't here. But our resources do not stretch far enough. We are overwhelmed by a flood of clients, ones who have become increasingly desperate since welfare reform began. Listening to clients coming in for intake, or hearing them talk in our waiting room, you can easily believe recent studies showing a dramatic increase in the number of "extremely poor" families who subsist on incomes less than half the federal poverty level. Between 1989 and 1997, the number of Wisconsin food stamp families living in extreme poverty jumped from 1,661 to 11,298. By 1997, more than 75% of those living in extreme poverty received no cash assistance. More, T. S. & Selkove, V. (June 1999), *The Growing Crisis Among Wisconsin's Poorest Families: A Comparison of Welfare Caseload Declines and Trends in the State's Poverty Population* (Institute for Wisconsin's Future [IWF]). The IWF reports cited can be accessed electronically at: www.execpc.com/~iwf. At the same time, drastic budget cuts for legal services and federal restrictions on our ability to help large numbers of clients through class actions limit the number of people we can serve.

And make no mistake, there are thousands, if not tens of thousands, of poor families who need help.

It is fashionable to laud welfare reform. After all, caseloads are dropping precipitously, nowhere more so than here in Wisconsin. Since the late 1980s, the number of families receiving cash assistance in this state has plummeted by 90%. DeParle, J. (1999, December 30). "Bold Effort Leaves Much Unchanged for the Poor," *New York Times*. The Times articles cited can be accessed electronically at: www.nytimes.com. For the politicians who created the new welfare system and the bureaucrats who run it, forcing families off of welfare is the goal. They measure success solely by caseload reduction, not by whether poverty has declined or whether families are receiving the supportive services the agencies are supposed to provide them.

Though many more parents are working, few find jobs with sufficient hours or high enough wages to lift their families out of poverty. Only 36% of former welfare recipients have incomes greater than they did when they were on welfare. "Bold Effort Leaves Much Unchanged," supra. n.2. The vast majority of households that leave cash assistance have incomes below federal poverty level, and those who have left welfare more recently are poorer. For example, of those who left welfare in 1997, fewer than 14% had incomes above poverty level in 1998. Cancian, M.; Haveman, R.; Meyer, D.R. & Wolfe, B. (December 1999), *Before and After TANF: Full Report*, (University of Wisconsin - Madison, Institute for Research on Poverty). The state's own survey indicates that more families who left the welfare system end up short on money to feed their families or to pay the rent than when they received welfare. Wisconsin Dept. of Workforce Development, Division of Economic Support. (January 13, 1999), *Survey of those Leaving AFDC or W-2, January to March 1998, Preliminary Report*. The report can be accessed electronically at: www.dwd.state.wi.us. See also, Quinn, L. (May 1999), *State of Milwaukee's Children: Family Income/Economic Support Report*, (University of Wisconsin-Milwaukee, Employment and Training Institute [UWM-ETI]), showing a 39% increase in poor working families headed by single parents over the previous five years. UWM-ETI reports can be accessed electronically at: www.uwm.edu/Dept/ETI. Under old AFDC rules, many working parents could keep receiving aid if their incomes stayed below specified levels. In W-2, however, the mere fact that they can work at all often disqualifies them from receiving any cash assistance. See, e.g., Institute for Wisconsin's Future (June 1998), *Transition to W-2: The First Six Months of Welfare Replacement*. Although these families usually would qualify for food stamps to supplement meager incomes, many caseworkers haven't shared that information -- out of ignorance or indifference, if not malice. Perhaps not surprisingly, in the first years of welfare reform food stamp enrollment plunged faster in Wisconsin than it did in any other state in the country, much faster than the rate of poverty declined. Norman, J. (1999, November 29), "Hunger Task Force Enters Trenches for County's Poor," *Milwaukee Journal Sentinel*, citing a 1999 U.S. General Accounting Office report. See also, Aukofer, F. (1999, March 16), "Anti-Hunger Groups Join Food Stamp Inquiry," *Milwaukee Journal Sentinel*; Sandin, J. (1999, December 15), "Hunger Problem Said to Be Getting Worse," *Milwaukee Journal Sentinel*; Associated Press (1999, December 17), "W-2 Participants Face Deadlines, State Giving Hardest Cases More Time," *Milwaukee Journal Sentinel*. Articles can be accessed electronically at: www.jsonline.com. And even families who do know what benefits they should be getting, from Medicaid to child care subsidies, frequently can't or won't negotiate the bureaucratic maze on their own. Only about 9,000 of the 41,400 working poor families in the county receive food stamps, while as many as 100,000 individuals eligible for Medicaid are not covered Pawasarat, J. (January 2000), *Analysis of Food Stamp and Medical Assistance Caseload Reduction in Milwaukee County: 1995-1999* (UWM-ETI). See also, Quinn, L. & Pawasarat, J. (December 1999), *Employment and Economic Well-Being of Families in Central City Milwaukee Neighborhoods* (UWM-ETI), finding that most eligible families in central city Milwaukee do not access child care subsidies, food stamps or Medicaid.

Meanwhile, those left on W-2, as well as those who dropped out because they could not function or because of frustration with an

unresponsive system, often struggle with severe and multiple barriers to employment. See, e.g., "Bold Effort Leaves Much Unchanged," supra., n. 2. Women may be victims of domestic violence or may have suffered physical or sexual abuse in the past. See, e.g., Moore, T. & Selkove, V. (September 1999), Domestic Violence Victims in Transition from Welfare to Work: Barriers to Self-Sufficiency and the W-2 Response (IWF), finding a lack of screening for domestic violence, and widespread worker failure to advise victims of available options and services; DeParle, J. (1999, November 28), "Early Sex Abuse Hinders Many Women on Welfare," New York Times, citing studies showing a median of 33% of women on welfare have been sexually abused in the past. Increasing numbers are homeless. Many are the parents or spouses of severely disabled family members. Others, who often suffer from cognitive limitations or chronic mental illness, have few options besides seeking disability benefits for themselves, but they usually will need more assistance than the welfare system provides to even get onto SSI. The state's own survey found that 38% of former welfare recipients were not employed at the time they were interviewed. Of these, 32% were ill or injured themselves or needed to care for a disabled family member. Survey of those Leaving AFDC or W-2, supra. n. 3. And still others, with impairments that are real but not severe enough to qualify them for such benefits, must have meaningful evaluations and extensive accommodations if they will ever be able to work at all.

Yet W-2's architects spend less time talking about support than gloating about sanctions. For example, the state's former W-2 administrator, J. Jean Rogers, proclaimed that women on welfare are like "big kids." Wisconsin Public Television,(1999-2000), What Welfare Reform Did for Me. And like children, she said, the W-2 program must punish them -- by cutting off basic support -- if they don't follow their caseworkers' rules.

The message that punishment works best has been heard loud and clearly in the ranks. Front line workers focus on completing computer screens and cutting benefits for minor instances of noncompliance, not on trying to uncover the real barriers or figuring out how to solve them. The state compounds the problem by refusing to establish educational standards for so-called case managers, so few have any meaningful training in mental health issues or vocational rehabilitation or social work. See, e.g., "Early Sex Abuse Hinders Many Women," supra. n. 8, reporting that few caseworkers have social work training and generally function only as administrators. At one hearing, I heard a supervisor proudly discuss how she imposed "tough love" to discipline a mentally ill W-2 participant.

It doesn't help that the state privatized much of the system, especially here in Milwaukee, which now has 85% of the state's welfare caseload. State of Wisconsin Legislative Audit Bureau (February 1999), Report No. 99-3. By August 1998 Milwaukee County had 86.6% of Wisconsin's W-2 caseload. This report, and the one cited in n. 13, can be accessed electronically at: www.legis.state.wi.us. The state's contracts permit private agencies -- for-profits and non-profits alike -- to make millions of dollars a year off welfare. Yet the state refuses to seek the kind of accountability from these private businesses that it demands of poor families. Instead, the state structured the initial contracts to allow the agencies to keep a percentage of the difference between the amount they got from their contracts and the amount they spent. State of

Wisconsin Legislative Fiscal Bureau (January 1999), Informational Paper 45. Getting people on W-2 -- and providing proper services -- costs money. Getting them off, or keeping them out, costs less. For example, in the first year of their contracts, W-2 agencies received \$146.4 million for W-2 payments, but spent only \$78.2 million. State administration and W-2 office costs alone were \$122 million, more than 25% of the state's total W-2 related expenditures of \$479.4 million, and more than one and one-half times the amount spent on payments to W-2 participants. Informational Paper 45, supra. n. 13. See also, Transition to W-2, supra. n. 4; "Bold Effort Leaves Much Unchanged," supra., n. 2. Although the state's second set of contracts include some performance standards, this seems to be too little too late, given the virtual disappearance of the public assistance caseload. And the less that is spent, the more profit is left.

In the past, if an agency's actions were found not to be "substantially justified" we at least could request that the hearing office or the courts order the agency to pay our attorney's fees. Now federal law prohibits us from claiming those fees, eliminating a key financial incentive for agencies to handle cases properly.

For many poor families, the result is chaos.

For example, Ruth, the woman afraid to leave her home, was a legal services client for nearly two years. When she first sought our help, W-2 said it would reduce her benefits for missing appointments. The agency, however, refused to address the limitations caused by her mental condition.

We represented Ruth, arguing that the welfare agency had an obligation to accommodate her disabilities. The first round was an informal hearing before an employee of the welfare agency itself. Although Ruth lost at that level -- a not uncommon outcome -- we appealed and convinced the independent state hearing office, which can review the local decisions, to reverse the sanctions because the agency's actions violated the Americans with Disabilities Act.

Ruth got her W-2 back. After she'd been in the program for a year and a half, the agency finally sent her for a formal evaluation. The psychologist's report detailed the extent of her mental impairments. The evaluation not only helped her remain on W-2, but also turned out to be crucial for her SSI case. We represented Ruth at her SSI hearing as well, since a year earlier she'd gone to a hearing on her own and lost due to her inability to articulate the connection between her physical symptoms and her mental illness. Relying heavily on the psychological assessment from W-2, and on other information our office provided him, the Social Security judge finally decided that Ruth is too disabled to work.

Ruth's W-2 decision -- and a subsequent line of cases we have argued and won based upon the same rationale -- impose a clear obligation on the W-2 agencies to investigate, evaluate and accommodate participants' disabilities. Still, the agencies frequently honor those obligations only in the breach. Because so few caseworkers have specialized training, they often fail to identify impairments, even ones that are obvious. Many others will terminate benefits, whether or not they believe a barrier exists, if a particular form from a particular doctor is not in the file. Too

often, the agencies assess and accommodate disabled parents and children only after our office intervenes or wins a hearing decision forcing them to do so.

Sara's case exemplifies the depths to which the agencies can sink. For months, the agency had placed Sara in limited W-2 activities because of her physical and mental health problems. Suddenly her checks stopped coming. Originally, the problem was due to a computer error which no one in the agency bothered to fix, if they noticed it at all. Then the agency decided that Sara did not have enough medical information in her file to "prove" she was unable to work. Her caseworker demanded that Sara submit a medical form, but her doctor refused to complete the paperwork. Then the worker unilaterally changed Sara's assignment, without even asking if she had or needed specialized day care for her disabled children. Sara asked her worker for help. Instead, the worker closed her case. By that time, she'd lost three full months of benefits. Soon after, she lost her home.

Like Ruth, Sara requested a hearing before her W-2 agency, then contacted our office to go with her. Even though her worker admitted she had never sent Sara for a medical or psychiatric examination -- actions required by the state's own policy -- Sara lost that hearing. She hadn't turned in the right paper, the W-2 agency's hearing officer decided, so she deserved to lose her benefits. Again, we appealed, and again the state hearing office reversed, holding that the agency had failed in its duty to evaluate her impairments and to address the needs of her disabled children. The decision sharply criticized the agency for doing nothing more than insisting that Sara bring in a doctor's form.

Sara's struggle isn't over. The agency has had her case for more than a year, but has yet to provide any meaningful services to her. A week after getting the state's hearing decision, I called her caseworker. She assured me that the agency had, indeed, issued the back benefits the hearing office had ordered. But it's not so clear that the worker bothered to read the rest of the decision. She was really worried, she told me, because Sara still had not brought in the right doctor's form.

And that's not going to be Sara's only problem. Under Wisconsin rules, she's only allowed two years of her life to get the kind of W-2 available to families with serious physical and mental health issues, a category of assistance which allows treatment to count as a work activity. But instead of focusing on what services she should help Sara obtain, her worker was far more concerned about emphasizing that Sara's time limits are almost up. When that time comes, I expect that Sara will want us to be there, to insist that those limits be extended because the agency failed to meet her needs.

When such lapses are brought to the attention of state welfare bureaucrats, they shrug their collective shoulders. It's a learning curve, they say. The agencies have to figure out how to run the program. But while the agencies make millions off their contracts with the state, it is the families who pay for their workers' neglect. They pay it with precious months slipping away from their lifetime limit on benefits.

I ran into Angie at a W-2 office while she was trying to find her check. For months, we'd helped her through incessant snafus among multiple

W-2 agencies when they couldn't figure out which one was in charge of her case and, consequently, which one was supposed to send out her benefits. Until that day, however, I'd never met her in person. Once I did, it quickly became clear that her problem wasn't only the bureaucratic morass.

The next morning, I called the supervisor who'd most recently been in charge of Angie's W-2 case. She confirmed that some time ago they indeed had done testing, which showed Angie could only read at a second grade level. But, she said, they'd provided no special services to deal with the educational deficits, and no further assessment to determine whether, as seems likely, the reading problem stems from a more serious cognitive impairment.

Instead, with surprising candor the supervisor admitted that Angie was one of the many women who'd been lost in the "transition." Back in late 1997 and early 1998, the welfare caseload was moved from AFDC to W-2. In that massive shift, the agencies worried far more about making sure the right papers were signed than about figuring out the needs and barriers of the families whose cases were being transferred. Few recipients were properly evaluated, and for many no assessments were done at all. Instead, the agencies simply labeled thousands as "job ready" and pushed them off the system -- whether or not they actually had employment or could realistically expect to get it. Only the intervention of Legal Action of Wisconsin helped stem the abuse of the "job ready" classification. Transition to W-2, *supra*. n. 4.

In that sense, perhaps Angie was luckier than others. Her problems were obvious enough that she got put on W-2, although now her time is almost up. I intervened with her current agency to finally get her an evaluation. We also will follow through and make sure she gets adequate services and, if she qualifies, SSI. But if Angie didn't have a lawyer, she'd almost certainly would have been cut off assistance, either because her time ran out or because she simply does not understand how to follow the rules.

The state routinely dismisses such complaints as "anecdotal." Although the welfare contracts permit the state to fine local agencies for failing to serve W-2 participants, no fine has ever been imposed. DeParle, J. (1999, October 10), "As Welfare Benefits Expire, Second Thoughts," *NewYorkTimes*. Meanwhile, poor families don't get the help they need.

Of course, not every W-2 participant is permanently disabled. Barbara, for example, had been working. But early in her pregnancy, a problem developed. Stay home, the doctor ordered her, or you will lose this baby.

Barbara enrolled in W-2, but because of delays in how the state processes payments, it takes up to six weeks to get a full check. She didn't have the money to pay the rent while she waited. Although W-2 includes a loan program to help families stave off eviction, the agency wrongly told her she didn't qualify. Somehow, she managed to scrape together the rent money. For W-2 administrators, this counts as a success: A poor woman desperately turned to friends and relatives, rather than using a program the state itself established to help people like her. The state casts in a positive light the fact that 30% of those surveyed depended on help and gifts from family and friends, and 13%

depended on meal programs and food pantries, instead of public assistance. Survey of Those Leaving AFDC or W-2, supra. n. 3.

Then came a bigger problem. Not only did Barbara need to stay home, but her doctor put her on complete bed rest. That meant she could not even care for her children. The W-2 agency, however, said it wouldn't allow her to get day care, even though state policies permit W-2 participants to receive child care subsidies as long as they do what is assigned to them. And Barbara's worker had told her to comply with her doctor's orders for the duration of her pregnancy.

By the time Barbara called us to ask for help with child care, she had signs of extremely premature labor. We requested a hearing. While we waited for the hearing date, we strenuously negotiated with the agency. It took more than a week. Every morning, I half-expected a phone call saying that Barbara had been hospitalized, but fortunately that didn't happen. Finally, the agency accepted the language in the state's policy manual and approved her child care. For now, one potential crisis was averted. If legal help hadn't been there, I'm not sure it would have been.

Even getting off of welfare, however, does not end problems for many poor families. By the end of the first year of W-2, almost 43% of the final AFDC caseload received no cash assistance. Report No. 99-3, supra. n. 12. Yet even according to the state's own survey, nearly four in ten of these households had no members working at all, and most of the rest could not get year-round, full-time employment. Twenty-three percent of the unemployed respondents did not live with anyone who was working and received no financial assistance from any program at all, like child support or SSI. Survey of Those Leaving AFDC or W-2, supra. n. 3. See also, Before and After TANF, supra. n. 3. And these were just the households the state was able to locate. It could not even find nearly a third of its sample. The original sample was 547 people. Only 375 were located and surveyed. Survey of Those Leaving AFDC or W-2, supra. n. 3. and the households who have "disappeared" are quite possibly in worse straits. Yet families find W-2 so oppressive or so inaccessible that they end up scraping by, rather than returning to the program. Of the persons surveyed by the state, 45% stated that getting welfare was more trouble than the money was worth. Sixty percent said that welfare was more about rules and regulations than about helping families. Survey of Those Leaving AFDC or W-2, supra., n. 3.

Sometimes it seems that's the strategy. If the state and its W-2 agencies can just make welfare unpleasant enough, people will see even low-wage, temporary or part-time jobs as better than staying on assistance.

Jessie was one of those people. Tired of being subjected to W-2's arbitrary rules, Jessie got work and got off assistance as soon as she could. But, apparently, that wasn't soon enough.

A few months after Jessie received her last W-2 check, the agency sent a notice informing her that there had been a mistake made in her case. The agency decided it had issued too much in W-2 benefits to her. It wanted thousands of dollars, money she didn't have. And, more to the point, Jessie couldn't understand why she should have to pay it back. After all, she'd told the agency everything they wanted to know and

done everything they asked her to do.

Jessie wasn't sure how to proceed. The notice told her she had to go back before the same welfare agency to appeal the decision -- a proceeding she quite reasonably expected would be futile. When she contacted us, we told her that the independent state hearing office had decided that it could address these issues instead of leaving them to the local agencies. We asked for and got a state hearing for Jessie. At the hearing, even the agency representative couldn't clearly explain the basis for the decision to demand thousands of dollars back. The hearing officer threw out the agency's claim.

If these were isolated cases, as the state likes to claim they are, it might be feasible to address them one at a time. But for each woman we see, for each family we assist, there are hundreds of others who may never get the help they need.

Huge federal budget cuts have left legal services programs like ours with a mere handful of lawyers and paralegals to handle all the welfare problems -- as well as food stamp, Medicaid, SSI, and unemployment compensation cases -- for thousands of Milwaukee residents, while federal and state welfare reforms have left clients more desperate and despairing than ever before. Because federal regulations prohibit class actions, our clients can't bring cases on behalf of large numbers of other families who also are hurt by the agencies' actions -- no matter how egregious or persistent or widespread the violations. And because we are prohibited from seeking attorney's fees, the agencies have little financial incentive to properly serve the families who walk in their doors.

Last week, I spoke with a mentally ill woman who doesn't speak English and got cut off W-2 because her child turned 18. She has no income at all, and lost most of her food stamps because the agency told her she had to work for them without figuring out whether she was capable of doing so. "Why is this happening?" she wanted to know.

That is a question this country should be asking. Until it does, we need more support for legal services. Without those resources -- and the freedom to use them as the attorneys who represent poor families determine is necessary -- we cannot fairly protect the rights, and the lives, of those who have few other advocates to hold the system accountable. Without them, we cannot make the concept of "equal justice" a reality.