ORIGINAL

In the

Supreme Court of the United States

C.1.

Secretary Of Agriculture, Petitioner,	)	
v.	)	
Karen Hein, Et Al., Respondents; and	)	
Kevin J. Burns, Etc., Et Al., Petitioners,	)	No. 75-1261 and No. 75-1355
v.	)	
Karen Hein, Et Al., Respondents	)	

Washington, D. C.
November 29, 1976

Pages 1 thru 49

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IN THE SUPREME COURT OF THE UNITED STATES

SECRETARY OF AGRICULTURE, Petitioner, v. KAREN HEIN, ET AL., Respondents; and KEVIN J. BURNS, ETC., ET AL., Petitioners, v. KAREN HEIN, ET AL., Respondents	:	No. 75-1261 and No. 75-1355

Washington, D. C.

Monday, November 29, 1976

The above-entitled matter came on for argument at 1:13 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN P. STEVENS, Associate Justice

APPEARANCES:

STEPHEN L. URBANCZYK, ESQ., Office of the Solicitor General, Department of Justice, Washington, D. C., for the Petitioners.

APPEARANCES (Cont'd):

LORNA LAWHEAD WILLIAMS, ESQ., Special Assistant to the Attorney General of Iowa, Des Moines, Iowa, 50319, for the Petitioners.

ROBERT D. BARTELS, ESQ., Iowa City, Iowa, for the Respondents.

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C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 75-1261, Secretary of Agriculture against Karen Hein, and 75-1355, Kevin J. Burns against Karen Hein.

ORAL ARGUMENT OF STEPHEN L. URBANCZYK, ESQ.

ON BEHALF OF THE PETITIONERS

MR. URBANCZYK: Mr. Chief Justice, and may it please the Court:

These consolidated appeals are taken by the Secretary of Agriculture and the Commissioner for the Iowa State Department of Social Services from an order of the Three-Judge District Court from the Southern District of Iowa.

That order enjoins, on constitutional and statutory grounds, parallel State and Federal regulations that have bearing upon the amount of benefit appellees may receive under the Food Stamp Act.

We have described the operation of the Food Stamp Program in our opening brief. It is necessary here only to reiterate that benefits are provided under the Food Stamp Program by permitting eligible households to purchase an allotment of food stamps for less than their face value, and that the amount of the discount is a function of the household income.

Congress provided explicitly that the income of the household was to be the eligibility criterion for participation

in the food stamp program, as well as the standard for determining what amount the household is required to pay for an allotment of food stamps.

QUESTION: Household or householder?

MR. URBANCZYK: Household.

QUESTION: Household. So it is a total picture.

MR. URBANCZYK: Yes.

Congress, however, left to the Secretary the task of defining income. Income is not defined in the Act. The Secretary has defined income in regulations that are set out in the Appendix to our opening brief.

This case principally concerns the reasonableness of one of those regulations, as well as the regulation of the State of Iowa that is similar, since the States are required to conform their administration of the food stamp program in conformity with the Secretary's standards.

Now, let me describe the Secretary's regulations briefly and explain how they apply to the appellee class in this case.

In general, the Secretary has provided that all monies received shall be included in income. There are a few exceptions, for example, for items of income that are non-recurring or extraordinary, but otherwise all monies received are generally included in income.

Now, included within the Secretary's definition,

explicitly, are payments received from Federal assistance programs that were not specifically exempted by Congress.

Appellees in this case are individuals who received such assistance in the form of an allowance that the State of Iowa provides to welfare recipients that are attending a work and training program. That State program is Federally funded under Title XX of the Social Security Act.

Now, the regulation under which the appellees received this allowance provides for a monthly $60 flat allowance for full-time trainees. It was $44 at the time this lawsuit was instituted. Part-time trainees receive a somewhat different type of grant. They are provided a travel allowance for actual expenses computed on a rate-per-mile basis up to a maximum allowable amount of $45 a month.

These allowances, like all other forms of Government assistance not specifically exempted by Congress, were included in the Secretary's regulatory definition of income.

Now, the Secretary's regulations also allow that certain expenses are allowable as deductions from income. In part pertinent here the Secretary allows an itemized deduction for tuition and other mandatory educational fees and a standardized monthly 10% deduction of all travel allowances, or $30, whichever is less, to cover incidental expenses.

But the Secretary expressly has disallowed an itemized deduction for the commutation or other incidental

expenses incurred by one who is attending school or attending a training program.

I hasten to point out that the Secretary has not singled out students who are trainees for special treatment in this regard. No individual, be he a student, a worker or whatever, is allowed an itemized deduction for transportation costs.

Indeed, if you will take a glance at the regulations, I think you will conclude that ordinary household expenses, such as transportation costs, generally are not deductible under the Secretary's regulations.

QUESTION: Transportation for the purpose of getting education is not household, is it? It is not a household expense. It is going from household to --

MR. URBANCZYK: Mr. Justice Marshall, transportation expenses, whether they are incurred by one trying to attend a vocational training program, I think, under the Secretary's regulations are not treated any differently from transportation expenses incurred by other households in the pursuit of equally important endeavors, like work or some other --

QUESTION: Well, why do you draw the line between tuition and travel?

MR. URBANCZYK: Tuition and travel, I think, is a form of expense incurred by students that does not have a counterpart in the ordinary household budget.

QUESTION: Of course, not.

MR. URBANCZYK: Correct, but I believe, Mr. Justice Marshall, that --

QUESTION: I am not talking about household, I am talking about schooling. You can get tuition but you can't get the transportation. And if you don't get the transportation, you can't use the tuition. Am I right?

MR. URBANCZYK: If you -- I am sorry.

QUESTION: If you can't get the transportation, if you can't get to the school, you don't need tuition.

MR. URBANCZYK: That's correct.

QUESTION: So you get credit for tuition providing you get there, but you can't get credit for it on your --

MR. URBANCZYK: That's right and I think the whole point of allowing the tuition is that it is a form of expense incurred by students that doesn't have a counterpart or is not comparable to other kinds of expenses that households ordinarily incur, such as transportation costs or other forms of commuting to or --

QUESTION: Well, why is education limited by household?

MR. URBANCZYK: I am not sure, Mr. Justice Marshall, that I understand what you are getting at. I am not sure that the focus here is on household expenses.

QUESTION: It is on household income, is it not?

MR. URBANCZYK: It is on household income.

QUESTION: When the normal person who is not on relief pays his tuition to college, you don't put that in your household money.

MR. URBANCZYK: Well, it would be included under the Secretary's regulations.

QUESTION: But I mean anybody other than the Secretary, does he draw a line like that?

MR. URBANCZYK: Well, I think that it does accord with the common sense understanding of the term "income." Those people that receive a scholarship, for example, are better off than people who incur tuition expenses but don't receive a scholarship.

I think a scholarship, for example, is income in every meaningful sense of that term.

QUESTION: Well, suppose the Government said everybody that's below a certain income, we will give you all of your tuition, all of your books and everything else, provided you get there on your own. Would that be okay?

MR. URBANCZYK: Well, certainly that would be all right --

QUESTION: Because that's what you've done. That's what you've done.

MR. URBANCZYK: Well, I don't think so, unless --

QUESTION: You get there on your own. We are not

going to give you any credit for that.

MR. URBANCZYK: Well, when you say credit -- The point I am trying to make, I think, is that the Secretary has a uniform and general approach to deduct from income as opposed to inclusion in income. I think it is very important that we keep those two regulatory provisions analytically distinct from one another.

The Appellees in this case receive, all receive, a training allowance. I think the question then is, or initially is, regardless of how it is spent: Is that reasonably included within the income of these recipients?

Then we must confront the fact, or the reasonable assumption, since the record is not clear, that the Appellees spent some or all of their, of this allowance on transportation.

And then the question is whether the Secretary is required by the Act or the Constitution to permit an itemized deduction for such transportation costs. And I think the issue in this case really focuses on the second of those two questions.

As we mentioned in our reply brief, I think, there is now little or no dispute -- I may be wrong -- that the Secretary's inclusion of this allowance was reasonable. As I pointed out, the inclusion of the allowance, separate and apart from how it is spent, accords with a common understanding of income. It is income in every sense of the word. Those who receive the allowance are better off by its amount than

otherwise similarly situated individuals who do not receive the allowance.

Indeed, the District Court focused on the deduction provision, not the inclusion provision, and it was the State and Federal regulations that denied a -- or disallowed an itemized deduction that was expressly invalidated by the Court.

QUESTION: Do you have any idea, Mr. Urbanczyk, why the District Court, after having found on the statutory grounds that the regulation wasn't authorized, went on to decide the constitutional questions?

MR. URBANCZYK: Well, I don't have an exact idea. I assume that, as the parties in this case have stated, the issues upon which the statutory and the constitutional issues turn are very similar in this case. They are interwoven and the whole concept of reasonableness, which is the appropriate inquiry in the statutory issue, also bears upon the constitutional issue but I am not exactly sure why the Court proceeded onward.

I note in the Court's first opinion, the opinion that was vacated by this Court in the first instance, when the Federal regulation was amended, expressly did not rely upon constitutional grounds but only on the statutory ground.

Now, this lawsuit, as I said, I think, focuses on the allowance of -- the reasonableness of the Secretary's disallowance of an itemized deduction.

I think the reasonableness of that regulation rests upon two general propositions. One, the disallowance of ordinary expenses such as transportation costs is fully consistent with the Act and is an effective and efficient method of administering the food stamp program.

The second proposition, assuming that that general approach at transportation costs is reasonable, is that there is nothing in the Act or Constitution which requires a Secretary to treat Appellee's training costs any differently from the analogous expenditures in other households.

For the first of these propositions, I think, we can start with the Act itself. As I mentioned, Congress provided explicitly that it was income that was to determine the amount that a household is required to pay for food stamps. Congress provided explicitly that the amount a household be required to pay is a reasonable investment, but in no event more than 30% of household income. Now, that left 70% of household income that Congress anticipated would be used for the household's other non-food expenses.

Thus, it seems plainly consistent, as a general manner, for the Secretary to disallow itemized deductions for non-food expenses.

I note, by the way, that the food stamp program, in this regard, is different from other programs, such as AFDC, for example, which seems to be based on actually available

income.

It is not actually available income that is the key here; whereas, I pointed out that Congress anticipated that much of the income would not be actually available for food, but would be not considered as part of the -- but, none the less, would be considered in the Secretary's determination of income.

I think an income standard in addition to being consistent with the Act is also an effective and efficient way of administering the food stamp program. We have described this at length in our brief. And I use the terms "effective" and "efficient" purposefully here because those are the exact terms that Congress used in instructing the Secretary on how to administer the food stamp program.

An income standard, again, as we described in our brief, is certainly more effective and efficient than a standard which requires the Secretary to determine each month the amount of food or the amount of household income actually available for food.

That is a standard which requires the Secretary to allow a deduction for all expenses that reduced food purchasing power, and it seems to be the approach that is implicit in much of what the District Court said in this case.

Transportation costs are a prime candidate for disallowance under these general principles that I have talked

about. Transportation costs are incurred by many households in the pursuit of a wide variety of endeavors. At the same time, such costs could be reasonably expected to vary widely among households and to depend to a large extent on personal consumption choices.

For these reasons, it seems especially appropriate for the Secretary to simply let these expenses fall where they lie and to disallow an itemized deduction for such transportation costs.

Appellees, in their brief, do not appear to express serious disagreement with the foregoing. They do not suggest that non-food expenses, generally, or even commutation costs, should be deducted from household income.

Instead, the principal burden of Appellee's brief appears to be that their transportation costs should be treated differently. But, as I stated earlier, I think the second proposition, under which the reasonableness of the Secretary's regulation rests, is that there is nothing in the Act -- and certainly nothing in the Constitution -- which requires the Secretary to treat these transportation costs any differently.

Certainly, the concept of food purchasing power which so occupied the District Court, in this case, does not sustain that distinction.

Appellee Karen Hein, we know from the record, traveled from Muscatine to Davenport, Iowa, to attend a training

program. But certainly there is nothing in the concept of food purchasing power which requires that those expenses be treated any differently than a similarly situated individual who travels from Muscatine to Davenport because the only job available to them is there, or a person who travels to Muscatine to Davenport to attend a training program without the aid of an allowance.

The District Court, however, found that a subsidiary purpose in the Act was to encourage education, and, as an alternative ground of holding it, held that the regulation was invalid to that subsidiary purpose.

In this respect, the Court read the Act for far more than it was worth in this regard. The regulation -- or the provision that the Secretary relies upon -- that the Court relied upon, does nothing more than require as a criterion for eligibility that able-bodied individuals be either employed, be ready and willing to find employment, be a mother or care-taker of children or be a student.

Able-bodied individuals in any of those categories are equally eligible under the food stamp program and the Act appears to be neutral with respect to those expenses.

There, thus, appears to be nothing in that provision which supports a favoring of transportation, training transportation expenses, over, say, the transportation expenses of a worker.

QUESTION: Supppse the employer of an individual allowed $50 a month to any employee in the one city who attended extension courses at the university 25 miles away, and that was a standard allowance to employees. Would that be treated by the Internal Revenue Service as income for tax purposes?

MR. URBANCZYK: I hate to give a legal opinion on that matter since it is a while since I took tax, but I believe it would be, yes.

QUESTION: Well, is it not a reasonable analogy?

MR. URBANCZYK: I think it is. I think that the Secretary's definition of income does resemble the Tax Code's definition of income, although there are some exceptions, as I pointed out, for extraordinary and non-recurring items of income.

QUESTION: This would be quite different from an automobile allowance of 10 cents a mile or a flat amount for the purposes of carrying on the daily occupation of the employee.

MR. URBANCZYK: I believe that is correct. Yes, that would be a specialized kind of expense, although I should point out that part-time trainees under the Iowa program do receive an allowance that is designated as a travel allowance.

It is our position that, again, you must analyze the inclusion of that allowance and the question of whether there

should be a deduction from that allowance, as analytically separate questions.

These regulations, as we have shown, I think, or as we have tried to show, are consistent under the Act -- with the Act -- are reasonable and therefore should be sustained under this Food Stamp Act as well as the Due Process Clause.

We, therefore, respectfully submit that the judgment of the District Court should be reversed.

Mr. Chief Justice, I would like to reserve the remainder of my time, if I may.

MR. CHIEF JUSTICE BURGER: Very well.

Mrs. Williams.

ORAL ARGUMENT OF LORNA LAWHEAD WILLIAMS, ESQ.

ON BEHALF OF THE PETITIONERS (No. 75-1355)

MRS. WILLIAMS: Mr. Chief Justice, and may it please the Court:

I am Lorna Williams and I am one of the Assistant Attorneys General from the State of Iowa.

There is a little irony in this particular lawsuit for the reason that the very people that Iowa would like to help, under this modification of the regulation, prevents them from doing so because they are trying to protect the rights of the trainees in Iowa's individual programs.

It means that, first, there are not unlimited sources to draw upon, but Iowa is proud that it is ranked in giving ADC

benefits eighth or eleventh, depending on how you figure it, from the top on ADC.

Iowa has this individual training program which most States don't have. It has had the program since 1969. It can continue to provide this kind of thing for the people in Iowa or anyone who comes there and can qualify and it is not limited to a bread and butter course. It even offers a Bachelor or Arts degree if someone is in need and eligible to do that kind of work.

The particular regulation here in the retroactive aspect is particularly harsh on Iowa. For here, Iowa all these years has been passing on to the beneficiaries, the trainees, the amount of money it thought it would take in administrative time and cost. They have already passed the saving on and instead of making a day-by-day calculation of how much did each food stamp individual trainee in that course spend for commuting, it just gave them across-the-board allowance.

That's not unlike the way the WIN program treats people there also. The WIN people give a $30 a month allowance, unaccountable, no restrictions on it, plus $1 for lunch a day, $1 for travel a day whether it is used or not. So that, it's about the same. In both programs, there's approximately $60 -- it's $60 now in Iowa under our training program, too -- $60 that's available to these people. They can save it if they want to. They can move to the location of their school if they

want to. None of their rights or benefits will be taken away from them. They can, perhaps, use it even on household items if they need to. Maybe they moved to the college campus and the rent is going to be $10 a month more because they moved to Davenport. There is nothing in Title 19, or excuse me, Title 20 program, which is where Iowa gets part of its funds for its individual training program, that says it cannot be used on that, because it is beyond the expectation of the ordinary household item. Meals at school are included in that if they need them.

The WIN program. There is one checking that is required of our people who administer that program also. They must check at the school to see if someone was in attendance, but they do not make the people say, "Oh, I skipped lunch today and used the dollar for something else," or "I hitched a ride to school today and saved the dollar." They have a right to do that if they want to. They don't have to account for the money.

And it could very well discourage people from coming into the food stamp program if they had to account for how much money they are going to get, how they spend it. The same way it can hurt our trainees if they had to. We don't require it of them.

Yet now this law, this regulation as set out by the

Court, the modification to the regulation would so require. So that the people may then become discouraged and not want to come into either program.

The trainees at our Area 11 school right there in Ankeny came to our State House and complained because they felt as though they had been singled out by having to have them be checked at the school for their school attendance, days in attendance.

Iowa wants to help the people and not hinder them. And it is not uncommon now for people in one program to be recipients and beneficiaries in another welfare program, and one should not curtail the activities of the other.

The Federal Court, under the Eleventh Amendment, really shouldn't be spending Iowa's money that way when Iowa has determined it would rather give it to the beneficiary, and has given it to them.

Now to be called back and spend -- we figured 3,400 who have gone through our program since the complaint has been filed, to review month by month, every single food stamp calculation, recalculated month by month -- it would take one person, Your Honor, at eight hours a day, if you average it, once you identify them, it would take between 10 and 13 years -- one staff person -- if we would have to go back now to carry out the Court order, if it took an average of eight -- to identify the people, locate them, have them go from their

records or recollections, because the Food Stamp law says you have to verify everything.

So they have placed upon the State of Iowa an almost impossible burden, to say nothing of the amount of money that would have to be spent on staff time to do it at the expense of the very people in the class who are bringing the action against the State of Iowa.

I notice you asked a question a while ago as to why the Court went ahead and gave its opinion on the constitutional questions. It is kind of interesting. The Federal Government, once we got them into the Court, took over in the trial at the law court, but the briefs of the Appellee in both the first trial before it was remanded and in this trial had contained the constitutional question.

It could well be the Court wasn't quite sure about why it should have put it on a statutory basis. To me, I really think that Congress in no way intended to encourage the people in the food stamp program to go into education, nor did it intend to discourage them. It just said, "You just don't have to -- you just don't have to come to work, you don't have to -- you can get your food stamps without going to work or without applying or trying to get a job if you are a bona fide student."

I think that's all that they did. I think it was in deference to the -- Iowa's program which most States don't have,

Iowa's program and some of the other Federal programs. There were fourteen in Iowa within the last few years. I listed them. I couldn't believe there had been fourteen training programs in Iowa.

But anyhow, I think it was in deference to those training programs, all of which give us unrestricted allowance, just as an incentive for people that take the programs, that the Secretary wanted to include them, then gave across-the-board disallowance. It said, "We just take off 10%. Some of you don't spend one penny of it, some of you may spend all of it, but we'll just take 10% for everyone."

And the people, somehow, including Ms. Hein, were able to manage -- to buy her total food stamps. So maybe she had to borrow $12 a month for her schooling. Think of our children who have student loans who pay back the whole thing, tuition and all. Our --

QUESTION: I thought your opponent said that she was not able to buy all her food stamps after the change.

MRS. WILLIAMS: In his very brief, he attached her own affidavit where all through she's talking about she had to buy the food stamps by paying $12 more. She paid $56, $58 more.

QUESTION: Didn't she say she couldn't afford the $12 and therefore she got the lesser quota of food stamps?

MRS. WILLIAMS: No, Your Honor, this is what I pointed out in my reply brief. In her affidavit, she said that she was

buying the stamps but it cost her more money.

In their arguments to the Court and in their brief here, they talk about it just cost her more money, but where, except in one place in the brief cited the attorney's stipulation which said if she were called to testify -- and the attorney for Ms. Hein attached it to his brief and it appears at page 26. The affidavit of Ms. Hein appears in the Appellant's brief -- Appellee's brief at page -- the affidavit at page 1B.

And there she says --

QUESTION: What was that again? What page?

MRS. WILLIAMS: At page 1B, Your Honor.

It says that she's been getting $44 for necessary commuting. She says -- and she's been paying food stamps, $58.

So she was able to go ahead and pay her food stamps.

Now, in the stipulation, she -- signed by her attorney -- it says that if she had been called to testify, that she would testify that she had to buy less than her allotted food stamp coupons, but she really didn't. She was able, somehow, to make do with what she had in order to get the amount of food stamps to which she was entitled. She got a full allotment.

I see I am running into the time of my co-counsels and if they are --

MR. CHIEF JUSTICE BURGER: Not until the red light

goes on, I think.

MRS. WILLIAMS: But, Your Honor, I want to save a little time for rebuttal for both of us unless there are other questions.

MR. CHIEF JUSTICE BURGER: No more questions.

Mr. Bartels.

ORAL ARGUMENT OF ROBERT D. BARTELS, ESQ.

FOR THE RESPONDENTS

MR. BARTELS: Mr. Chief Justice, and may it please the Court:

As the Appellants have indicated, the District Court did decide this case on both statutory and constitutional grounds, but I think as, perhaps, both of us have agreed, that this Court need not reach the constitutional issues.

I would, therefore, like to focus my own remarks on the statutory issues in the case. I think it is fair to say that the statutory and constitutional issues are interwoven, although I think they stand independently of one another.

QUESTION: Of course, if the District Court hadn't reached the constitutional ground, the case wouldn't be here at all; would it?

MR. BARTELS: Well, Your Honor --

QUESTION: I think that would be the Court of Appeals.

MR. BARTELS: Your Honor, I think that would have

been an interesting issue.

This Court has in the past, I believe, taken appeals from three-judge courts on which the grounds were purely statutory and I believe there has been some dictum, I believe, in Higgins v. Levine, Your Honor, that that would be permissible, if it were decided by three judges. But I think that under 1253 there would have been question whether this was a case that had to be decided by three judges and there would have been --

QUESTION: Were some of those cases backed with a protective appeal that required them to go to the Court of Appeals?

MR. BARTELS: Your Honor, I am not aware of the Court's normal practice. I believe, though, that in Doe v. Connecticut, the Court did take a case such as this, but in any event, I think the fact that the constitutional issues were addressed removes that particular problem in this case.

I think, probably, the reason the District Court did that was more or less as a matter of judicial economy, that it would present to this Court all of the issues for disposition of the case, so that if the Court disagreed with it on these statutory issues there would be no need for a second remand in the case.

I think Mr. Urbanczyk has described adequately the operation of the food stamp program and the importance in the

program of the concept of income.

Appellee Hein's case, in effect, illustrates the importance of income because her training allowance was included in income, her food stamp benefits, correspondingly, were decreased.

Now, the District Court's order in this case enjoined the Appellants from including in income for food stamp purposes any allowances received for necessary commuting in connection with individual education and training plans.

This decision was proper on two separate statutory grounds. First, although the Secretary, clearly, does --

QUESTION: Mr. Bartels, before you get into the explanation of it, I'd like to get one thing sorted out in my own mind. Your

Your client received $220 from the AFDC, $28.75 rent allowance and $44 training allowance, $272.75 total.

MR. BARTELS: That's correct, Your Honor.

QUESTION: Supposing she had a next door neighbor who worked as a -- did household work of some kind and earned $272.75, and also took training at the university to become a nurse, just did everything else exactly the same except her income was from private sources rather than public sources.

Under the District Court's order, do you understand that there would be a differential between those two people and what food stamps they might receive?

MR. BARTELS: That's correct, Your Honor, and I think the reason for that, although there would appear to be some inequality there, the real inequality is in the Title 20 program, that the one neighbor was not getting the assistance.

Now, the difference here is that the neighbor, as I understand it, has $44 of earned income, as opposed to --

QUESTION: She just has a net of $272.75 that she has earned.

MR. BARTELS: Right, that all of her income is earned income.

Now, what that means is that she legitimately has the choice of how to spend that money. She may choose to spend it on educational commuting, but she doesn't --

QUESTION: She decided to go to school, just like your client has.

MR. BARTELS: Your Honor --

QUESTION: What different choices does she have, having made that decision?

MR. BARTELS: Well, Your Honor, if I may persist with that, the crucial factor here is the choice that she has not to take the education. If she were to choose, let's say, to spend that $44 on normal household expenses, she would still get the same amount of income. Her total income and food stamp allowance would not be effected.

However, if a person in Ms. Hein's situation decides

to divert the $44 away from educational expenses, she's going to lose it.

The Secretary, here, has correctly pointed out that --

QUESTION: Supposing she is able to hitchhike to work?

MR. BARTELS: Well, Your Honor, I suppose that then we are talking about whether the $44 allowance was really necessary, and then it wouldn't be covered by the District Court's order. Then we've got the administrators of the individual education and training plans who happen to be the same as the administrators of the food stamp program in Iowa in the rather peculiar position of sort of giving away this $44 to someone who doesn't need it. And, Your Honor, that would mean that they are expecting that money would be divertible to normal living costs that are covered by AFDC. And that would be in direct contravention of 42 USC 1397 C2(h), which says that the benefits under Title 20 may not be used for the same sorts of things that are covered by AFDC.

QUESTION: Isn't it true, or have I misapprehended the situation, Mr. Bartels, that this is a lump sum monthly payment for which no accounting of any kind need be made?

MR. BARTELS: That's not clear at all from the record, and I, frankly, have not been able to determine whether Ms. Hein was on a full-time or a part-time plan. But I think it is really not particularly important either way here, Your

Honor.

On the record of this case --

QUESTION: Well, the Secretary has said, for example, that if your client had moved to the campus where her only transportation was walking, she would still get the allowance. Do you disagree with that?

MR. BARTELS: Well, Your Honor, I am not sure in Ms. Hein's case. Clearly --

QUESTION: How about the general program? We are deciding more than one case here.

MR. BARTELS: With regard to the general program, Your Honor, we have to talk about two groups, part-time trainees and full-time trainees.

Part-time trainees receive a mileage allowance, so that if such a recipient moved from Muscateen to Davenport, the travel allowance would go down and the person would only receive that amount of money that really was for necessary commuting.

Now, the full-time --

QUESTION: This is for what, part-time students?

MR. BARTELS: This is for part-time --

QUESTION: Trainees, rather?

MR. BARTELS: It is called a participant in a part-time individual education and training program.

QUESTION: If she were full-time?

MR. BARTELS: Okay. Now a somewhat more complex problem. It seems to me that there is absolutely no problem with the District Court's rationale or order with regard to these part-time students.

With regard to the full-time students, it is more complex. What would happen here is that -- I think the order is not perfectly clear what would happen with a full-time student who, let's say, moved to Davenport.

If we assume that not all of the $44 or $60 a month was needed for educational travel, then it seems to me there are two possibilities under the order.

One is that the order doesn't apply at all because the allowance is not for necessary travel expenses.

QUESTION: Whose order? Is that the District Court order?

MR. BARTELS: That's right, Your Honor.

Now, I think that it could be interpreted --

QUESTION: But under the program, she would still get the money; would she not?

MR. BARTELS: Well, that's right, Your Honor, but the --

QUESTION: If she were a full-time trainee?

MR. BARTELS: That's right, Your Honor, but the District Court's order then, if it were interpreted in that way, would allow the reduction of food stamp assistance.

QUESTION: The District Court didn't make any such distinction, did it?

MR. BARTELS: No, Your Honor, it was never presented as a distinction in the District Court, and that's, I think, perhaps, why it doesn't cover it very clearly. I think that under the District Court's rationale and under a fair interpretation of the order, what ought to happen there is that there should be a determination of what portion of the $60 a month really was for necessary educational commuting expenses. And that portion would not be includible in income.

Now, that does require, if that system were adopted, that would require --

QUESTION: It would be an administrative nightmare, wouldn't it?

MR. BARTELS: No, Your Honor, I don't believe it would be that at all.

First of all, one could adopt exactly the same system that the Appellants have already adopted with regard to part-time students. Namely, use mileage as the measure.

Secondly, Your Honor, this is no more difficult a task than accounting for child care expenses which are deducted out, in fact, under the administrative regulations.

And, finally, Your Honor --

QUESTION: Is the child care on a so much per child or is it actual money spent?

MR. BARTELS: Your Honor, I believe it is the actual charge by the vendor, so to speak, of the child care.

The other thing that, frankly, I neglected to point out in the brief that may have some impact on this administrative convenience argument is that all participants in individual education and training programs in Iowa are AFDC recipients.

Now, with regard to such recipients, Federal regulations require that income from loans and grants not be included in AFDC income for purposes of determining eligibility and levels of benefits to the extent that those grants are not useable for current living costs.

And that is, essentially, the identical determination of necessity. So we are not talking about any additional burden here.

I might add, Your Honor, that in terms of the State of Iowa's purported interest here in this administrative convenience, the statute under which this program is authorized in Iowa, itself requires that in determining the need for public assistance that the expenses, and so on, related to the individual education and training programs be taken into account.

So, again, Iowa, itself, has indicated this kind of consideration ought to be taken into account. That's Iowa Code Section 249 C.11.

QUESTION: Mr. Bartels, if we come back a minute to

the $44 allowance. Was that tailor-made for this particular Appellee on the basis of her distance from the school?

MR. BARTELS: Your Honor, I don't believe it probably was, although I really can't tell. It was not tailor-made in the sense that there was clearly a maximum amount. It could not have been tailor-made above $44.

QUESTION: But if she had had a friend who lived half the distance who applied for the same program and the other facts were the same, would the $44 have been allowed the friend also?

MR. BARTELS: If the friend were on a full-time training program, yes, Your Honor, the friend would also have received $44. Now, again, I believe the record does not reflect -- it was never raised as a question, and the materials that I have outside the record are sort of conflicting on whether Ms. Hein was regarded as a full-time or a part-time student.

Again, insofar as some portion of the $44 might not be necessary for the transportation of the friend -- and I think under the District Court's order, as fairly interpreted, only that portion that was necessary for commuting would be required to be excludable from this amount of income.

I might add, Your Honor, that this is essentially the same kind of problem that this Court faced, although I don't recall any real articulation of the administrative convenience

problem, in Shea v. Vialpondo. Again, there had to be an individualized determination.

QUESTION: What was her actual travel expense? Is that in the record?

MR. BARTELS: No, Your Honor. The only indication of it is the -- that the allowance was for necessary commuting and that she did the commuting. And from that, I think, the District Court properly found that all of the money had been spent and --

QUESTION: Let me ask you this. If she got $40 a month and her actual travel expenses were $20, would the Secretary be right in not deducting twenty of those dollars?

MR. BARTELS: Your Honor, I think that under the District Court's order and rationale that it would be proper to not include only $20 worth of that. Now, that doesn't --

QUESTION: Well, what's the difference between that case and this case, because we don't know how much she spent? We don't even know that she spent any.

MR. BARTELS: No, Your Honor, I think the District Court found that it was all spent and that that was a proper inference from the materials that were given.

QUESTION: Where did it get that information from, where in the record is that?

MR. BARTELS: Your Honor, it's in the stipulation. Paragraph -- I guess the easiest way is Paragraph 6 of the

stipulation which is on page 24 of the Joint Appendix --

QUESTION: Twenty-four?

MR. BARTELS: -- indicates that the transportation allowance was for necessary commuting expenses in connection with the individual education and training plan, and then Paragraph 12 of the same stipulation on the same page.

QUESTION: I see one stipulation here that doesn't go that far.

QUESTION: Mr. Bartels, you said the problems here are no different than Shea v. Vialpondo, but we didn't have the difficulties with the District Court order in Shea v. Vialpondo that we have here, do we?

MR. BARTELS: Well, Your Honor, I think that what's happened here is that the District Court was being very careful to make a very narrow order that didn't bind in the USDA or the Secretary of Agriculture.

It would certainly be permissible here for the Secretary to respond to this holding by accounting for these expenses. In other words, doing exactly what was required in Shea v. Vialpondo, but the District Court's order does not require the Secretary to go quite that far and would permit some administratively more convenient system than that. In other words, assuming that the, for example, that the allowance was necessary on the basis of the administrative judgment made by individual education training plan administrators.

And, of course, there is a difference in this case because we are talking here about allowances and the Court's orders clearly restrict it to that, the extent of the allowance.

QUESTION: But what risk of contempt do the Governmental parties face under the kind of order the District Court entered here, if they misjudge on some of the things the District Court talked about?

MR. BARTELS: Your Honor, if it is a matter of misjudgment, I don't think that they really have any legitimate fear for contempt and there is still the opportunity for them to ask for clarification of the order and what it requires, or this Court could clarify the order and order that it be amended.

QUESTION: I'd like to return to Justice Marshall's question to you. The stipulation on page 24 states that she was allowed this amount of money and that she continued going to classes. It doesn't give any hint of whether she actually spent it.

If, as Justice Marshall suggested, she got a ride every day from a classmate or a teacher, she'd still get the money without having spent it. She'd still get the allowance, wouldn't she?

MR. BARTELS: Your Honor, she would still get the allowance, but there was no evidence on that basis and I think everybody --

QUESTION: Yes, but the stipulation doesn't quite say

what you suggested --

MR. BARTELS: Your Honor, I think there may be a small loophole there in the allowance. On the other hand, unless one is an awfully good hitch-hiker or has a friend, there are going to be those kinds of expenses associated with commuting that distance, particularly if she is, in fact, a full-time student.

QUESTION: How many days a week does she go to school?

MR. BARTELS: Your Honor, again --

QUESTION: That's not here?

MR. BARTELS: The record is not clear on that, no.

QUESTION: What is in the record that we can use?

MR. BARTELS: Your Honor, I think that the main problem at this point that the Court ought to address is the people in the future, and it is clear that however Karen Hein was treated and however her actual expenses broke down, that we do have left in this case two basic groups of people, part-time IETP students and full-time IETP students.

And with regard to the full-time ones, Your Honor, there is no question but what they would get the allowance, the full $60 a month, regardless of whether it was --

QUESTION: Was this a class action?

MR. BARTELS: Yes, Your Honor.

QUESTION: Was Mrs. Hein a full-time or a part-time?

MR. BARTELS: Your Honor, we don't know.

QUESTION: Well, how do we know whether she can represent both full-time or part-time students if we don't even know which one she was?

MR. BARTELS: Your Honor, I would think that she can certainly represent the group of people who received these individual education and training allowances.

QUESTION: But you said a moment ago that you thought part-time should be treated differently from full-time.

MR. BARTELS: Well, Your Honor, it is really just a matter of sort of the administration and not the theory of the thing.

QUESTION: Well, but ordinarily a District Court doesn't sit to decide matters of pure theory. They are supposed to decide cases and controversies between concrete litigants.

MR. BARTELS: Your Honor, I think that if one assumes that Karen Hein were a full-time student here, which seems to be the assumption that the Secretary wants to make and which I am perfectly willing to accept, then --

QUESTION: Can we accept it? You can't come here with a record that you pull out of the thin air. We are bound by the record in this case. And as I understand, the record in this case doesn't show whether she is part-time or full-time, doesn't show when she went to school, how many days she went to

school, how far she went.

MR. BARTELS: Your Honor, the stipulation was that it was an allowance for necessary commuting expenses. And the District Court regarded that as sufficient, together with the other facts -- I might add that there was an affidavit that was totally unopposed from Ms. Hein saying that this was reimbursement for necessary commuting expenses.

I think, certainly, the understanding of the work "reimbursement" would be that the money was actually expended; and I think that the District Court's findings of that are supported. Perhaps, the loop-hole that exists in the stipulation has to be taken care of by the additional record that's supplied by the affidavit which is on, begins on page 1B of the Appellee's brief.

QUESTION: This case has already been here once and was sent back to the same three judges who have dealt with it now.

MR. BARTELS: Your Honor, I think, in fact, that's a good point because when it went back down, Your Honor, the District Court had made its findings of fact which included the fact that this was for necessary commuting expenses and that, in fact, the money was spent. There was no effort at all by the Appellants to dispute that. There was never any dispute about those findings of fact in the District Court despite ample opportunity to do so. I think that's an --

QUESTION: Who initiated the litigation?

MR. BARTELS: Your Honor, the plaintiff did.

Nevertheless, Your Honor, I think when the District Court makes a finding that is supportable by the affidavits and materials in the record, that if you disagree with it the time to do it is at the District Court.

QUESTION: Mr. Bartels, what, precisely, is the statutory issue? The statute doesn't use the work "income"; does it?

MR. BARTELS: Yes, Your Honor, it does.

QUESTION: Well, except -- it authorizes the Secretary to prescribe the amounts of household income and other financial resources, including both liquid and non-liquid assets, to be used as criteria of eligibility.

It is no more than an authorizing statute; is that right? The statute doesn't define the word "income," is what I mean.

MR. BARTELS: No, it doesn't Your Honor, although there are, I think, clear indications in the entire structure of the Act and its purpose that this must because that's what determines the level of benefits.

QUESTION: Are you talking about the preamble or 7 USC 2011?

MR. BARTELS: 2011 shows the purpose and I think also quite important in terms of showing the connection that

Congress saw between income and food purchasing power, Section 2014(a) which says, "The program is to be limited to those households whose income and other resources are found to be a limiting factor on ability to purchase --"

QUESTION: It authorizes the Secretary, then, in rather broad authorizing language, to prescribe the amounts of household income and other financial resources, and so on; doesn't it?

MR. BARTELS: That's correct, Your Honor.

QUESTION: And the precise statutory question, then, is, what, as you see it?

MR. BARTELS: Whether the Secretary has exceeded his authority or has exercised, in terms of -- I believe it would be 2013(c), Your Honor, whether the Secretary has authorize -- has exercised his authority in a manner inconsistent with the Food Stamp Act.

QUESTION: Well, the Act purports to give him very broad authority to -- I won't read it again -- to prescribe the amounts of income; does it not?

MR. BARTELS: There is no question but what the Secretary has very broad authority and that this basic purchase price level that he sets for particular levels of income, and so on, is almost to a total extent within the Secretary's authority, but --

QUESTION: In other words, there cannot be any claim

here that the administrative definition of income is contrary to some statutory definition of income, because the latter doesn't exist in this statute; isn't that right?

MR.BARTELS: Your Honor, it is not directly contrary to any clear definition of income. It is contrary, though, I think, to the clear intent of the Act that income, because it determines level of benefits, mustn't be related to the household's food purchasing power.

QUESTION: Where do you find this conflict? What language of the statute do you find to be in conflict with the Secretary's regulation?

MR. BARTELS: Your Honor, the language of the statute indicates that this -- the purpose of this Act is to increase food purchasing power and that income is to be related to food purchasing power.

Again, I think, 2014(a) is the --

QUESTION: Nothing here about food purchasing power, is there? That's a phrase that --

MR. BARTELS: Your Honor, I believe that the --

QUESTION: -- has become current in this lawsuit because nothing in either the statute or the regulation has used that phrase.

MR. BARTELS: I believe "food purchasing power" is used in 2011, Your Honor, but you are right that for the most part it has become a means of speaking about --

QUESTION: In this litigation.

MR. BARTELS: -- the ability of a household to purchase food, to make food purchases.

QUESTION: 2011 just -- "The food stamp program is herein authorized which will permit low income households to purchase a nutritionally adequate diet through normal channels of trade." That's it, isn't it?

And your claim is that the Secretary who is -- under 2014 -- expressly authorized to prescribe these standards has somehow violated the statute? That is your -- that issue of the claim -- that's the issue?

MR. BARTELS: That is one of the issues, Your Honor. The other problem in this case is that both the food stamp --

QUESTION: The second one is the constitutional issue which you told us you weren't going to really talk about.

MR. BARTELS: No, Your Honor, I think the second statutory issue has to do with 2014(c) and Title 20. 2014(c) indicates that the Secretary's -- or the operation of the Food Stamp Act should not act as a disincentive to education.

Now, I think the District Court overstated it by saying that there was to be an encouragement, but --

QUESTION: Yes.

MR. BARTELS: -- but I think to not provide disincentives is clearly there, and that's very strongly supported by Title 20 which funded the individual education and training

program and the allowances involved. The purpose --

QUESTION: Title 20 is not part of the Food Stamp Act, right?

MR. BARTELS: No, Your Honor, it's not, but --

QUESTION: Well, the claim here, however, is that the Secretary's regulation violates the statute -- or is in conflict with the statute under whose authority he made the regulation.

MR. BARTELS: That's right, Your Honor. And then, I think, we have to look at 2014(c) --

QUESTION: It is not the claim that it violates some other statute that didn't authorize him to --

MR. BARTELS: Your Honor, the District Court found that it violated the Food Stamp Act because of the disincentive to education, but I think it also is fair to say that the Secretary of Agriculture cannot, because he is only the Secretary of Agriculture, violate Title 20 of the Social Security Act or defeat the purposes of Congress that are expressed in that particular title, particularly, when the Food Stamp Act itself indicates a Congressional intent that the Food Stamp Act should not operate to be a disincentive to these kind of educational training programs.

QUESTION: You say that's in 2014(c)?

MR. BARTELS: Your Honor, that's a reference. Students are exempted from the work registration requirement.

The practical effect of that is that you may be a student in one of these programs and still receive food stamps, otherwise you would not be able to do that unless you happen to be particularly unemployable. In other words, there is no chance that you would actually find a job through work registration.

QUESTION: Mr. Bartels, is there anything in the statute that would prevent Iowa from terminating the $44 allowance?

MR. BARTELS: Your Honor, in Title 20, I don't believe so. Certainly, Iowa is perfectly free not to participate in it at all.

QUESTION: So that, of course, wouldn't raise any question under the Food Stamp Act?

MR.BARTELS: No, Your Honor, that would raise the question if there is this training program and there is not sufficient allowances to allow, say, an AFDC recipient to participate, that might raise a problem under Title 20, but not under the Food Stamp Act.

QUESTION: Not under the Food Stamp Act.

MR. BARTELS: No, Your Honor, because then there is no impact on food purchasing power and there is no disincentive to education from the Food Stamp Act. It then becomes disincentive from Title 20 and certainly the State of Iowa is not --

QUESTION: What you are saying, if I understand you, is the more travel allowance she gets the greater the

disincentive because it reduces the food stamp -- you know, a percentage of that is taken away from the food stamp --

MR. BARTELS: No, Your Honor, to the extent that the allowance exceeds the needs, that may be taken into account in food stamp calculations and reduce the benefits, so that there would be no greater disincentive at the amounts that are above what's necessary for the educational travel. It is only up to the point at which it is necessary.

QUESTION: Was there a stipulation in this case that said the $40 was necessary for travel in this case?

MR. BARTELS: The stipulation it was for necessary commuting in connection with the individual education and training plan.

QUESTION: And the District Court accepted that? That is a fact in the case that the $40 was necessary for commuting expenses?

MR. BARTELS: Your Honor, that's the way the District Court has read the stipulations and affidavits in this case.

QUESTION: It wasn't that way, though. It wasn't a stipulation that it was necessary. The stipulation is that it was granted --

MR. BARTELS: For necessary --

QUESTION: -- no determination of necessity, except by the administrative decision to grant it which would presuppose

that someone had made the decision.

MR. BARTELS: Well, Your Honor, I think if we were talking about a full-time student, one couldn't even say that it was for necessary commuting. I think that the way in which the District Court interpreted that, in combination with the rest of the stipulation and the affidavits that were submitted in this case, was that the grant was for necessary commuting and that, in fact, it was all spent to defray those expenses.

QUESTION: In order to sustain your position and the District Court's position, we have to conclude that the $44, that it was either a violation of the statute or a violation of the Constitution for the Secretary to include the $44 as one of the financial resources of this recipient; isn't that right?

MR. BARTELS: That's correct, Your Honor, at least insofar as the allowance was for necessary commuting. What the Secretary's policy, in effect, does, Your Honor, is it presumes for every recipient that all of the training-related expense allowance is necess -- is unnecessary for travel and is freely available for food and living costs. That's just an irrational policy that doesn't give the recipient any opportunity to challenge or rebut that particular presumption.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Urbanczyk, do you have anything further? You have just two minutes left.

REBUTTAL ARGUMENT OF STEPHEN L. URBANCZYK, ESQ.

ON BEHALF OF THE PETITIONER

MR. URBANCZYK: Thank you, Mr. Chief Justice.

Just a few points.

There is some unclarity in the record in this case. I think that is perhaps a hazard of stipulating and having such a short stipulation.

I think this case has been litigated throughout, however, on the assumption that the Appellee class are recipients of both a full-time allowance and a part-time allowance, recipients of both kinds of allowances.

The Secretary's position with respect to his regulation is that the regulation is reasonable with respect to both kinds of allowances.

QUESTION: The class, as I understand it, includes recipients of both kinds.

MR. URBANCZYK: That has been the understanding, as I read it.

With regard to the stipulation about necessary expenses, Mr. Justice White, we have dealt with that in our reply brief by footnote on page 2.

I do believe there is some unclarity in the stipulation.

QUESTION: I just wanted to get your colleague's view of the stipulation because in his brief he said the

stipulation was that the -- it was stipulated in District Court that the monthly allowance received was for commuting that was necessary.

MR. URBANCZYK: I believe the District Court read that stipulation as --

QUESTION: Do you think the District Court construed the stipulation as establishing the fact that the expense was necessary for commuting?

MR. URBANCZYK: Well, the District Court -- as a matter of fact, it was necessary. The District Court found that Appellee Hein received this $44 and that all $44 of it was necessary for commuting.

QUESTION: Was necessary?

MR. URBANCZYK: I believe that it was on the basis of that stipulation. There are no other facts that I am aware of --

QUESTION: But there was the District Court finding --

QUESTION: You accept that, don't you?

MR.URBANCZYK: Yes, we do accept that. However, I want it pointed out that the Appellee class may not be the only individuals --

QUESTION: I understand that, but the District Court did find that in this case the $40 was necessary.

MR. URBANCZYK: I believe that is what they found on the basis of the rather ambiguous stipulation.

QUESTION: And you accept that. For purposes of your arguments, you accept that.

MR. URBANCZYK: Yes, of course. Yes, we do.

I see that my time is up.

I would like to point out, simply, that we have addressed the Title 20 argument in our reply brief, and we respectfully submit that the judgment of the Court be reversed.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, counsel.

The case is submitted.

(Whereupon, at 2:14 o'clock, p.m., the case in the above-entitled matter was submitted.)