



**Testimony of Jen Jenkins
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**Before the Committee on Public Works and Operations
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Office of Administrative Hearings

April 11, 2023

Legal Aid DC¹ appreciates the opportunity to share our views on the funding needs of the Office of Administrative Hearings ("OAH") and how to improve the OAH so that District residents have increased access to justice. A majority of the case types that OAH hears involve parties from Legal Aid's client community – District residents who live at or under 200% of the federal poverty level and face significant systemic barriers and often lack access to resources. Therefore, Legal Aid DC is very concerned about budget cuts to OAH as an administrative agency and the impact on unrepresented litigants.

¹ Legal Aid of the District of Columbia was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 91 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

As a result of reduced funding, OAH will be unable to decide timely contested cases involving more than 40 District of Columbia agencies, boards, and commissions.² Moreover, OAH expects a rise in cases across almost all of the agencies, including unemployment compensation, Medicaid and other public benefits administered by the DC Department of Human Services (“DHS”), public space, rent control, professional and business licenses, building, health, and fire code violations.³ Furthermore, OAH is responsible for collecting fines for Notice of Violations (NOVs) or Notices of Infractions (NOIs) concerning any issue within its jurisdiction other than those issued by the now-defunct Department of Consumer and Regulatory Affairs (DCRA), Buildings (DOB), Licensing and Consumer Protection (DLCP), or taxicabs or for-hire vehicles.⁴ OAH’s budget should reflect how critical it is as an administrative body to DC and its residents.

A Lack of Adequate Funding for OAH will Increase Barriers to Justice for *Pro se* DC Residents

Legal Aid DC’s concerns with OAH’s ability to meet the needs of numerous *pro se* litigants have increased with the release of the Mayor’s FY24 budget. OAH should receive the funding it needs to make improvements to ensure that litigants are easily able to:

- 1) File fair hearing requests, regardless of their language access needs;
- 2) Obtain information about any hearing requests that they have filed, and
- 3) Understand what the fair hearing process entails.

² See DC Office of Administrative Hearings, About, <https://oah.dc.gov/page/about>; see also Performance Oversight Prehearing Responses, Question 41©, <https://dccouncil.gov/wp-content/uploads/2023/02/OAH-Performance-Oversight-2023-Prehearing-Questions-and-Responses.pdf> (lists the 27 agencies within OAH’s purview).

³ District of Columbia, Office of Administrative Hearings, About, <https://oah.dc.gov/page/about> - :-:text=The District of Columbia Office,began formal operations in 2004.

⁴ *Id.*

While Legal Aid was pleased to see an increase in funding for Judicial Assistance and Legal Counsel, which would be the highest actual or approved amount in this area from FY21 to date, it is still not enough to address our concerns.⁵

Many DC residents, particularly in public benefits cases related to DHS benefits that are terminated, reduced, or not processed timely, are not aware of how they can file an administrative fair hearing request or struggle to do so. While the responsibility for education around the fair hearing processes and rights lies with DC agencies and not solely with OAH, OAH should make improvements to ensure that litigants understand their rights and the information relating to filing and navigating the fair hearing process.

OAH Must Increase Funding to Address a Foreseeable Increase in Appeals

OAH is facing an unprecedented number of administrative appeals.⁶ As of the end of FY 2023 Q1, there were 18,661 total open cases across all of the agencies within OAH's jurisdiction.⁷

Increased appeals are occurring across several agencies. Notably, DCRA/DOB is facing an unprecedented number of appeals, and DOB's website indicates that approximately \$106,718,278.97⁸ of fines have gone uncollected since FY19.⁹ While

⁵ Office of Administrative Hearings FY2024 Budget Chapter, (300A) Court Counsel, (030A) Judicial Assistance and Legal Counsel, https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fs_oah_chapter_2024m.pdf.

⁶ OAH Performance Oversight Prehearing Responses, Question 54, <https://dccouncil.gov/wp-content/uploads/2023/02/OAH-Performance-Oversight-2023-Prehearing-Questions-and-Responses.pdf>.

⁷ The purpose of OAH is to “provide the District of Columbia’s citizens and government agencies with a fair, efficient, and effective forum to manage and resolve administrative disputes.” This means OAH decides cases involving unemployment compensation, Medicaid and other public benefits administered by the DC Department of Human Services (“DHS”), public space, rent control, professional and business licenses, building, health, and fire code violations, among others. OAH also receives payments of fines imposed by various agencies.

⁸ As of April 9, 2023.

⁹ Department of Buildings, Public Dashboard, <https://dataviz1.dc.gov/t/OCTO/views/DOBPUBLICDashboard/EnforcementNOIPen>

DOB collects those fines, OAH hears the contested cases and resolves them. Essentially, OAH wastes considerable energy and resources if DOB/DCRA fines go uncollected following a decision.¹⁰ In order to avoid the costs of disregarding OAH's decisions, the Council must ensure that agencies within OAH's jurisdiction follow through with their obligations following a decision from OAH.

In addition to DOB/DCRA, there are other agencies with a large number of cases before OAH. The Department of Human Services (DHS) had 1,119 cases in FY21, 1,615 cases in FY22 and 491 cases in Quarter 1 of FY23.¹¹ The Department of Public Works had 4,193 cases in FY21, 7,858 cases in FY23 and 1,704 cases in Quarter 1 FY24. Without a considerable financial investment in OAH, the many agencies and residents that fall within OAH's purview will not receive the services and due process to which they are entitled under the law.¹²

OAH Resource Center Expansion Should Be Prioritized and Funded

Studies show that District residents with access to assistance and full representation tend to achieve better outcomes in legal proceedings than those without representation.¹³ Unfortunately, unrepresented litigants account for a large percentage of cases handled by OAH. According to the 2019 Access to Justice Report, of the over 2,000 unemployment insurance cases in FY 2017, 91% had no

[dingBalance?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3Aembed=yes&%3Atoolbar=no](https://oah.dc.gov/page/pay-fine) (To get there, you follow these steps: 1) click enforcement 2) towards the top of the page, click NOI with pending balance 3) towards the left top of the page, under select service year, click "all" and then unclick "null" 4) go to the right side of the page, where it says "balance," and you'll see the total amount owed by landlords in bold.); OAH Performance Oversight Prehearing Responses, Question 41(c), <https://dccouncil.gov/wp-content/uploads/2023/02/OAH-Performance-Oversight-2023-Prehearing-Questions-and-Responses.pdf>.

¹⁰ OAH, Pay a Fine, <https://oah.dc.gov/page/pay-fine>.

¹¹ OAH Performance Oversight Prehearing Responses, Question 41(c), <https://dccouncil.gov/wp-content/uploads/2023/02/OAH-Performance-Oversight-2023-Prehearing-Questions-and-Responses.pdf>.

¹² See D.C. Code §§ 2-1831.02; 2-1831.03.

¹³ D.C. Access to Justice Commission, Delivering Justice: Addressing Civil Legal Needs in the District of Columbia, 2, https://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf (2019).

party represented; in public benefits appeals, 86% of the over 1,100 cases had no party represented; and 88% of the over 200 student discipline cases had no party represented.¹⁴ Further, DC residents increasingly face service delays and lack of access from District agencies, for example, DHS frequently fails to resolve issues or timely process paperwork related to their public benefits. Applicants and recipients with public benefits issues are often unable to effectively resolve their issues in person at Service Centers or by calling the DHS Call Center, leaving the OAH fair hearing process as their only option for effective resolution in a DHS case.

A robust and well-resourced resource center would facilitate an accessible fair hearing process with timely outcomes and lessen the miscarriage of justice for *pro se* litigants at OAH. Because the majority of OAH litigants are *pro se*, the Council should assist OAH in addressing these significant gaps in representation by funding the expansion of the OAH Resource Center and improving service delivery to increase accessibility for all litigants. As the number of OAH cases increases beyond pre-pandemic levels, an expanded OAH resource center is needed because the current resources and FY24 budget are insufficient to meet the needs of DC residents.¹⁵

An expanded resource center would help ensure that District residents do not fall through the cracks or miss out on services because they do not know where or how to file and litigate a fair hearing request. To ensure better outcomes for *pro se* litigants at OAH, the following recommendations should be prioritized:

- Hire a full-time, permanent Resource Center Coordinator.
- Find a permanent home for the Resource Center and all its staff in a specific place on the OAH organizational chart.
- Bring on additional staff to expand the types of services provided.

While there are a variety of resource centers throughout the court system, each focused on particular areas of court practice, the Family Court Self-Help Center at DC Superior Court offers a sound example of a court-based resource center. The Family Court Self-Help Center consistently offers same-day assistance to

¹⁴ D.C. Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia*, 80, https://dcaccesstojustice.org/files/Delivering_Justice_2019.pdf (2019).

¹⁵ Office of Administrative Hearings, *Performance Oversight FY2022-2023 Pre-Hearing Questions* Question 54.

unrepresented litigants that require assistance navigating the court system. The Council should approve funding for OAH to expand the Resource Center in order to:

- Assist people with filling out fair hearing request forms or other filings for their cases;
- Provide information about the fair hearing process, including the timeframe involved, how to file any exhibits or evidence and serve the opposing party, and what to expect for an evidentiary hearing;
- Provide contact information for serving or contacting the opposing parties in cases when a DC agency is involved;
- Work with the clerk's office to obtain any status orders or other orders for a party's case;
- Provide language access and translation services to assist ESL/EFL litigants with filings and the fair hearing process; and
- Work with lawyers and law school legal clinics to provide referrals and facilitate same-day advice and representation.

Along with adequately funding the OAH resource center, the Council should consider coordinating with the Family Court Self-Help Center and OAH in order to implement a similarly robust program at OAH. Legal Aid described the features of the Family Self-Help Center at length in its FY24 Performance Oversight testimony and remains adamant that OAH should incorporate the best practices from the Family Self-Help Center into its own resource center.¹⁶

The OAH Legal Assistance Network (OLAN), a group of four legal services organizations, including our organization, Bread for the City, Legal Counsel for the Elderly, and the Washington Legal Clinic for the Homeless, attempts to fill the current gaps that pro se litigants and ESL/EFL litigants face. OLAN is designed to assist people who already have an active fair hearing request at OAH, but many individuals face barriers to filing a fair hearing request in the first place or getting information about their cases. Realistically, OLAN is not able to help everyone that needs assistance (due to income limits and overall capacity versus demand for services), which is why the Resource Center is needed to fill a crucial gap in services and providing other potential referrals.

¹⁶ Jen Jenkins, Policy Counsel, Systemic Advocacy & Law Reform, Legal Aid of the District of Columbia, February 6, 2023, <https://www.legalaiddc.org/practice-areas/policy-advocacy>.

The Council Must Increase Funds to Information Technology in Order to Ensure the Technological Needs of Litigants Are Met

Adequately funding information technology at OAH is crucial. Unfortunately, there is a decrease in funding from FY23 for information technology, although we were encouraged to see it is still an increase from previous FYs (since 2021).¹⁷ OAH and *pro se* litigants would benefit from increased funding in a variety of ways.

The newly implemented E-filing Portal needs maintenance and improvements. OAH launched the E-filing Portal Project in 2022, and it is currently limited to filing only certain cases related to unemployment benefits.¹⁸ Other cases must be filed by completing specific forms and submitting them in person, by email, mail, or fax. The E-filing Portal needs expansion to permit electronic filing in all case types and requires language access improvements. The E-filing Portal main page is accessible in Amharic and Spanish; however, the clickable guides need to be translated as well.¹⁹

When parties do send fair hearing requests to OAH, it can be difficult for them to access the agency by phone to confirm whether it was received or if they have a hearing scheduled. Legal Aid clients frequently report that they have missed a hearing, causing their cases to be dismissed, after OAH failed to mail out hearing notices to litigants,²⁰ and the email notices the agency send frequently go to spam.

Callers frequently contact OLAN just days before a scheduled hearing. OAH's website should include information about the Legal Assistance Hotline (OLAN) so people who request fair hearings know how to get assistance, and information about OLAN should be distributed with hearing notices. Having clear information on the website and distributed with hearing notices will facilitate litigants' access to

¹⁷ Office of Administrative Hearings FY2024 Budget Chapter, (1040) Information Technology
https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fs_oah_chapter_2024m.pdf.

¹⁸ See E-filing Portal Launch, <https://oah.dc.gov/release/e-filing-portal-launch>.

¹⁹ See OAH E-Filing Portal Project, <https://oah.dc.gov/page/oah-e-filing-portal-project>.

²⁰ In cases where parties have an attorney who filed a Notice of Appearance in compliance with the OAH Rules, OAH frequently fails to serve the attorney with hearing notices, creating issues with attorneys being able to attend hearings or comply with evidentiary-related deadlines.

legal advice and representation by allowing them to contact OLAN sooner in the fair hearing process.

In addition to these changes, OAH, through its clerks, should accept email filings from litigants without requiring them to complete specific forms that must be downloaded from the website. The OAH clerks are a vital point of contact for litigants who may not be able to use the E-filing Portal or fill out forms. If a person emails OAH, “I want to start a case against DHS for stopping my Food Stamps even though I recertified,” then the OAH clerk should contact the person and ask them to provide any additional information that is required, such as their name and contact information, and accept the case for filing, rather than instructing them to complete a specific form or use the e-filing system. Litigants with limited access to email or smartphones that do not allow for PDF-editing will be able to initiate cases much more easily this way. Unfortunately, the Clerk of the Court’s line item, (040A) Case Management and Judicial Support Services, received funding cuts, which indicates the needs of all litigants will likely not be met unless funding is restored.²¹ With these improvements and appropriate funding, *pro se* and low-income litigants are much more likely to have positive outcomes.

OAH Should Improve Services That Reflect the Needs of the District's Diverse Population

While we appreciate OAH’s efforts to provide translation of the various filing forms in Spanish and Amharic, OAH must ensure that any further updates to its processes, webpages, or policies comply with the requirements of the D.C. Language Access Act. Fair hearing request forms²² include a section regarding language access that asks whether the claimant requires interpretation services and, if so, for which language. However, even when claimants indicate they require interpretation services for a specific language, OAH frequently fails to process the language access request to ensure that an interpreter is at each hearing. Claimants face additional delays in resolution of their cases when a hearing is continued because OAH did not make proper arrangements for an interpreter and the claimant cannot participate without one. Claimants should not have to take the

²¹ Office of Administrative Hearings FY2024 Budget Chapter, (040A) Clerk of Court, Case Management and Judicial Support Services, https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fs_oah_chapter_2024m.pdf.

²² See, e.g., Request to Appeal a Department of Human Services (DHS) Action, https://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/PB-007 - Hearing Request Form - DHS_0.pdf.

additional step of confirming before the hearing that an interpreter will be available after they have indicated that they require language access.

OAH should also update the language on its website to inform people of current operations and clarify how they can ask for in-person or video hearings. People may not request in-person or video hearings because they do not realize that is an option or may not know that the default is WebEx telephone. In our review, we have noticed that the OAH website does not include clear information explaining that, for non-workers compensation hearings, the default for hearings is virtual but that in-person hearings can be requested (including under the "WebEx hearing" section or the "Office Hours and Court Closings" tab on the "about page").²³ The only language we found was on the OAH Modified Operating Schedule page that says: "Hearings are being conducted in-person and by telephone and video conference."²⁴ Also, language should be added to Section 6 (using the DHS Fair Hearing Request as an example) that says "Do you need a reasonable accommodation to help you participate or would you like to request an in-person or video hearing? Then checkboxes could be included for: "yes, reasonable accommodation"; "yes, in person hearing"; "yes, video hearing"; "no"; and the "if YES, please explain:" line remains.

Conclusion

To effectively serve all District residents, OAH needs enough staff and resources to meet the needs of its rising caseload, as well as a fully functioning resource center and E-filing Portal. In turn, the Council must do its part by providing funding and passing legislation to ensure that OAH effectively carries out its mandate. We look forward to working with members of the Committee on Departments of Public Works, staff, court personnel, and other advocates on these and related proposals to ensure OAH's success.

²³ D.C. Office of Administrative Hearings, <https://oah.dc.gov/>.

²⁴ D.C. Office of Administrative Hearings, OAH Modified Operating Schedule, <https://oah.dc.gov/page/oah-modified-operating-schedule>.