

**Testimony before the District of Columbia Council
Committee on the Judiciary
Hearing Regarding
The Office of Administrative Hearings ("OAH")
Bill 16-279 "Office of Administrative Hearings Term Amendment Act of 2005"**

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As the Council considers B 16-279 and the issue of hearing terms for Administrative Law Judges, the Legal Aid Society of the District of Columbia takes this opportunity to update the Council regarding OAH's efforts to implement simplified hearing procedures for the District's "safety net" cases.

In short, there has been good progress since we last testified before this committee in April, and we are optimistic about the future. In my testimony, I will:

- Recap the history of Legal Aid's involvement with the Office of Administrative Hearings (OAH);
- Update the Council on our current meetings with OAH senior staff; and
- Discuss goals for future OAH proceedings involving low-income public benefits recipients.

History of Legal Aid involvement with OAH

Because of Legal Aid's work in the area of public benefits, we have been following closely the development of OAH and the transition from agency-run fair hearings. Although Legal Aid and other legal services organizations supported the concept of an independent fair hearing authority, we wanted to ensure that low-income public benefits recipients would not face barriers in challenging agency decisions.

After several meetings with OAH officials and reviewing OAH's proposed rules, Legal Aid and other legal services providers became very concerned that these rules would be too burdensome for low-income families to navigate. These families face many barriers in obtaining and keeping public benefits – low literacy levels, lack of access to transportation to get to different agencies and a higher prevalence of disabilities. We felt that the OAH procedures would simply not work for these families. As a result, they would be denied access to the crucial safety net benefits of food, shelter and medical care.

¹ The Legal Aid Society 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 both the oldest and largest general civil legal services program in the District of Columbia. Over the last 70 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Currently, Legal Aid's work focuses on three areas: housing, family law, and public benefits.

After submitting three rounds of comments on proposed regulations and unsuccessful meeting attempts, Legal Aid brought our concerns to this committee. At OAH oversight hearings in March, my colleague Sarah Lichtman Spector testified about Legal Aid's concerns that OAH's procedures would make it extremely difficult for low-income families to request and participate in fair hearings. Ms. Spector was accompanied by one of Legal Aid's clients whose case illustrated many of the problems we had identified in the OAH procedures as they applied to *pro se* claimants.

In our testimony, we highlighted numerous areas of concern, including that (1) OAH's standard notices were exceedingly difficult to understand; (2) OAH had erected unnecessary barriers for residents trying to request or reschedule a hearing; (3) OAH had erected unnecessary barriers for residents trying to bring documents or witnesses to a hearing; and that (4) OAH was not complying with federal and local laws setting forth time lines for decisions in safety net cases.

Things changed very quickly after this hearing as reflected in the testimony of my colleague Eric Angel just one month later at this Committee's April OAH budget hearing. Mr. Angel testified that we were much more optimistic about OAH and its commitment to achieving fairness for low-income often *pro se* public benefits recipients. Due in no small measure to the oversight efforts of this Judiciary Committee, OAH has already made significant changes to its implementing regulations and procedures with respect to safety net cases and has evinced a willingness and desire to work together to do so.

Status of our current meetings with OAH staff

Now in July, I can report that OAH has lived up to its commitment to work with legal services providers and that we are very pleased with the progress we have made. For the past three months, a work group of OAH staff (including its new Deputy Chief Administrative Law Judge Mark Poindexter and its General Counsel, Lisa Coleman) have met regularly with representatives from Legal Aid, the Whitman-Walker Clinic and the Washington Legal Clinic for the Homeless to determine how to make the OAH processes easier for public benefits recipients and applicants to navigate.²

Although there are still disagreements over details, by and large, we have found OAH committed to ensuring that our clients (and those low-income individuals who do not make it to our offices) are able to access the OAH system.

We applaud OAH for taking the following steps after consulting with legal services providers:

- **Issuing emergency regulations that conform with federal and local law and some procedural simplification.** OAH has already issued emergency regulations that go some of the way to meeting our concerns. Among other things, the emergency regulations:

² We understand that meetings with other advocates have been occurring as well. Because we have not been a part of those meetings, we cannot discuss their progress.

- Provide for oral hearing requests in safety net cases;
- Clarify that strict rules of evidence do not apply in OAH cases;
- Explicitly state that non attorneys can help represent individuals before OAH in food stamp, Medicaid, and other safety net cases;
- Explicitly state that all Food Stamps determinations must be issued and served upon the parties within 60 days of receipt of the hearing request;
- Explicitly state that all Medicaid decisions must be issued and served upon the parties within 90 days of receipt of the hearing request; and
- Explicitly state that in all Temporary Assistance for Needy Families (“TANF”), Interim Disability Assistance, General Assistance for Children; Program on Work, Employment and Responsibility (“POWER”), and Emergency Family Shelter Services cases, all decision must be issued and served upon the parties within 60 days of receipt of the hearing request.

Perhaps just as importantly, in the preamble to the emergency regulations OAH commits to “developing a simplified procedural track for cases involving public assistance benefits.”

- **Revising Case Management Order.** Legal services organizations were quite concerned that the Case Management Order that OAH was using to inform public benefits recipients of their hearing dates and their rights and responsibilities related to the hearing was too complicated and incomplete. We believed that individuals’ receiving these notices would not understand them, know where to go or be able to adequately prepare for their hearings.

We are very pleased that through our meetings with OAH staff, we have almost finished a new case management order (which will now be called a hearing notice). This notice is written in plain English at a literacy level more appropriate to the clients we serve than the previous Case Management Order. There are still a few outstanding issues that need to be resolved before the notice can be finalized but we are confident that it will be in use very soon.

- **Developing Process to Accept Oral Hearing Requests.** Under the old OAH regulations, individuals had to do formalistic pleadings and motions in order to request a fair hearing. While a public benefit recipient could still make an oral request with the Department of Human Services, the mechanism for conveying that request to OAH was not clear. Furthermore, it was not clear what would happen to individuals who tried to make an oral request at OAH.

OAH has now set up a specific phone number where individuals can call and make oral hearing requests. These requests will be reduced to writing by an OAH clerk and sent to the proper agencies. Not only does this put OAH in compliance with federal Food Stamps and Medicaid regulations, it makes it easier for public benefits recipients to participate in the fair hearing process.

Goals for the Future

We are now currently working with OAH staff to develop rules that would create a simplified track for current, former and prospective public benefits recipients who wish to challenge agency decisions. There are two major issues that we continually face as we discuss this simplified track.

First, we still have some disagreement with OAH's concern that agencies and *pro se* claimants be treated the same under OAH procedures. We want OAH to treat everyone with respect and not to prejudge any outcomes. However, it is simply unrealistic and contrary to established law and practice to assume that the District government and a public benefits recipient are on the same footing. Low-income families in DC tend to have lower literacy levels, higher prevalence of disabilities and less access to transportation than individuals with more means. The average public benefits recipient is just not going to have similar access to information, means of communication and capabilities as a DC government agency. Imposing the same requirements on these parties risks seriously disadvantaging individuals who already find it difficult to advocate for themselves.

OAH has shown a desire to balance the goal of impartiality with the need for fairness, and we are continuing to look for common ground. I am happy to report that even with disagreements over specific proposals, our discussions have been respectful, positive and productive.

The second issue that OAH and, potentially, the Council will need to address is the extent to which OAH will provide assistance to *pro se* litigants (particularly low-income individuals in public benefits cases) so that these individuals can participate adequately in the fair hearing process. The simplified notices and new procedures will certainly help this population, and OAH has committed to helping *pro se* litigants with some tasks. However, we remain concerned that without significant assistance from OAH clerks numerous individuals will fall through the cracks.

Therefore, we recommend that OAH designate one clerk to help *pro se* litigants in public benefits cases as is done in federal courts. While OAH officials have been supportive of this concept, they have expressed concern about the availability of resources to fund an entire *pro se* position. Legal Aid takes no position on whether these funds are currently available for OAH. However, to the extent that OAH needs additional funds from the Council to create this position, we would urge the Council to ensure that these funds are available.

Conclusion

Thank you for holding this hearing and for allowing me to testify. The history of OAH's relationship with the legal services community reflects the importance of Council oversight. After Council hearings, OAH expressed a renewed willingness to meet with advocates and follow through on remedying their concerns. We commend the Council, and particularly Chairman Mendelson, for the excellent job on oversight and OAH for its responsiveness. We hope that the Council will continue to participate in this collaboration with OAH and the legal

services community as we continue to work to protect the rights of the District's most vulnerable individuals and families. If you have any questions, please feel free to contact me at 202-661-5962 or jmezey@legalaiddc.org.