

**Testimony of Nina Wu  
Supervising Attorney, Public Benefits Law Unit  
Legal Aid Society of the District of Columbia**

**Before the Committee on Government Operations  
Council of the District of Columbia**

**Public Oversight Hearing Regarding the Office of Administrative Hearings**

**February 28, 2019**

The Legal Aid Society of the District of Columbia<sup>1</sup> submits the following testimony regarding the performance of the Office of Administrative Hearings (OAH). As part of our work, Legal Aid routinely assists clients who appeal erroneous denials or terminations from social safety net programs such as Medicaid, SNAP, TANF, and unemployment insurance, as well as low-income tenants facing illegal rent increases. Legal Aid’s Barbara McDowell Appellate Advocacy Project also reviews relevant OAH decisions appealed to the Court of Appeals, providing advice and representation in certain cases affecting District residents living in poverty. For Legal Aid clients, OAH’s processing and handling of their cases can have serious consequences for their health, well-being, and ability to successfully navigate daily life. Having practiced in front of OAH for many years, our attorneys have an important perspective on how well the agency meets the needs of some of the District’s most vulnerable residents.

We commend OAH for steps it has taken over the last year, including improving case processing by preparing records for appeals more quickly and increasing access to justice by uploading sample Administrative Law Judge (ALJ) decisions from certain public benefits cases. The agency has also re-convened an Advisory Committee that includes non-governmental members – an important means for assessing and improving the agency’s performance. However, we continue to have concerns about other case processing and access to justice issues including:

- 1) Delays in the scheduling of initial hearings;
- 2) Timeliness of some ALJ decisions;
- 3) Effectiveness of the OAH Resource Center as a resource for unrepresented hearing participants; and
- 4) Appropriate use of technology to make OAH’s processes more accessible to litigants.

---

<sup>1</sup> The Legal Aid Society 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.” Over the last 87 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. More information about Legal Aid can be obtained from our website, [www.LegalAidDC.org](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

We urge the Committee to use today's hearing to ask questions about each of these issues, and we are willing to follow up with the Committee in whatever ways that would be most helpful.

### **Case Processing**

Legal Aid is concerned about the scheduling of hearings and the issuance of Final Orders in cases involving the vital public benefits administered by the Departments of Human Services and Health Care Finance. In these cases, our clients are seeking to remedy a deprivation of critical safety net benefits, such as food stamps, Medicaid, TANF, or home health aide services. Without such benefits, they are often unable to provide meals for themselves or their children, pay their rent or utility bills, obtain needed medical care or medications, or perform critical activities of daily living.

#### Scheduling of Initial Hearings

Despite the urgency of public benefits cases, we have seen a backlog in the scheduling of their initial hearings. For example,

- We have a food stamps case where a mother of four children, including an infant, first had her food stamps cut off without notice, then started receiving fluctuating and unexplained food stamps amounts each month. We filed a hearing request on January 9, 2019, but the request was not processed and assigned a case number until February 22, 2019 and a hearing date has yet to be set.
- In a Medicaid termination case where our client's child is suffering from cancer, a hearing request was filed on December 21, 2018, but OAH did not even assign this matter a case number and hearing date until February 6, 2019, at which time a hearing date was set for February 21, 2019.
- In one of our home health aide cases, our client filed a hearing request in August 2018, but did not have an initial hearing scheduled until February 2019, i.e. six months later.

Also, anecdotally, we have heard from OAH staff that home health aide cases with hearing requests filed in December 2018 have yet to be processed or even assigned a case number as of February 2019.

We urge the Committee to ask the agency about its process for processing public benefits hearing requests, to push the agency to identify ways it can eliminate delays, and to ensure that the agency implements these reforms.

#### Timeliness of Administrative Law Judge Decisions

As the Committee knows, in a 2016 report the District of Columbia Auditor raised timeliness of ALJ decisions as an area in need of improvement, noting that, *inter alia*, a significant percentage

of counsel (23%) and agencies (17%) surveyed by the Council of Court Excellence reported ALJs taking “more than a year to [issue] decisions in at least some of their cases.”<sup>2</sup>

Legal Aid views this as a continuing problem. For example, in one of our public benefits cases, our client waited for over a year for a decision and only was able to get relief when the agency involved reevaluated its initial decision. It appears that at least some of this delay was due to the assigned ALJ being out on extended medical leave. However, we are very concerned that, in the ALJ’s absence, OAH did not take any steps to re-assign coverage of the ALJ’s cases and/or notify litigants of anticipated delays. In another case, handled by a *pro bono* attorney, the client has waited for over two years to receive a decision on a Medicaid case involving dental coverage.

We urge the Committee to ask the agency about its process for managing dockets of individual ALJs and other steps they are taking to ensure timely decisions. Further, we hope that both the agency and the Committee will explore ways to ensure greater consistency in the timeliness of decisions in the coming year.

### **Access to Justice**

As the 2016 Auditor Report also noted, it is likely that the vast majority of individuals who appear at OAH for hearings do so without legal representation.<sup>3</sup> Therefore, Legal Aid urges that both OAH and the Committee examine ways in which OAH can make the hearing office—and public benefits cases in particular—more user-friendly, accessible, and understandable to the public. We believe that improving the OAH Resource Center and technological accessibility of OAH records would help to achieve this goal.

#### OAH Resource Center

In 2012, and for several years after that, the OAH Resource Center was staffed by an attorney adviser who helped *pro se* individuals understand and prepare filings. The adviser also worked with Legal Aid and other legal services providers to ensure that *pro se* materials were updated and to connect unrepresented litigants with meritorious or particularly high stakes cases to representation or advice. We believe that this model was successful in helping *pro se* individuals. There currently is no one in this position, and we rarely hear about applicants or clients using the Center or finding it to be helpful in understanding their cases.

Therefore, we recommend that the Committee ask OAH about:

- Its efforts over the last year to make the Resource Center more user-friendly;

---

<sup>2</sup> Office of the District of Columbia Auditor, *Administrative Justice in the District of Columbia: Recommendations to Improve DC’s Office of Administrative Hearings* (September 7, 2016), p. 45. Available at: <http://www.dcauditor.org/sites/default/files/OAH%20Final%20Report.pdf>.

<sup>3</sup> *Id.* at 50.

- What steps it plans on to improve both the reach and effectiveness of the Resource Center; and
- What resources it needs to re-establish the attorney adviser role in the Resource Center.

Re-establishment of the attorney advisor, as well as other steps to improve the Resource Center's effectiveness, would go a long way to ensuring that unrepresented OAH hearing participants are able to navigate the agency's processes, and that participants are connected to legal assistance when needed.

### Technological Accessibility

A 2013 analysis of OAH by the National Center for State Courts (cited in the 2016 DC Auditor Report) found that OAH was not effectively using technology to provide information to litigants about their cases before the agency.<sup>4</sup> As of February 2019, little has changed in the way that OAH uses technology.

Although public benefits cases are confidential by statute, litigants and counsel should be able to log into the OAH website to figure out the date, time, and nature of their next hearing; check on the status of their case or any filings; and view all documents submitted in their case. Applicants for Legal Aid's services are understandably confused about the procedural posture of their OAH case or are missing key documents. Technological accessibility would dramatically improve their and other *pro se* litigants' ability to help themselves in their cases, as well as help legal services organizations serve *pro se* litigants more efficiently.

We urge the Committee to ask OAH what steps it is taking to improve technological accessibility of information and documents, and to closely monitor the agency's progress in this area over the next year.

### **Conclusion**

We appreciate the opportunity to testify today regarding OAH's performance. We would be happy to answer any questions and to work with the Committee and the agency following today's hearing to identify further concrete steps OAH can take to address these pressing challenges.

---

<sup>4</sup> *Id.* at 47.