

**Testimony of Curt D. Campbell Jr.  
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**Before the Committee on Government Operations  
Council of the District of Columbia**

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

**January 22, 2020**

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). Every year Legal Aid represents hundreds of clients at OAH, mostly in disputes involving critical safety net benefits such as TANF cash assistance, SNAP food assistance, health insurance, home nursing care, and employment benefits. Legal Aid’s Barbara McDowell Appellate Advocacy Project also reviews relevant OAH decisions appealed to the D.C. Court of Appeals, providing advice and representation in certain cases affecting District residents living in poverty. Legal Aid values the role OAH plays in striving to give District residents a “fair, efficient, and effective,” forum to resolve disputes involving various District agencies.

We commend OAH for steps it has taken over the last year to improve access to justice, and we appreciate OAH’s support of Legal Aid’s new fellow, funded through the Skadden Foundation, who will be providing onsite assistance to unrepresented litigants. 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 Administrative Law Judge (ALJ) decisions; and
- 3) The effectiveness of the OAH Resource Center as a resource for unrepresented hearing participants.

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<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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

With respect to delays in **case processing**, we urge this committee to ask OAH about a contingency plan for dealing with the recurring flood of appeals whenever a major change in policy puts residents at risk of losing access to vital safety net benefits. We also implore this committee to ask the agency about its process for managing dockets of individual ALJs and other steps it is taking to ensure **timely decisions**. Finally, we ask that this committee ensures that OAH has all the resources it needs to **better serve unrepresented litigants**. We look forward to working with this Committee and OAH on these issues in whatever ways that would be most helpful.

### **Delays in 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 seek to remedy a deprivation of critical safety net benefits, such as food stamps, Medicaid, TANF, or Medicaid-funded 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,

- In March 2019, Legal Aid filed a fair hearing request for a single mother of three who was fleeing a domestic violence situation. The client challenged the Department of Human Services' improper reduction of her family's TANF benefit. OAH failed to process the client's request for nearly two months. After Legal Aid filed an emergency motion, the client was finally able to appear before an Administrative Law Judge **three months** after her initial request.
- In June 2019, Legal Aid filed a fair hearing request for an 80 year old client with disabilities because his SNAP benefits were improperly terminated by DHS when the agency sent him recertification notices with conflicting deadlines. His initial hearing was not scheduled until October 2019, **five months** after the filing of his initial request.
- In July 2019 a single mother of two's SNAP benefits were improperly terminated by DHS when, the latter admitted, they failed to send her proper notice of her recertification deadline. Her initial hearing was not scheduled until January 21, 2020, **six months** after her hearing request was filed.
- One of our clients filed a hearing request challenging her reduction in Medicaid-funded home health aide hours in May 2019, but **seven months** later, she does not have an initial hearing date scheduled.

Legal Aid recognizes that OAH strives to process cases in a timely fashion. In OAH's oversight responses for FY 18, the agency noted that it aims to process DHS and DHCF appeals "within 48 hours of receipt and scheduled for an initial status conference within two weeks."<sup>2</sup> However, as OAH previewed in its oversight responses in FY18, an influx of DHCF appeals for home health aide cases delayed normal processing of these matters due to personnel limitations. Unfortunately Legal Aid's experience in FY19 and FY20 to date has been that these delays have spilled over to other types of public benefits cases, as highlighted above.

Legal Aid understands that OAH is in the unique position of needing to respond to the ebb and flow of appeals from its sister agencies. The influx of DHCF appeals was due to a confluence of changing DHCF policies for assessing medical necessity for home health aide cases and the use of a new contractor to undertake those assessments. However, it is not the first time in recent history that a large influx of cases threatened to overwhelm OAH's ability to timely serve District residents. In FY16, DHS filed a large batch of "Intentional Program Violation" cases related to the SNAP program. Most of these cases were dismissed by the Department of Human Services before any hearing was conducted. However, if, instead, these matters required a full evidentiary hearing, it is likely that they would have caused a similar backlog of cases awaiting initial hearings.

Based on this history, it seems likely that OAH will frequently experience large influxes of cases whenever a major change in policy puts residents at risk of losing access to safety net benefits. We urge this committee to ask OAH about a contingency plan for dealing with this situation and to give OAH the resources it needs to hire more personnel to deal with such eventualities.

Additionally, while we commend OAH for making an ALJ available to handle motions for "expedited hearings," we fear that many unrepresented litigants may not know that they have the ability to request an expedited hearing. Moreover, even when an emergency motion is granted, applicants may still have to wait a significant amount of time for a hearing due to the fact that the Department of Human Services (in particular) tends to be unresponsive to requests to resolve matters prior to the scheduled hearing date. On December 12, 2019 Legal Aid filed a request for hearing for a family of three, and a motion for an expedited hearing, based on DHS's improper termination of their TANF cash assistance. Although the motion for expedited hearing was granted the next day, the initial hearing did not take place for another month. Due to DHS's unresponsiveness to this matter outside of the fair hearing context, it was only at that initial hearing that our client was able to begin resolving her issue.

Finally, we understand that OAH is hamstrung in its ability to hold SNAP, Medicaid, and TANF hearings by DHS's insistence at only making two representatives available for a total of 20 hours per week. We urge this committee to work with the Committee on Human Services to ensure that DHS helps ameliorate this backlog by making more staff available for DHS related hearings.

#### Timeliness of Administrative Law Judge Decisions

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<sup>2</sup> OAH FY18-FY19 Performance Oversight Responses, Q58 - Q60.

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 ALJ's taking "more than a year to [issue] decisions in at least some of their cases."<sup>3</sup>

Legal Aid views this as a continuing problem. For example, in one of our home health aide cases, our elderly client has been waiting over three months for a decision on whether he is eligible for additional nursing hours. Because of the client's extreme health limitations, he has to rely more heavily on family members for assistance. This has put a strain on the client's daughter and granddaughter who have had to cut back on work hours to try to cover the gap between the assistance he receives and the assistance he needs.

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 (and accountability for) the timeliness of decisions in the coming year.

### **Access to Justice**

Even in a forum as "*pro se* friendly" as OAH, formal adjudicative proceedings can be extremely intimidating for litigants who are unfamiliar with the process. This is especially true for District residents dealing with the stress of potentially losing the government assistance they need to ensure that they have enough food for the month, are able to keep their lights and heat on, or able to obtain necessary medical treatment. While OAH has historically provided referrals and assistance to *pro se* litigants, the agency is currently doing very little due to limited resources.

Starting this fall, Legal Aid will have a staff member on site at OAH as part of a fellowship sponsored by the Skadden Fellowship Foundation. The fellow will be available to provide advice to *pro se* public benefits litigants on the day of their hearing and consider their matters for extended representation. We appreciate OAH's support of this effort and are looking forward to working with them in implementing it.

Legal Aid also understands, through our participation in the Advisory Committee to the District of Columbia Office of Administrative Hearings, that the agency is exploring ways to improve access to justice through technology. As we highlighted in our testimony before this Committee last year, OAH litigants cannot get information about the date, time, and status of their hearings through OAH's website.<sup>4</sup> In this area, OAH lags behind the DC Superior Court's technological

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<sup>3</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>4</sup> See *Legal Aid Testimony Regarding Agency Performance Oversight for the Office of Administrative Hearings* (February 28, 2019), <https://www.legalaiddc.org/wp-content/uploads/2019/02/Legal-Aid-FY18-19-OAH-Oversight-Testimony-FINAL.pdf>.

advancements that allow litigants to look up all of this information on a computer or smartphone and, in many cases, view documents submitted in their case.<sup>5</sup> Technological accessibility would dramatically improve unrepresented litigants' ability to help themselves in their cases, as well as help legal services organizations serve litigants more efficiently. We commend OAH for undertaking these improvements and we look forward to seeing the agency's progress in this area over the next year.

While these planned improvements are great steps in a positive direction, we will still all need to work together to ensure that *pro se* litigants have the help they need. To that end, we urge this committee to inquire about any additional steps OAH has taken or plans to take in the near future to improve the reach and/or effectiveness of its Resource Center and whether OAH will need additional funding to implement these improvements.

### **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.

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<sup>5</sup> See D.C. Superior Court's eAccess System, <https://eaccess.dccourts.gov/eaccess/home.page.4>