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**Before the Committee on Human Services
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Department of Human Services

January 29, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the Department of Human Services (DHS), and in particular, the DC Healthcare Alliance, TANF, and SNAP programs. While DHS and its sister agencies deserve credit for taking key steps over the last year to protect District residents from ill-advised federal policies aimed at weakening our social safety net, there remains a disconnect between these efforts and the agency’s continuing failure at the local level to address persistent service delivery issues that prevent District residents from accessing or maintaining critical public benefits. Our testimony today discusses the barriers that individuals and families continue to face as they try to address problems with their public benefits, include erroneous cut-offs, notices, reductions, and delays. We also follow up on a specific issue we raised at last year’s oversight hearing: the need for both DHS and the Office of the Attorney General’s Child Support Services Division to do a better job of communicating with parents receiving TANF about their obligations.

We would like to thank Chairwoman Nadeau for her ongoing attention to DHS service delivery. In particular, Legal Aid is grateful to Chairwoman Nadeau for meeting with Legal Aid’s Community Advisory Council last September to discuss the experiences that they, their families, neighbors, and community members experience at Economic Security Administration (ESA) Service Centers. We appreciate the Committee’s willingness to listen to longstanding community concerns regarding DHS. Yet listening is not enough. We urge the Committee to not just acknowledge the problems experienced by District residents, but to hold roundtables, including roundtables in the community, over the next year to generate meaningful dialogue about

¹ 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, and our blog, www.MakingJusticeReal.org.

solutions, with buy-in from the agency, the Council, advocates, and the District residents who apply for and receive benefits administered by DHS.

Positive Steps DHS Has Taken to Defend District Residents in FY19 and FY20

We commend the District government (including DHS and sister agencies) for joining other jurisdictions in taking legal action to fight the implementation of harmful and discriminatory rule changes by the Trump Administration designed to impede access to benefits. In August, Attorney General Racine joined four other states to file a lawsuit and motion for preliminary injunction to block the Department of Homeland Security’s Public Charge rule, which discourages eligible immigrants from accessing critical public benefits and creates additional barriers for lawful admission to the United States. An analysis by the D.C. Fiscal Policy Institute found that implementation of this rule would have caused the percentage of District residents who are not citizens to be labeled a “public charge” to increase from 1 to 32%.²

Additionally, just two weeks ago, on January 16, 2020, Attorney General Racine joined the New York State Attorney General’s office in leading a coalition of 14 states and New York City to file a lawsuit designed to block the implementation of United States Department of Agriculture (USDA) rule that could take effect on April 1, 2020. The new rule would make it more difficult for states to obtain waivers of a federal requirement that prevents “able-bodied adults without dependents” from receiving SNAP for more than 3 months in a three year period unless the recipient meets certain work requirements. If the rule were to take effect, approximately 13,000 individuals in the District would be at risk of losing their SNAP benefits.³

Importantly, as soon as the federal government finalized this rule, DHS immediately reached out to community partners to discuss the implications of the rule change and those who would be affected. Legal Aid thanks DHS for communicating with partners about the potential impact of the rule change, supporting the District in opposing the rule change, and working to ensure smooth service delivery if the rule does take effect.

DHS Continues to Experience Service Delivery Problems Related to the D.C. Access System, the ESA Service Centers, the DHS Call Center, and Inadequate Staffing of the Department of Program Operations E-mail System and Administrative Hearings

² See Amy Lieber, DC Residents Should Speak Up to Oppose Trump’s Proposed “Public Charge” Rule Targeting Immigrants and Their Families, October 23, 2018, available online <https://www.dcfpi.org/all/dc-residents-should-speak-up-to-oppose-trumps-proposed-public-charge-rule-targeting-immigrants-and-their-families/>.

³ See Attorney General Karl A. Racine, Prepared Remarks: Multistate SNAP ABAWD Lawsuit, January 16, 2020, available online <https://oag.dc.gov/release/prepared-remarks-multistate-snap-abawd-lawsuit>.

In spite of the efforts detailed above, however, long-standing service delivery problems continue to prevent individuals and families from accessing and maintaining key safety net services when they need them. The agency continues to make errors in processing District residents' cases and documents that can result in erroneous delays and cut-offs of their benefits. Capacity limitations at the ESA service centers and DHS's call center mean that when errors occur, individuals and families face extremely limited options for reaching someone at DHS to address them. And DHS has become increasingly unresponsive to public benefits consumers' attorneys as well, meaning that matters that could be resolved informally ultimately have to go to the Office of Administrative Hearings (OAH) for resolution. The human cost of these problems is that vulnerable District residents lose crucial safety net benefits for unacceptable periods of time, and even when problems are ultimately resolved, recipients must deal with the fear and anxiety that results of the uncertainty.

A New Round of Problems With DCAS

In September 2019, DHS announced a system platform upgrade of its D.C. Access System (DCAS) computer system, a system that the agency originally transitioned to in October 2016. In light of the widespread technological problems that followed the DCAS's 2016 launch,⁴ when announcing this more recent upgrade, DHS urged advocates to notify the agency of unusual problems regarding consumers' cases via the Division of Program Operations (DPO) email, which was designed to allow advocates to raise issues with DHS. Consumers were encouraged to report problems in person to the Service Centers or through the DHS Call Center.

Since the DCAS upgrade in September 2019, the agency has experienced a significant increase in agency errors, including providing erroneous notices and failing to process applications and recertifications in a timely manner. And these errors were not insignificant. The most egregious example was the October and November notice that many TANF recipients received telling them that their TANF would terminate at the end of the month because, "you were found to have committed public assistance fraud and this is your third offense, so your needs will be permanently removed from your household's TANF benefit." Although these consumers had never been found to have committed TANF fraud before, they did not receive TANF in the following month.

The provision of late benefits does not come without a human impact. For example, Legal Aid represents one couple with two children who did not receive TANF on the first of December after receiving a fraud termination notice in November. After the couple filed a fair hearing request and Legal Aid filed an emergency motion, DHS loaded the family's TANF benefits on December 12 after an ALJ ordered the agency to act. While Legal Aid's intervention was able to limit the harm this family suffered, the eleven-day delay still meant that the family was unable to pay rent on time. This placed the family in fear that their landlord would file a non-payment case for eviction.

⁴ See *Legal Aid Testimony Regarding Agency Performance Oversight for the Department of Human Services* (March 15, 2017), <https://www.legalaiddc.org/wp-content/uploads/2017/03/CRumer.3.15.17.pdf>.

When Legal Aid contacted DHS about cases like this one through the DPO email, DHS replied that an incorrect notice was generated by a worker who attempted to correct an error in the case in DCAS. However, it took multiple attempts by Legal Aid staff to get this information and an updated notice for the clients. Eventually, in the cases that Legal Aid identified, DHS provided underpayments to these families for the month in which they were wrongfully terminated due to the agency error. However, to our knowledge, the agency has still not sent corrective notices for all of the TANF households to clarify that the fraud notice was sent in error and that the head of the household receiving TANF was not found to have committed fraud.

ESA Service Centers and the DHS Call Center Are Inadequate Options for Addressing Problems With Public Benefits

And while Legal Aid experiences challenges with resolving cases, the problems for customers without advocates are much worse. Simply put, when customers encounter problems with their case, they do not have an effective method of communicating with the agency to resolve problems. Although DHS suggests visiting a Service Center or utilizing the Call Center, both options take multiple hours and do not guarantee success. The best method to resolve problems or answer questions about a case is for a consumer to visit a Service Center in person to discuss their case with a caseworker but this option has no guarantee that the customer will be able to meet with a caseworker, as Service Centers often reach capacity by 1:00 p.m., if not earlier.⁵ If customers provide documents or verifications by fax they still have to follow up by phone or in person to confirm that DHS received and processed the paperwork correctly. Attempting to use the Call Center is often unsuccessful as customers regularly report waiting over an hour to speak with a representative and the Call Center representatives are often unable to see the actions that Service Center representatives have taken in DCAS. As DHS acknowledged, high staff turnover meant that the Call Center was only staffed at 50% for much of FY2019.⁶ The example below illustrates just how challenging communicating with DHS can be:

One Legal Aid client, Beyene Tesfaye,⁷ recertified for SNAP at the Fort Davis Service Center in October. The caseworker asked her to provide verification of the child support payments she received as well as her income from Uber. Ms. Tesfaye faxed the documents to Fort Davis on October 24, 2019 and confirmed that the fax was successfully sent.

The next day, she spoke with a representative from Fort Davis who told her that the agency had not received the documents. The representative told Ms. Tesfaye to email the documents to the Call Center, which she did. However, Ms. Tesfaye received a notice the following week dated October 26, 2019 that the agency

⁵ See DHS FY19-FY20 Performance Oversight Responses, Q136(b)(iv).

⁶ DHS FY-19-FY20 Performance Oversight Responses, Q31.

⁷ Client names throughout this testimony have been changed for confidentiality purposes.

would suspend her SNAP benefits at the end of November because she did not provide the requested verification of her child support. She tried to call the Call Center but had to hang up after waiting for an hour and a half.

*Fortunately, DHS eventually processed the family's SNAP recertification on time **after three urgent emails from Legal Aid to the DPO email address.** However, the staff at Fort Davis did not correctly file the paperwork that Ms. Tesfaye had provided to the Service Center, meaning that **the family did not receive the correct amount of SNAP benefits until an attorney from Legal Aid again followed up multiple times.***

Ultimately, it took ten emails between DHS and Legal Aid to process the family's SNAP recertification on time and then correct the family's SNAP benefits amount, even though Ms. Tesfaye had provided the requested verifications to DHS via both fax and email in a timely manner.

DPO Has Become Less Responsive to Inquiries By Advocates

Making matters worse, although advocates can use the Division of Program Operations (DPO) email to follow up about cases and seek resolution, we have noticed that DPO's response times to our inquiries have grown increasingly longer. Between September 2019 and the first week of January 2020, Legal Aid submitted inquiries to DPO for 55 different individuals and families. Legal Aid did not receive any response to 11 inquiries, despite multiple follow-up emails. The average response time for DPO to provide a substantive response was 11.85 days. Legal Aid has raised these issues regarding DPO delays, and DHS is working on the individual cases that we have identified with delays or no responses, which we appreciate. However, when Legal Aid does not receive responses from DHS or updates about the case, we are forced to file hearing requests to seek resolution through the fair hearing process. Fair hearings were necessary in 11 of the 55 inquiries that Legal Aid submitted from September through January.

The Fair Hearing Process Is Plagued By Long Wait Times and Lack of Communication From DHS

District residents file fair hearing requests at the Office of Administrative Hearings (OAH) to remedy a deprivation of critical safety net benefits, such as TANF, Medicaid, and SNAP. However, despite the urgency of public benefits cases, we have seen a backlog in the scheduling of these cases for an initial hearing with some not being held until five to six months after the hearing request.⁸ A lawyer often needs to file an emergency motion in order to obtain a hearing before then. For example:

⁸ See *Legal Aid Testimony Regarding Agency Performance Oversight for the Office of Administrative Hearings* (January 22, 2020), <https://www.legalaiddc.org/wp-content/uploads/2020/01/Legal-Aid-OAH-Oversight-Testimony-FY19-FY20YTD-FINAL.pdf>

In March 2019 Legal Aid filed a fair hearing request to challenge the improper reduction of the TANF benefit on behalf of a single mother of three who was fleeing a domestic violence situation. The client was only able to appear before an Administrative Law Judge three months later after Legal Aid filed an emergency motion for a hearing.

These delays are particularly disturbing at OAH, which is designed to be accessible for pro se litigants who are less likely to file an emergency motion for an expedited hearing related to their benefits if they are unrepresented.

Unfortunately, even when an initial hearing has been scheduled, it is difficult to work with DHS to obtain resolution, including any necessary back benefits. Policy analysts represent DHS at OAH. Prior to 2019, one policy analyst would typically be assigned to work on one fair hearing matter for the duration of that matter. This meant that the consumer or lawyer had a point of contact to communicate with and work towards resolutions between hearing dates.

In 2019, DHS began assigning different policy analysts to cover hearings on different days. One matter may have three different policy analysts at three different status hearings. This means that the policy analyst generally has not reviewed the case, initiated agency action, or learned of any actions that the agency might have taken. As a result, he or she cannot even represent the agency's position, much less seek resolution of the case.

It has also become increasingly difficult to resolve issues between hearings by reaching out to the policy analysts. Policy analysts do not communicate with DPO, so they do not have updates if DPO is working on the case. Additionally, our understanding is that DHS will only send three policy analysts to OAH for 20 hours a week, so the Administrative Law Judges (ALJs) at OAH do not have enough time for public benefits cases and are limited to specific days in which they can schedule public benefits cases. While Legal Aid is sympathetic to the high caseloads that the policy analysts have to manage and hopes that additional funding can be allocated for additional assistance with fair hearing representation, ultimately—as with the Service Centers—the delays and disorganization at DHS hurt the recipients of public benefits who simply cannot afford the erroneous loss, reduction, or delay of crucial safety net assistance.

DHS Must Increase Communication With TANF Consumers and CSSD Regarding the Child Support Cooperation Requirement

As we testified last year,⁹ parents in households receiving TANF do not receive clear communication from DHS when they apply or recertify for TANF about how to comply child support-related requirements that could impact their TANF award. We urge the Committee to work with the DHS, the Committee on the Judiciary and Public Safety, and the Office of the Attorney General (OAG) to address this problem.

⁹ See *Legal Aid Testimony Regarding Agency Performance Oversight for the Department of Human Services* (March 1, 2019), <https://www.legalaiddc.org/wp-content/uploads/2019/03/Legal-Aid-FY18-19-DHS-Oversight-Testimony-Public-Benefits-FINAL2.pdf>

Parents in households receiving TANF assign their right to receive child support to the District government while they are receiving TANF.¹⁰ This means that TANF recipients must cooperate with the District in identifying, locating, and establishing child support orders against the non-custodial parents of their children.¹¹ If a TANF recipient does not cooperate with the government's efforts to pursue child support from the non-custodial parent, the individual is subject to a TANF sanction equaling a 25% reduction in the family's TANF grant.¹² There is a "good cause" exception to cooperating with the child support enforcement if cooperating with the government, or seeking child support, may result in harm to the TANF recipient or the recipient's family.¹³

Currently, individuals must complete a Combined Application¹⁴ when they apply or recertify for TANF at a Service Center. The Combined Application requires consumers to provide information about the non-custodial parents, where relevant, including their last known address, whether paternity has been established, and the parent's last place of employment, for each child in the household. Many consumers believe that by providing this information to DHS, they have provided the necessary information to the District government for the child support cooperation requirement. However, this is only the first step in the process – something that DHS does not make sufficiently clear to recipients and potential recipients.

When DHS receives this information, it then sends it to OAG's Child Support Service Division (CSSD) for follow up. CSSD is the District entity responsible for pursuing support orders against non-custodial parents of TANF recipients, and requires further follow-up from custodial parents to do so. If CSSD requests information or participation from a TANF recipient and does not receive a response, they notify DHS that the family should be sanctioned. At that point, DHS is supposed to send a notice about the impending child support sanction before implementing the sanction, which reduces the family's benefits by 25%.

If DHS sanctions a TANF recipient, the recipient must take multiple steps to get the sanction lifted – basically acting as a go-between between the two government agencies. First, the recipient must go to CSSD and comply with the request for cooperation, whether that means providing information about the non-custodial parent or attending a child support hearing. Then, they must obtain a letter from CSSD that they are in compliance with the child support cooperation requirement. Third, they must physically take the letter from CSSD to DHS to have the TANF sanction lifted and demonstrate that they are in compliance.

¹⁰ D.C. Code § 4-205.19(b).

¹¹ D.C. Code § 4-217.08(a).

¹² 29 DCMR §§ 1715.2-.3.

¹³ 29 DCMR § 1709.1(a).

¹⁴ *Available at*

https://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/Combined_Application_December-2015_%28English_%202020.pdf

The failure of DHS and CSSD to adequately communicate, with either the TANF family or each other, places an enormous burden on TANF recipients, particularly those who are experiencing domestic violence and fear for their safety. Given that CSSD has the capability to communicate to DHS that a family should be sanctioned, it is unclear why CSSD cannot communicate that the family is in compliance and that the sanction should be lifted. Forcing a parent to act as a liaison is unnecessary and burdensome when appropriate lines of communication already exist. Additionally, when CSSD flags a case for sanction for non-compliance with child support, DHS does not check its systems to see whether the consumer indicated the need for a good cause waiver before the agency implements the sanction.

This failure to communicate between DHS and CSSD leaves parents in difficult situations. For example:

A Legal Aid client, Nicole Smith, had her family's TANF benefits sanctioned for non-compliance with child support, causing the family of three's TANF grant to be reduced from \$658 to \$493. Ms. Smith's fiancé moved in with her and their two children in the fall of 2019 after being released from jail. Ms. Smith went to DHS in November 2019 to add her fiancé to her Food Stamps and TANF household. A DHS caseworker told her that he would be added to her family's benefits in December; however, Ms. Smith's benefits remained unchanged in December and January.

In the meantime, Ms. Smith and her fiancé attended an initial child support hearing the second week of January that resulted from her receipt of TANF. Although they told the OAG representative that they lived together, which should have prevented the entry of a child support order, the OAG representative said that the government would request a child support order for \$245 because Ms. Smith's fiancé had not been included in her TANF household. Eventually, OAG agreed to give Ms. Smith more time to ensure that her fiancé was included in her TANF household. However, if DHS had updated CSSD that both parents were living in the same household as of November 2019 a case should not have been filed by OAG. After the hearing, Ms. Smith still had to go to CSSD to get a letter for DHS showing she was in compliance.

Conclusion

The Committee needs to exercise on-going oversight, in the form of follow-up questions and further oversight hearings, to ensure that DHS takes affirmative steps to address what District residents are experiencing regarding technological issues, ineffective service center visits, excessive wait times, delays in communication, and inadequate intra-agency communication with CSSD for the child support cooperation requirement. We hope that DHS will be open to more meaningful communication with advocates and customers regarding these ongoing problems.