

A REPORT ON THE
NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
FAIR HEARING PROCESS

NEW YORK STATE COMMISSION
ON MANAGEMENT AND PRODUCTIVITY
IN THE PUBLIC SECTOR

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Executive Director

JUNE, 1978

NEW YORK STATE ASSEMBLY
STANLEY STEINGUT SPEAKER

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Introduction and Legal Basis

New York State offers all public assistance recipients a right to a fair hearing in the event that they are dissatisfied with the amount or manner of their assistance

The right to a fair hearing is written in New York State law and regulated to a considerable extent by the Federal government. New York State laws relating to fair hearings are interspersed throughout the Social Service Law. Most of these laws pertain to a recipient's right to a fair hearing. Presently there are two bills in the Legislature (A 10506 and S 6337) that would consolidate these laws, codify the regulations regarding fair hearings, and add new protections for the recipient in order to ensure a fair hearing.*

The Federal regulations as found in the Social Security Act, Section 205.10, provide for extensive controls over New York State's fair hearing process. The regulations provide for a hearing before a State agency or an evidentiary hearing at the local level with the right to appeal to a State agency hearing. (New York State permits the hearing before the State agency only). The procedures must be written and publicized by the State agency. The recipient must be informed in writing at the time of application and at the time of any change in his claim of the right to a hearing, the method of obtaining a hearing, and the right to representation by legal counsel or other authorized persons. The regulations state

*S 6337-B (amended) and A 30042-A was passed on June 22, 1978.

- The amount of notice to be given for each change in the claim
- The amount of time the client has to request a hearing (90 days from the date of the agency action New York State allows only 60 days)
- The amount of time the State agency has to complete the process (90 days from the date of the request for a hearing)
- Under what circumstances the aid should be continued unchanged
- The persons to conduct the hearing
- Methods for determining and recording decisions
- Other detailed regulations regarding the process

Fair Hearing Procedures - Preceding Hearing

In New York State if a recipient is dissatisfied with any action made on his claim he may request a hearing either by calling or writing the regional office or Albany The request is forwarded to the Fair Hearings Unit of the New York State Department of Social Services by special courier It is categorized and a determination is made whether to continue aid unchanged or not This determination is made according to Federal regulations This process takes approximately four days If the aid is determined to be continued the State Fair Hearings Unit will notify the local agency to continue aid unchanged The Fair Hearings Unit will then schedule the hearing This process usually takes eight to 10 days Thus the time period from the initial request until the scheduled hearing is approximately three weeks Preceding the hearing the appropriate files are sent to the hearing officer who will preside over the hearing The local agency and the recipient are advised

of the date of the hearing. The recipient is notified of his rights and that the local agency must provide transportation, child care and other costs related to the hearing if necessary. The recipient may request an adjournment if he is able to show good cause for not attending the hearing (i.e., illness, inability to obtain a babysitter, inability of attorney to attend). The recipient may also withdraw his request for a hearing. The local agency may not adjourn the hearing. The local agency should make the evidence to be presented at the hearing available for the recipient and his representative before the hearing. This information is not always supplied unless the recipient requests it. The local agency should also continue aid unchanged if the determination was made.

The Actual Hearing

At the hearing itself, the hearing officer presides. All of New York State's hearing officers are attorneys. They must be licensed to practice law in New York State and must also pass a civil service hearing officer test. Most of the hearings are taped except for the hearings that may result in court action. In these cases, a stenographer is present.

At the beginning of the hearing, the hearing officer presents an opening statement and asks two mandated questions. In the opening statement, the officer states the issue and the parties involved and also that each side may present witnesses and documentation to support their case. Each side has the opportunity to question witnesses of the other side. At the end of the hearing, the record

is sent to the Commissioner of the New York State Department of Social Services who will decide the issue. The hearing officer asks if aid was to be continued and if so did the local agency comply with the determination. Also the hearing officer asks if the client had requested and was denied transportation, child care or other expenses related to attendance at the hearing.

After this initial statement and question period, the hearing officer will conduct the hearing. The officer will listen to arguments presented by both sides, ask pertinent questions, and collect any documentation presented. The final decision will be based solely on the evidence presented at the hearing. Thus it is important for both sides to clearly present the issues and provide evidence to support their contentions. Also it should be noted that the hearing concerns a previous decision made by the local agency. Thus the evidence presented should describe the situation as it was at the time of the decision.

Post Hearing Procedures

After the hearing the hearing officer will review the evidence presented and make a recommendation. This recommendation will be reviewed by a fair hearing officer supervisor to determine if the recommendation accurately reflects State Department policy and Social Services Law. If there is any question the supervisor sends the recommendation and the record of the hearing to the State Fair Hearings Unit to be reviewed. Usually the hearing officer's recommendation becomes the final decision. Theoretically the Commissioner

of New York State's Department of Social Services is to make the final decision but practically this is not possible as will be noted later by the large numbers of hearings held every year

After the decision has been approved a copy of the decision is sent to all parties involved The total hearing process from initial request until the final decision reaches the parties involved takes approximately 60 days The recipient is notified of his right to judicial review under Article 78 of Civil Practice Laws and Rules if the decision made is unfavorable to him and that he should notify legal counsel The local departments currently do not have the right to appeal reversed decisions for two reasons First Federal regulations allow only 90 days for the total fair hearings process Ninety days would not be enough time to complete an appeal Second court decisions have suggested that problems between local agencies and the State Department are an internal agency affair and should be dealt with internally and not with outside judicial review

Statistics Regarding the Fair Hearings Process

The New York State Department of Social Services receives over 100 000 requests for fair hearings per year A little less than half that number result in hearings held The requests that do not complete the fair hearings process are either withdrawn or abandoned (recipient does not appear for the hearing) Most of these are withdrawn Of the total number of hearings held a certain number are affirmed or reversed and a certain number are neither affirmed nor reversed The latter are determined no issue

For the total number of hearings scheduled in New York City during 1977 34 1 percent were affirmed 33 4 percent were reversed and 32 5 percent were determined no issue

In upstate counties during 1977, 57 6 percent were affirmed 29 percent were reversed and 13 4 percent were determined no issue

Of the total number of hearings that were either affirmed or reversed during 1977 50 6 percent were affirmed in New York City and 49 4 percent were reversed In the upstate counties 66 6 percent were affirmed and 33 4 percent were reversed These statistics show that New York City has a smaller percentage of affirmed decisions than upstate counties Also New York City has a greater percentage of withdrawals and no issue determinations than upstate counties During 1977 of the total withdrawals and abandonments 67 percent were in New York City

In 1977 an average of 170 hearings were scheduled per hearing officer per month Of those scheduled less than half were actually held (An average of 43 percent per month of those scheduled were actually held)

In 1977 an average of 74 decisions were recommended by each hearing officer per month The Fair Hearings Unit notes that presently each hearing officer drafts approximately 60 decisions per month Thus hearing officers are significantly overscheduled in anticipation of a certain percentage of withdrawals and abandonments For example, there are approximately 14 to 17 hearings scheduled

per day in Nassau County There may be only seven hearings actually held Scheduling varies according to location and ease of scheduling

There are approximately 52 hearing officers who regularly hold hearings Approximately 10 additional hearing officers are assigned to special cases (i e medicaid fraud cases) There are approximately seven to 10 supervisors who review the hearing officer's decisions Previously, virtually all decisions were reviewed Presently the supervisors initially review all hearing officer s decisions If after a certain period of time the supervisor determines that the hearing officer consistently recommends accurate decisions he may opt not to review the hearing officer s decisions

The Fair Hearings Unit has periodic meetings with the hearing officers to discuss problems new laws and regulations recent court decisions and changes in policy The Fair Hearings Unit will discuss specific problems confronting the hearing officers with the various program units The program units also review certain decisions of the hearing officers

There are approximately 12 to 14 people in the Fair Hearings Unit at the State level of DSS who take requests for hearings At this point the staff does not try to screen requests in order to resolve the problems without a hearing for two reasons First is workload With the large number of requests per year there is only enough time to take the requests Second the recipient may not present

all the information necessary to make a determination without a hearing

Approximately 40 percent of the initial requests for fair hearings are determined aid-continuing There are very few instances of non-compliance with this determination by local agencies If the local agency does not comply with this determination it will become an issue at the hearing

Approximately one percent of hearing decisions per month result in appeals to an Article 78 (of the Civil Practice Laws and Rules which allows private citizens the right to judicial review) These appeals are usually a result of issue-oriented policy changes and are usually brought by various legal assistance groups If the recipient does receive a favorable decision and the local agencies do not comply with the decision within 15 days the recipient may write to the Compliance Unit of the Fair Hearings Unit The Compliance Unit will take action to bring about compliance There are approximately 40 to 50 compliance complaints per month As mentioned previously local agencies cannot appeal State Department decisions The Fair Hearings Unit does occasionally receive complaints from local agencies regarding this However the Fair Hearings Unit states that the local agencies may change the claim and go through another hearing if dissatisfied with the decision Fair Hearings Unit officials noted that many times local agencies were not prepared for the hearings and did not present sufficient evidence to support their actions

The Fair Hearings Unit does not breakdown statistics by individual counties It also does not have aggregated statistics for the various program categories (i e Home Relief Aid to Dependent Children Medicaid) This is due to the small administrative staff at the Fair Hearings Unit Also statistics are computed manually The Fair Hearings Unit would eventually like to be computerized The computer could be used for scheduling case control compliance control determination of problem areas and other aggregated statistics that would improve the management of the fair hearings process

Conclusions

The fair hearings process was established as a protection for the public assistance recipient Therefore the process should be evaluated within this context Recommendations for change should make the system run more smoothly and should improve the recipient's opportunity for a truly fair hearing Considering the present staff capacity of the Fair Hearings Unit scheduling seems to be fairly efficient Decisions reviewed by supervisors for the most part accurately reflect Department policy and Social Services Laws There are some improvements that can be made in the fair hearings operations These include

- Regular contact between the Fair Hearings Unit and the various program units may improve the quality of the decisions
- Computerization and a larger administrative staff would definitely improve the management capacity of the unit

- Recipients should be given additional information that would adequately prepare them for the hearing (i.e. evidence they may need to produce the evidence to be presented by the agency and the procedures involved in the hearing)

The Assembly fair hearings bill calls for an informational pamphlet to be given to the recipients that would provide much of this information

- Even though the local agencies would like the right to appeal the State Department's decisions it seems that many of their problems would be solved if they more adequately prepared for the hearings (i.e. presented witnesses including caseworkers involved and sufficient documentation and more adequately prepared their staff)

Although the local agencies the State Department of Social Services and the recipients have differing views regarding the fair hearings process all groups must increase their knowledge of the procedures involved if the system is to work. If all groups understood this process as a right of recipients and that the hearing should be conducted as fairly as possible, the process should become more efficient and effective