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March 14, 2006

Members of the Judiciary Committee:

I am here to address HB 5738, AN ACT CONCERNING THE APPEAL OF RECONSIDERED AGENCY DECISIONS UNDER THE UNIFORM ADMINISTRATIVE PROCEDURE ACT.

I am an attorney with Connecticut Legal Services, and have represented clients in hundreds of administrative appeals before the Department of Social Services (DSS). This bill resolves confusion in the present appeal process by designating as the final decision, the decision issued by an agency after reconsideration has been granted, and the only one which should be appealed once reconsideration has been granted. It also creates a deadline by which DSS must issue a reconsidered decision. It leaves intact the deadline for appealing an unreconsidered decision.

Although DSS' Office of Legal Counsel, Regulations and Administrative Hearings (OLCRAH) must DECIDE whether or not to reconsider a decision within 25 days, it presently does not have any real deadline to COMPLETE AND ISSUE the reconsidered decision under CGS §4-181a (the words used in the statute are "in a reasonable time").

Currently, the parties have 15 days from the date of the mailing of the decision in which to request reconsideration. DSS then has 25 days in which to decide whether or not they will reconsider a decision, for a total of 40 days. DSS itself can spontaneously decide to reconsider its own decision within 40 days of its mailing.

After that, however, DSS has no deadline at all to issue the reconsidered decision. Meanwhile, the request for reconsideration does not toll the appeal period, so even when DSS has agreed to reconsider its decision, the aggrieved party must still file its appeal by the 45th day or risk losing its right to appeal.

This lack of a deadline has caused delay for my clients and required me to file two appeals on their behalf -- an appeal of the original decision, so as not to miss the 45-day time period, and another appeal of the reconsidered decision, when it is ultimately issued. This is a waste of judicial resources and a real problem for clients seeking subsistence level benefits who are left hanging for extended periods of time awaiting a reconsidered decision. This bill will resolve those problems.

Here is an example of the problem with the present system: I represented



a mentally ill client who was denied Medicaid benefits. The administrative appeal upheld the DSS denial. I requested reconsideration, citing pertinent DSS regulations in support of my client's position. Reconsideration was granted by OLCRAH (then the Office of Fair Hearings) within 25 days. However, the reconsidered decision was not issued for 6 months. In the meantime, I filed a Superior Court appeal within 45 days of the original decision in order to protect my client's rights of appeal.

When the reconsidered decision was issued 6 months later, it was identical to the original, even including the same typographical errors. Only the date of the decision's issuance was changed. I then had to file an appeal of the reconsidered decision as well, again to protect my client's rights. Because I did not know which decision the Court would regard as the final decision, I was forced to file two appeals for the same man on the same issues that flowed from two identically-worded decisions. As my client was indigent, the State of Connecticut waived the fees for both appeals to be filed.

Eventually, DSS settled the case and my client got his benefits years later. Under the proposed bill, my client would have to wait only 90 days for the agency to issue the reconsidered decision, and the bill makes clear that he would not lose his appeal rights by not appealing the original decision.

It is preferable for the aggrieved client to get the appeal process underway as soon as possible. This bill maintains the 45-day appeal deadline for an unreconsidered decision, but places an outside limit on the time required for the reconsidered decision to be issued. It eliminates the current practice of leaving the process of reconsideration completely up to the whim of OLCRAH and the fair hearing officer.

On behalf of the legal services community and our indigent clients seeking subsistence level benefits, we urge passage of this bill.

Very truly yours,

Randi Faith Mezzy