

**BEFORE THE CONNECTICUT GENERAL ASSEMBLY  
JUDICIARY COMMITTEE**

**TESTIMONY OF THOMAS J. RILEY  
IN SUPPORT OF RAISED BILL NO. 432**

My name is Thomas Riley. I am an attorney and practice with the firm of Tobin, Carberry, O'Malley, Riley & Selinger, P.C. in New London. I am here today to urge your favorable consideration of Raised Bill No. 432, the demonstration project it creates, and most importantly, the creation of an independent office of administrative hearings to consider appeals of decisions of the Department of Social Services (DSS).

I regularly handle appeals before DSS relating to Medicaid and SAGA benefits. I have appeared at dozens of these hearings, and have represented clients in the Superior Court, Appellate Court, and Supreme Court in these matters. In my judgment, there is a great need for a truly independent body to hear these matters.

Too many of the hearing officers employed by DSS are intent on finding ways to deny benefits rather than impartially assess eligibility. Acting on their own, the hearing officers assigned to two of my cases, for example, refused even to hold a hearing on the grounds that the applicant lacked standing to raise the issues, effectively prejudging the matter without even giving the applicant an opportunity to demonstrate in person why the hearing should go forward. The Department eventually scheduled a hearing in both cases, after reviewing my objection to this unlawful effort to deny due process to the applicant. DSS eventually found that each person was eligible for the benefits sought. Had these people not had legal representation, however, as is the case in most DSS hearings, they would not even have received a hearing let alone the benefits to which they were entitled. Since a large percentage of the people who appeal DSS decisions do so without representation, and are illiterate or have poor writing skills, the

opportunity to challenge arbitrary government action is effectively denied to them, if a hearing is not held at which they can explain themselves orally,

Another serious problem with the current hearing process is that DSS hearing officers are not adequately insulated from the influence of DSS staff, to put it mildly. Counsel for DSS draft the regulations the hearing officers interpret, and provide advice to staff members on the application of the regulations to the very cases which end up before the hearing officers. But they also advise these same hearing officers on legal matters, including how to rule, without any notice to the parties before them. The DSS hearing Unit admits that DSS attorneys regularly review and influence the decisions the hearing officers write, without telling applicants or their counsel that this occurs.

In one of my cases a hearing officer reversed his decision after *ex parte* communication from DSS staff and counsel. This matter concerned the eligibility for Medicaid benefits of a woman from Jamaica who developed an emergency medical condition while visiting her son here in Connecticut. The issue was whether she was eligible for emergency Medicaid benefits without proving that she was a resident of Connecticut. Relying on regulations contained in DSS' Uniform Policy Manual, the hearing officer found that she did not have to prove residency, and ordered DSS to evaluate whether she had an emergency medical condition which would make her eligible for the benefits. *See* Exhibit 1 attached to this testimony. He reached this decision after an evidentiary hearing at which the Department was represented by one of its employees, who had the opportunity to call any witness from DSS, and to bring to the hearing officer's attention any regulation DSS thought was relevant to evaluation of the issue. In short, DSS had a full and fair opportunity to litigate the issue and lost.

After the time for either of the parties to request reconsideration expired (*See* C.G.S. §4-181a(a)), DSS staff who were not involved in the hearing sent an e-mail asking for reversal of the decision to Brenda Parrella, the DSS attorney who supervises the DSS' Office of Legal Counsel, Regulations, and Administrative Hearings, including its hearing officers and their supervisors. *See* Ex. 2. Neither the applicant nor I was given a copy of this communication, nor were we otherwise informed that efforts were underway behind the scenes to reverse the hearing officer's decision. Within a couple of weeks, the hearing officer sent me a letter announcing that he had decided to reconsider his earlier decision, without giving the applicant or me an opportunity to comment first on whether there were grounds for reconsideration *See*, Ex. 3. He did not reveal whether Ms. Parrella had communicated with him *ex parte* before he reached this decision. Given the sequence of events, however, it is hard to imagine any other reason why the hearing officer suddenly would have reconsidered his opinion. He certainly had reviewed the email to Ms. Parrella that I had never seen, because he made it DSS exhibit 8 in the record. *See*, Ex. 3, referring to Ex.2. I cannot imagine how he obtained the email if Ms. Parrella did not give it to him

I objected to his decision to grant reconsideration without ever telling me of the communication within DSS, or giving me the chance to be heard before he reopened the matter. *See*, Ex. 4 I also pointed out that the Department could have presented witnesses at the hearing and made the arguments set forth in the *ex parte* materials submitted after he rendered his decision.

The hearing officer responded by claiming that he had acted on his own, but his letter clearly indicated that he relied on the material submitted to Ms. Parrella. *See*, Ex. 5 referring to Ex. 3. He also noted that I had a chance to review the request for reconsideration *See*, Ex. 5

referring to Ex. 3. He neglected to state, however, that I had received the request for review only after he decided to reconsider his decision. *See*, Ex. 2 & 3. He also enclosed a letter to him from the DSS caseworker who had represented DSS at the hearing, which was written after he had decided to reconsider the case. *See*, Ex. 6. The DSS caseworker had not sent me a copy of this communication to the hearing officer, even though I had sent the caseworker my objection to the earlier *ex parte* communication which obviously led to the reconsideration decision. While I argued that the hearing officer's original decision was correct on the merits (*see*, Ex. 7) , predictably, the "reconsidered" decision was a complete rejection of the decision and reasoning supporting it that the hearing officer had written only months earlier. *See*, Ex. 8. I was startled to read the hearing officer's assertion that this reversal was "initiated on (his) own motion" without any reference to the earlier communications. It simply is not credible for DSS or the hearing officer to claim that this dramatic change of position was in no way related to the *ex parte* communications between DSS staff and Ms. Parrella and influence by Ms. Parrella.

This is no way to conduct the State's business involving entitlement to public benefits. It also is not something that can be fixed by minor improvements; the structure of the office inevitably destroys the independence that is necessary to ensure impartiality in DSS hearings and decision-making.

My example today is just one of many illustrating the need for a truly independent hearing tribunal to decide these matters, which at times literally involve matters of life and death. I urge you to report favorably on this bill and to include DSS in the demonstration project established under it.