



Written Testimony Before the Judiciary Committee

In opposition to Section 30 of Senate Bill No. 1431, AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS

Section 30 of this bill requires a study of the feasibility of transferring hearings currently conducted by the Department of Social Services to the proposed Office of Administrative Hearings. While the Department appreciates the cautious approach the study of this issue represents, we would like to share our concerns, both legal and logistical, at the outset as follows and request the opportunity to be consulted in the course of the proposed study.

If the administrative hearing function within DSS were transferred to a proposed Office of Administrative Hearings, the new agency would hear cases and render only proposed final decisions for the Commissioner's approval, modification or rejection because neither state nor federal law gives authority to this proposed agency to render final decisions for DSS. The new agency would have 45 days to issue a decision with the possibility of a 45-day extension. Consequently, the hearing record would need to be returned to DSS with the proposed decision so that the final decision could be made by the Commissioner. The Commissioner is then required to allow each party to present briefs, a step not currently required in the DSS process. DSS clients are most often not represented by counsel, making the option of filing a brief often unrealistic for the client, while the agency may access the counsel of the Office of the Attorney General if it chooses, potentially leaving a client at a disadvantage. The Commissioner is required to approve, modify or reject the proposed decision within 21 days, with the possibility of an additional 21-day extension. If the Commissioner does not act within 21 days, the proposed decision would become final. It is completely unclear as to how a final decision would be issued if the Commissioner rejects the proposed final decision. Where does this leave the client? Further, if the Commissioner found that additional evidence was necessary, the case would have to be sent back to the new Office of Administrative Hearings for the receipt and consideration of the additional evidence starting the process over again. The time frames contemplated are certainly lengthier than the current timeframes in the Uniform Administrative Procedure Act (UAPA), to the client's disadvantage.

DSS hearing requests for 2006 numbered 11,300. Of that number 4,161 were related to the Medicaid program. Under federal law, DSS is the single state agency for the administration of the Medicaid program. As such, no other agency may have the authority to change or disapprove an administrative decision of DSS when it acts in its capacity as the single state agency. No agency may substitute its judgment for that of the Medicaid agency with respect to the applications of policies, rules and regulations issued by the Medicaid agency. While it may be permissible for another agency to conduct a Medicaid hearing and issue a proposed final decision, the final decision must be that of DSS. Thus the thousands of proposed hearing decisions involving the Medicaid program would have to be substantively reviewed as outlined above.

DSS uses one application so that a client may concurrently apply for multiple DSS programs. Thus SAGA, TFA and Food Stamp hearing requests are very often companion requests to Medicaid cases. To separate them would require an inefficient bifurcation of issues to the client's inconvenience. The bill would transfer DSS' 15 hearing officers to the newly created agency and make them administrative law judges. There would be no staff at DSS to perform the final decision making function for the Commissioner. Currently DSS Hearing Officers are authorized to issue final agency decisions. The process contemplated by this bill is cumbersome, lengthy, hugely inefficient and duplicative. It would require DSS to hire new staff to conduct the review of records and proposed decisions issued by the new agency.

Additionally, each hearing requested by a client of DSS is subject to strict confidentiality provisions under state and/or federal law, as would each record and decision related thereto. This bill does not adequately protect the confidentiality of the entire process, but only proposes that the Chief Administrative Law Judge would prepare edited versions of proposed and final decisions when disclosure of a person's identity or other information is barred by law. This does not assure confidentiality to the extent required for DSS clients and would be a significant administrative challenge in light of the volume of DSS hearings. The bill also requires that an agency issuing a final decision must immediately transmit the decision to the Office of Administrative Hearings. This provision appears to include all agencies whether or not otherwise under the Office, but does not address how a decision, which is confidential, and not a public record would be protected.

The Department's Office of Legal Counsel, Regulations and Administrative Hearings is well-equipped to handle the agency's hearings and does so to ensure fairness and impartiality to all clients in accordance with the UAPA. Consistently over the course of past years clients prevail in DSS hearings about one third of the time. Hearing Officers apply agency policy to cases with which they have had no involvement. A Hearing Officer is always impartial as to the facts. Agency final decisions may be appealed to Superior Court. The Department is not aware of a client ever appealing a DSS hearing decision based on bias on the part of a Hearing Officer. The UAPA supports agencies using their expertise to interpret and apply agency policy. DSS policy is vast, complex, detailed and often changing along with changes in state and federal law. DSS Hearing Officers typically draw upon their familiarity with agency policies and programs gained from their experience working directly with clients in a regional DSS office through eligibility and redetermination processes. The Hearing Officers are not attorneys and are not required to be under the UAPA. They conduct hearings with a high degree of professionalism and issue clear well-written decisions. They take very seriously the impartiality required of them and have a thorough understanding of DSS regulations, as well as applicable state and federal law.

If the General Assembly wishes to establish a new agency composed of administrative law judges, DSS should not be one of the agencies selected to have its hearing functions transferred. As explained above, state law may not be changed to authorize the proposed new agency to issue final decisions for DSS. DSS strongly opposes its inclusion in the proposed Office of Administrative Hearings.

For additional information on this testimony or any other legislation concerning the Department of Social Services, contact Matthew Barrett at (860) 424-5012.