

Testimony Supporting
S.B. 817, Judicial review in state rental assistance programs
Testimony of Ady Barkan¹
To the Committee on Human Services
February 17, 2009

Distinguished members of the Human Services Committee,

I am testifying today on behalf of the Jerome Frank Legal Services Organization at Yale Law School. I am a student in the organization's Landlord Tenant Clinic, and as part of my education I represent tenants who are being evicted from their homes.

Our clinic has been representing our clients in the New Haven Housing Court for over 25 years. Many of our clients receive some kind of public housing subsidies – subsidies that make an enormous difference in their lives. Connecticut's rental assistance programs are an essential component of our state's social safety net, providing crucial help to families who could not otherwise afford safe or comfortable housing.

When the Department of Social Services decides to terminate a family's housing subsidy – generally because it believes the family has failed to abide by the program's requirements – state regulations require it to provide for an “informal conference” with an impartial hearing officer to adjudicate the termination decision.²

Recently, a client who I represented through the clinic was facing termination of her housing benefits. At the “informal conference,” the hearing officer accepted pieces of information that my supervisor³ and I believed should not have been admitted. My client had not violated the terms of the program, but because of the admission of hearsay evidence, she was at risk of irretrievably losing the vital funds that allow her to rent an apartment big enough to house her and her children.

Happily for my client, the case was resolved in our favor. But if we had lost, we would have had no recourse through the courts – even though we believe there was a legitimate question as to whether the hearing had been lawful.

State law provides for judicial review of decisions of “contested cases” involving hearings, but not for judicial review of these “informal conferences.”⁴ SB 817 would redefine these “informal conferences” as “hearings” and would thus facilitate judicial review of the agency's final decisions.

There are three powerful reasons for Legislature to grant judicial review to housing program termination hearings:

1. The United States Supreme Court has famously held that “when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process.”⁵ The

1 This testimony was prepared through the Yale Law School Landlord Tenant Advocacy Clinic under the supervision of J.L. Pottenger, Jr.

2 Conn. Agencies Regs. § 17b-812-13

3 At the hearing, my supervisor was Francis X. Dineen, who has over fifty years experience providing legal aid in Connecticut.

4 C.G.S.A. § 4-166 (2)

5 Goldberg v. Kelly, 397 U.S. 254, 264 (1970).

informal conference currently mandated by state regulations does provide some important Constitutionally necessary due process. But because the regulations describe an "informal conference" rather than a "hearing," Connecticut residents do not currently have a right to judicial review.

The right to access our state courts is a cherished tradition in Connecticut. Section 10 of our Constitution says that "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."⁶ As the people's representatives, you have the duty and the privilege of ensuring that our state laws realize the values and the purpose of our Constitution. S.B. 817 is a fulfillment of the principles underlying that great document.

2. Judicial review will provide recipients with the peace of mind of knowing that they will not be unlawfully deprived of crucial housing support. If the hearing procedures are in violation of the law, or the hearing officer's decision is arbitrary or capricious, your constituents will be able to take their case to Superior Court, and a judge will decide whether the law was violated.

Connecticut law provides for such judicial review before the termination of other DSS benefits, including food stamps and Temporary Family Assistance. This bill would align the rental assistance programs with the other DSS programs.

3. This essential measure of fairness will not place a new burden on DSS and it will improve the quality of the hearing. In order to comply with the new law, the Department would need to make only one small change to its procedures: it would need to record the hearing on a tape recorder so that the discussion could later be transcribed for a court if necessary. This simple and extremely inexpensive measure will also provide the parties with the confidence that their words will not have been misunderstood or misrepresented and will give the hearing officer the ability to go back and listen to testimony again, slowly, if s/he needs to reexamine certain details.

In Connecticut, there is a well-known shortage of "affordable housing," and the DSS programs play a critical role in ameliorating that problem. This year, widespread foreclosures and a major recession are hurting our State's most vulnerable residents; it is the perfect opportunity for the legislature to enhance the basic due process provisions that will protect them from devastating miscarriages of justice.