

# NM center on law and poverty

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## Mid-year Report to the Barbara McDowell and Gerald S. Hartman Foundation

With the support of the Barbara McDowell and Gerald S. Hartman Foundation, the New Mexico Center on Law and Poverty (the Center) is working to ensure that low-income New Mexicans can exercise their right to appeal any reduction, termination, or denial of their public benefits. Hundreds of thousands of low-income New Mexicans rely on the benefits programs—which include Medicaid, Temporary Assistance to Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), and General Assistance—to fend off the worst aspects of poverty. If the state wrongfully denies, reduces, or terminates this assistance, the effects on the client can be devastating.

The fair hearings process was created to protect clients from improper reductions or denials of benefits. The law clearly states that clients may request a hearing whenever their benefits are reduced or terminated, or when their application is denied. However, the Center has long been hearing that clients find it difficult to exercise their right to an appeal. In recent months, we have been conducting an investigation to identify the problems with New Mexico's fair hearings process, conducting legal and administrative advocacy to have the NM Human Services Department (the agency that administers all of our state's benefits programs) address the shortcomings, and preparing for possible litigation.

One of the primary issues that we are working to resolve is that benefits clients are not being provided with “summaries of evidence” before their hearings. A summary of evidence is an explanation of why a person's benefits are being reduced or terminated. It includes the documents, calculations, and the legal basis on which the Human Services Department will rely at the hearing. This summary should be delivered well in advance of the hearing, so that clients and their advocates can prepare a counter-argument and gather the necessary evidence. Unfortunately, the state is not providing clients with these summaries with enough time to prepare. In fact, many clients receive the summary just before or even *at* their actual hearings, leaving them without adequate time to respond.

In order to address this problem, the Center collected evidence on the Department's delivery of these summaries. Our staff attorneys filed a request for data under the Inspection of Public Records Act and obtained files from clients' administrative hearings. The evidence we collected confirmed that many clients who requested a hearing did not receive their summary of evidence on time. We also found instances in which a critical piece of evidence—that upon which the agency based its adverse action—was actually missing from the documentation given to clients. Furthermore, many of the Administrative Law Judges who preside over these hearings have allowed evidence to be provided after the hearing, giving the client little or no chance to respond. Without proper provision of this key information, clients are far more likely to lose their benefits, causing them to sink even deeper into poverty.

We then began meeting with other organizations who provide direct legal services to low-income clients in New Mexico to hear about their clients' experiences with the fair hearings process. Four of the primary legal service providers (New Mexico Legal Aid, Disability Rights New Mexico, Law Access New Mexico and the Senior Citizens' Law Office) established an informal coalition, which has been meeting monthly to share information, discuss problems with the fair hearings process, and develop advocacy and legal strategies to compel the Department to make improvements. Our attorneys have also collaborated with a professor from the University of New Mexico School of Law, as well as with experts from the National Center on Law and Economic Justice, to discuss possible legal action and litigation strategies.

With the evidence that we have gathered through our investigation and our collaboration with other groups, Center attorneys have started using legal advocacy to move the Human Services Department to address the violations of law around fair hearings. We sent two letters to the Department's General Counsel, both of which were co-signed by New Mexico Legal Aid and the Senior Citizens' Law Office. The first letter provided a detailed explanation of the problems we have uncovered, how they are in violation of the law, and the Department's legal obligation to resolve them. When we did not receive a reply, we sent a second letter requesting a meeting to discuss the issues and threatening litigation if the Department did not make improvements. No response has been received to date.

As a result of our research, investigation, and litigation preparation, we have discovered significant additional problems with New Mexico's fair hearings process that must be addressed. For example, the Human Services Department has the authority to either approve or overturn all fair hearing decisions. We have found that, on the rare occasion that an Administration Law Judge finds in favor of an appellant at a fair hearing, those decisions are often arbitrarily overturned by the Human Services Department. Moreover, the Department does not provide a legal rationale when decisions are overturned, as the law requires. A related issue we discovered is that most plaintiffs do not understand that they have the right to have an attorney or non-attorney advocate represent them at their hearing. Without legal assistance, many clients remain unaware of what information and procedures they are entitled to receive, and are unable to successfully navigate through the complex legal process. Finally, the Center has discovered major problems with the state's imposition of a rigid timeframe for requesting a fair hearing. The state has been enforcing a strict 90-day period for requesting a hearing. No exceptions to that rule are allowed, even when a client has a compelling reason for missing the deadline.

The Center has been engaged in litigation to address the latter issue. We are currently representing a TANF client who requested a hearing after the 90 day deadline had expired. The client experienced extreme extenuating circumstances, including a recent trauma and disability, which caused her to miss the deadline. When she requested a hearing anyway, the Administrative Law Judge refused to consider the very legitimate reasons why she was late in submitting the request, and dismissed her case. The Center has filed suit with the New Mexico Court of Appeals for judicial review of this decision. We are seeking an opinion stating that judges may grant clients a late hearing if they can show good cause for why they missed the original deadline. We hope that this case will have systemic implications.

For the remainder of this project period, the Center will continue to address the problem of clients not receiving their summaries of evidence in a timely manner. We aspire to file a broad lawsuit challenging the state's failure to provide clients with summaries of evidence, in violation of due process law. However, we are having difficulty identifying plaintiffs for such a case. Although we have collected significant direct evidence of the problem, most of these cases are beyond the time limit for an appeal. We are currently conducting outreach with direct service providers and other advocates to identify clients. At the same time, we are also continuing to engage in legal and administrative advocacy with the Human Services Department. We are working with our organizational partners to press the state to make specific improvements in its administration of the fair hearings process.

We thank the Barbara McDowell and Gerald S. Hartman Foundation for supporting the Center's legal and administrative advocacy on this issue. Your support will allow us to address not only the summary of evidence issue, but potentially several other systemic problems with New Mexico's fair hearings process as well. These improvements could help strengthen a vital safeguard for hundreds of thousands of low-income New Mexicans who receive assistance through the public benefits programs.