

# NM center on law and poverty

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

The New Mexico Center on Law and Poverty (the Center) is pleased to submit a brief update on our work to improve the administrative hearing process for public benefits clients. With a grant from the Barbara McDowell and Gerald Harman Foundation, we have been working to ensure that New Mexico's low-income benefits clients can exercise their legal right to a hearing whenever their benefits are reduced or terminated.

Our project is currently focused on improving the fair hearings process for Navajo public benefits clients, who are some of the poorest and most vulnerable individuals in the country. The Navajo Nation administers separate benefits programs for its members. Any member of the Navajo Nation who is living in the Navajo service area must seek assistance through the tribe, rather than through the state.

In place of the federal government's Temporary Assistance for Needy Families cash assistance program, the Navajo Nation Division of Social Services administers the Program for Self Reliance, which provides benefits to Navajo members with minor children residing in New Mexico, Arizona, and Utah. Another office within the Division of Social Services administers the General Assistance program, which provides cash assistance to childless adults. Regrettably, the due process rights of Navajo clients are being routinely violated in the administration of these programs. Clients are not being given adequate information or notice about their right to request an "informal hearing" (or a meeting with their caseworker) when their benefits are denied or terminated. In addition, when clients request a formal hearing, these requests are not being processed. In fact, *no client* has ever received a formal hearing through the Navajo Nation Division of Social Services. Lastly, the Navajo Division of Social Services has started sanctioning disabled individuals deemed "unemployable," in violation of a formal policy prohibiting such sanctions.

To address these concerns, the Center on Law and Poverty has started partnering with DNA People's Legal Services—a direct service organization providing legal aid to the Navajo population—to bring a lawsuit against the Navajo Nation. In the last six months, we met with attorneys from DNA several times and developed a plan to identify both individual and organizational plaintiffs for our suit. Through our collaborative outreach, we located a few individual clients who were willing to serve as plaintiffs for our suit. However, in early 2014 the Navajo Nation restructured the Program for Self Reliance, taking over the General Assistance program and issuing new policies and procedures. While the deficiencies in the hearing process remain in place, this restructuring required us to begin our outreach anew, in order to find plaintiffs who have experienced problems under the revised system. This has created a slight delay in our original plans for filing the lawsuit.

Recently, Center attorneys visited a homeless shelter in Gallup, NM that serves many individuals eligible for tribal General Assistance, and spoke with several prospective plaintiffs there. We are also reaching out to domestic violence shelters in and around the Navajo Nation, where women are frequently seeking access to the Navajo TANF program.

Furthermore, we have been working to identify organizational plaintiffs for our suit. The inclusion of organizational plaintiffs will allow us to seek declaratory relief, resulting in a court order to have the Navajo Nation conform the policies and procedures of the Program for Self Reliance to federal law and the laws of the Navajo Nation. It may also increase the likelihood that the Division of Social Services will negotiate a settlement and enter into a Consent Decree to resolve the case, thus creating an enforcement mechanism to protect the rights of those denied benefits. For these reasons, we reached out to the Native American Disability Law Center, an advocacy organization serving disabled Native Americans, and the Shiprock Home for Women and Children, a domestic violence shelter on the Navajo Nation, and asked them to join our suit. Both would be strong organizational plaintiffs to address deficiencies in the fair hearing system within each benefit program.

At the same time, the Center has been conducting extensive legal research to prepare the legal complaint. Following the restructuring of the Program for Self Reliance, we sent a Public Records request to the Navajo Nation Division of Social Services asking for copies of its new policies and procedures, including any changes to the hearing procedure. We will review these documents upon their delivery. We are also researching the Navajo Sovereignty Immunity Act and other procedural law issues that will be important for our legal claim.

With DNA as co-counsel, we anticipate filing our lawsuit in the next 2-3 months. According to the Navajo Nation Sovereign Immunity Act, we must provide the Navajo Nation with significant advanced notice before filing suit. While we filed such notice for our previous clients, we will need to file it again when we find new plaintiffs. We will abide by that procedural requirement, although it may cause further delays.

We are optimistic that this lawsuit will have a major impact on over 15,000 of the poorest Native Americans living in tribal areas of New Mexico, Arizona and Utah. Addressing systemic problems that have impeded access to the cash assistance programs will help these very vulnerable clients meet their basic needs and advance their financial stability. Once again, we want to thank the Barbara McDowell and Gerald S. Hartman Foundation for helping make this work possible.

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## **Year-end Report to the Barbara McDowell and Gerald S. Hartman Foundation**

The NM Center on Law and Poverty (the Center) received a grant from the Barbara McDowell and Gerald Harman Foundation to improve the administrative hearing process for public benefits clients. Our goal was to ensure that New Mexico's low-income benefits clients could exercise their legal right to a hearing whenever their benefits are reduced or terminated. 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 NM Human Services Department, the state agency that administers all of these programs, wrongfully denies, reduces, or terminates this assistance, the effects on the client can be devastating.

Since our last report to the Foundation, the Center has continued to investigate problems with the state's administration of the hearings process. Our staff attorneys filed a request for data under the Inspection of Public Records Act to obtain files from clients' administrative hearings. We then analyzed more than 200 fair hearing decisions to determine problem areas. Following this review, we drafted a memorandum summarizing our findings.

Our investigation identified several priority problems with New Mexico's hearings process. These are: (1) the failure of the Human Services Department to provide clients with a "Summary of Evidence" (an explanation of why a person's benefits are being reduced or terminated) in a way that allows claimants to have a fair opportunity to be heard; (2) frequent improper application of the law by hearing officers and the Deputy Director of the Human Services Department; (3) the ability of the Department's Deputy Director to overturn a hearing officer's decision without a firm base in the law; and (4) the fact that almost no claimants have access to legal assistance at their hearings.

To collect additional information about the problems with New Mexico's hearings process and to develop a coordinated advocacy strategy to address them, the Center continued meeting with the statewide coalition we formed early in the project. This coalition includes five of the state's main legal service providers: the Center on Law and Poverty, New Mexico Legal Aid, Disability Rights New Mexico, Law Access New Mexico, and the Senior Citizens' Law Office. We have continued regular meetings with this group, during which we share information and discuss advocacy and legal strategies to compel the Department to make improvements.

Center staff have continued to raise the problems regarding the benefits hearings process with administrators at the Human Services Department. We have pressed the Department, especially, to provide clients with a summary of evidence explaining the reasons for an adverse decision. In addition, when the Human Services Department issued regulation changes that impacted the administrative hearing process for all the benefits programs earlier this year, we submitted two sets of comments on them, and testified at a hearing on the proposed regulation changes.

Another component of our work under this project has been ongoing litigation on behalf of a client who experienced difficulties in requesting a fair hearing. As you may recall, the Center has been representing a TANF client who was late in requesting her hearing due to some serious personal traumas that she

experienced. Her request was originally denied by the Administrative Law Judge due to lateness; the Judge gave no consideration to the very legitimate reasons as to why she submitted the request late. The Center filed a suit on her behalf in the New Mexico Court of Appeals, and recently won a favorable ruling stating that hearing officers must exercise appropriate discretion in determining whether there may be good cause for a person to request a hearing outside of the time limit. The Court of Appeals remanded the case to the Administrative Law Judge, and upon reconsideration, the client received her TANF benefits. This ruling by the Appeals Court sets an important legal precedent that may be useful in assisting other clients. The Center will distribute it to other advocates and direct service providers for their use in assisting their clients.

As a result of our research and investigation on this project, the Center on Law and Poverty also identified an entirely new area of concern. We discovered that Navajo public benefits clients—who are some of the poorest and most vulnerable individuals in the country—are encountering widespread, serious systemic barriers to accessing assistance. The Navajo Nation administers separate benefits programs for its members, such as the “Program for Self Reliance” (PSR), which provides cash assistance (similar to TANF or General Assistance) for Navajo members residing in New Mexico, Arizona, and Utah. Any member of the Navajo Nation who is living in the Navajo service area must seek cash assistance through the tribe, rather than the state. In 2012, this program served approximately 5,000 recipients in New Mexico, 10,170 recipients in Arizona, and 340 recipients in Utah.

The Center has collected substantial evidence that Navajo clients’ due process rights are routinely violated in the administration of these programs. For example, although federal law, agency protocols, and the laws of the Navajo Nation state that individuals whose PSR benefits are terminated have a right to request a formal hearing with the Navajo Nation Office of Hearing and Appeals, the Navajo Nation Division of Human Services has *never* responded to a request for a formal PSR hearing. In addition, individuals receiving General Assistance are routinely given notices without sufficient information, such as the time they have to file an appeal. The Navajo Division of Human Services also started sanctioning individuals deemed “unemployable,” when a formal policy says such sanctions are not allowed. And we have evidence that, when appeals are filed, the agency is not following federal law, the laws of the Navajo Nation, or written policies published on its website.

In the coming year, the Center on Law and Poverty will be working in coordination with DNA People’s Legal, which provides legal aid to the Navajo population, to address these issues. This work is especially critical because there are no other organizations in our state with the expertise or the resources needed to address the problem systemically.

Once again, we wish to thank the Barbara McDowell and Gerald S. Hartman Foundation for its support of the Center’s legal and administrative advocacy to improve access to the public benefits programs. It has meant a great deal to us and helped advance our work in important ways.