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**Before the Committee on Public Works and Operations
Council of the District of Columbia**

Performance Oversight Hearing Regarding Office of Administrative Hearings

February 8, 2024

Legal Aid DC¹ submits the following testimony regarding the Office of Administrative Hearings (OAH). Legal Aid’s practice at OAH is focused on crucial safety-net public benefits, including Supplemental Nutrition Assistance Program (SNAP) food assistance benefits, cash benefits like Temporary Assistance for Needy Families (TANF) and Interim Disability Assistance (IDA), medical insurance like Medicaid and Alliance, rental assistance, home health aide services, and unemployment benefits. When District residents encounter issues with their benefits, OAH is often the only pathway to obtaining the benefits they are owed. Due to the huge volume of cases and limited capacity of legal service providers, District residents often undertake their cases at OAH on their own. Ensuring that District residents can easily access OAH hearings and obtain

¹ Legal Aid DC was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 92 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

prompt resolution of their issues through those hearings is therefore critical to promoting the safety and security of District residents.

Legal Aid recognizes the positive efforts that OAH has made in administering its cases and increasing accessibility for DC residents over the years. However, OAH still requires the support of the Council to fully implement the changes needed to make the fair hearing process more accessible and effective for low-income District families. In particular, Legal Aid recommends that the Council provide OAH with additional funding in order to increase staffing and decrease delays in case processing; to promote flexibility in the manner of scheduling hearings; to increase public access and transparency; and to continue to work to improve the OAH Resource Center.

OAH Needs More Staff to Decrease Backlogs and Delays

Legal Aid remains concerned about the impact of backlogs on parties at OAH and on our client community in particular. As noted in OAH's responses to pre-hearing questions, case numbers at OAH have dramatically increased, resulting in backlogs across numerous areas.² For example, in the first quarter of FY 2024, the average time it took for an individual appealing an issue with their SNAP benefits to get in front of an Administrative Law Judge (ALJ) for the first time was 61 days.³

These delays cause extreme hardship for District families. Many households are not receiving any benefits while their appeal is pending, which means that each additional day their case remains unresolved is another day that their family will go hungry or be unable to pay for other basic necessities. Legal Aid is currently assisting a client who filed a TANF fair hearing request in November 2023 - but had to wait until February 2024 to get an initial hearing with an ALJ. Once this family's case was scheduled, the issue was resolved relatively quickly, but the family had already gone months (including the holiday season) without the benefits they were owed. During that period, the family was forced to take out a credit card and incur debt to make ends meet.

These delays also bring the District out of compliance with applicable timeliness standards. For example, federal regulations mandate that for cases involving SNAP

² See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 60.

³ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 40(b).

benefits, a *decision* must be reached within 60 days of receipt of a request for a fair hearing.⁴ However, in the first quarter of FY 2024, the average time it took OAH to close SNAP cases was 79 days, almost a full month longer than the 60-day deadline.⁵

These delays are directly linked to the steady increase in cases being filed at OAH. In other words, the Department of Human Services' (DHS) inability to properly administer programs has a cascading effect, causing more residents to have to file appeals, and leading to unacceptable delays at OAH. DHS cases include cases related to food assistance programs, cash assistance programs, and eligibility for health insurance. In FY 2022, 1615 DHS cases were filed, while in FY 2023, 2518 cases were filed – totaling a 56% increase.⁶ Similar trends can be seen in other cases handled by OAH's public benefits cluster. For example, for cases involving the Department of Healthcare Finance, including cases related to health insurance coverage and home health aide services, case numbers almost tripled from 227 in FY 2022 to 676 in FY 23.⁷

A recent feasibility study funded by the Council confirms that OAH needs additional staff to manage its increasing caseloads.⁸ Increasing staffing at OAH – and by extension, decreasing delays and backlogs – is crucial to ensuring District residents can achieve resolution of their cases at OAH in a timely manner.

OAH Should Ensure that District Residents Are Able to Participate in Hearings Through the Option of Their Choice

Legal Aid appreciates OAH's work to ensure that multiple methods of conducting fair hearings are available; namely, by telephone, videoconference, and in-person. For some District residents, telephone proceedings will be most accessible by allowing them to

⁴ 7 CFR 273.15(c)(1).

⁵ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 40(b).

⁶ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 39.

⁷ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 39.

⁸ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Attachment No. 21 B – B McNamee Court Feasibility Study.

balance their work and childcare with fully participating in hearings. For other District residents, in-person hearings will allow for the most fulsome participation in their case, particularly when there are many exhibits involved. OAH's decision to retain all three methods of conducting hearings is therefore very important. However, OAH must take further steps to ensure parties are actually aware of these options, and to ensure that they are able to access them when they choose to.

At the moment, almost all cases are scheduled by telephone as a default. To ensure District residents are aware that video or in-person hearings are an available option, OAH should widely distribute step-by-step instructions on how a party can request a video or in-person hearing. This information should be prominently displayed on the OAH website, added to hearing request forms where appropriate, and enclosed with all scheduling orders. Furthermore, this information should be made available in translation in compliance with the D.C. Language Access Act.

Additionally, OAH should increase transparency on how ALJs approach requests for video or in-person hearings. Without this knowledge, District residents pursuing cases at OAH – in particular those who are representing themselves – may be unaware of what details to include in a request to change the manner of the hearing. OAH should therefore make the factors ALJs consider when evaluating such a request publicly available.

OAH Should Increase Public Access and Transparency

OAH Should Continue to Improve the eFiling Portal

Legal Aid commends OAH on the roll-out of the eFiling Portal and encourages OAH to continue to make improvements to ensure the Portal can serve its function of streamlining the filing process for both parties and OAH itself. The launch of the eFiling Portal in August 2022 was limited to unemployment benefit cases, and the Portal was expanded in April 2023 to include all other OAH cases.⁹ The Portal is a very promising option to help individuals with cases at OAH file and access documents from their cases. However, the Portal has not been widely used - in FY 2023 and the first quarter of FY 2024, less than 1% of cases had a filing made using the Portal.¹⁰ This demonstrates the

⁹ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 27.

¹⁰ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 53(a).

need for a two-pronged strategy of (1) ensuring parties are aware of the Portal and (2) ensuring they can readily access and operate it.

With regard to increasing awareness of the Portal, OAH should ensure information about the Portal is readily available on the OAH website and in the OAH building. OAH should include more information about the Portal in its own notices. OAH should also consider coordinating with other agencies that send notices appealable to OAH to include this option on the notices. For example, notices from DHS related to public benefits inform recipients that they can go to OAH in person to file an appeal, but not that they can file by email or through the Portal. Knowledge of the portal and the option to access case-related documents through it is particularly important given that many benefit recipients have reported to Legal Aid that they did not receive notices sent by OAH by mail in time to attend the scheduled hearing, or that they never received them at all.

With regard to increasing access to the Portal, OAH must prioritize making the Portal and related guides available in other languages. Currently, the Portal and the guides to using it are only available in English.¹¹ Translating these web pages and guides is crucial for ensuring equitable access to this new resource, as well as for ensuring compliance with the requirements of the D.C. Language Access Act.

Additionally, the Portal may be difficult to operate for users regardless of their language. OAH should consider how usability can be increased – for example, by integrating the hearing request and other forms with the portal itself, rather than requiring users to download the form from another webpage and then upload it to the Portal. OAH should undertake user testing with District residents (and their representatives) to identify other areas for improvement.

While working to improve the Portal, OAH must also ensure that the Portal does not replace or curtail existing services. Many District residents with cases at OAH (including those seeking safety-net benefits) may not have access to the internet, a computer, or a smartphone, or may not have technology literacy. These District residents will not be able to use the Portal regardless of how many improvements OAH makes to it. It is therefore crucial that OAH retain alternative methods of filing and accessing documents (including email, mail, and in-person filing).

¹¹ See *OAH eFiling Portal*, available at <https://ecourt.oah.dc.gov/public-portal/>; see also OAH, "OAH eFiling Portal", available at <https://oah.dc.gov/page/oah-efiling-portal>.

OAH Should Prioritize Publishing a Searchable Database of Final Orders

Given longstanding discussions of the need for a searchable database of Final Orders, Legal Aid is encouraged to hear that OAH has taken concrete steps towards creating such a database and is on track to publish the database to the web in the fourth quarter of FY 24.¹²

Without access to Final Orders, unrepresented parties and legal service representatives are limited in their ability to pursue their legal claims. The lack of published OAH-level decisions makes it much more difficult to determine how ALJs may consider and resolve a given claim, or to see how similar cases have previously been decided. Additionally, publication of Final Orders will increase the transparency of the agency and will build public trust and confidence. Redaction should be utilized as needed to preserve the privacy and confidentiality of parties. Accordingly, Legal Aid encourages OAH to prioritize the publication of this searchable database to ensure the agency stays on track to release the database in FY 2024.

Improving Access to the OAH Resource Center

Legal Aid appreciated seeing that many of our requests for improvements to the OAH Resource Center were met due to the efforts of this Committee.¹³ While we know some positions still need to be filled,¹⁴ we believe the Resource Center is heading towards being a sustainable and reliable resource for unrepresented (*pro se*) District residents. We do remain concerned that OAH as a whole will continue to receive an increase in the number of appeals it receives,¹⁵ and therefore we encourage this Committee to remain attentive to the needs of the Resource Center, particularly in terms of staffing, information technology, language access, and advertising, so that *pro se* parties can be assured they will have access to justice

¹² See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 51.

¹³ Testimony of Jen Jenkins, Policy Counsel, Legal Aid DC, Performance Oversight Hearing on the Office of Administrative Hearings, <https://www.legalaiddc.org/media/3390/download?inline>.

¹⁴ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 56(c).

¹⁵ See Office of Administrative Hearings Performance Oversight FY 2023-2024 Pre-Hearing Questions, Question 39.

Conclusion

We appreciate OAH's ongoing efforts to improve operations and provide access to justice. We look forward to working with the Committee and OAH following the hearing to achieve these goals.