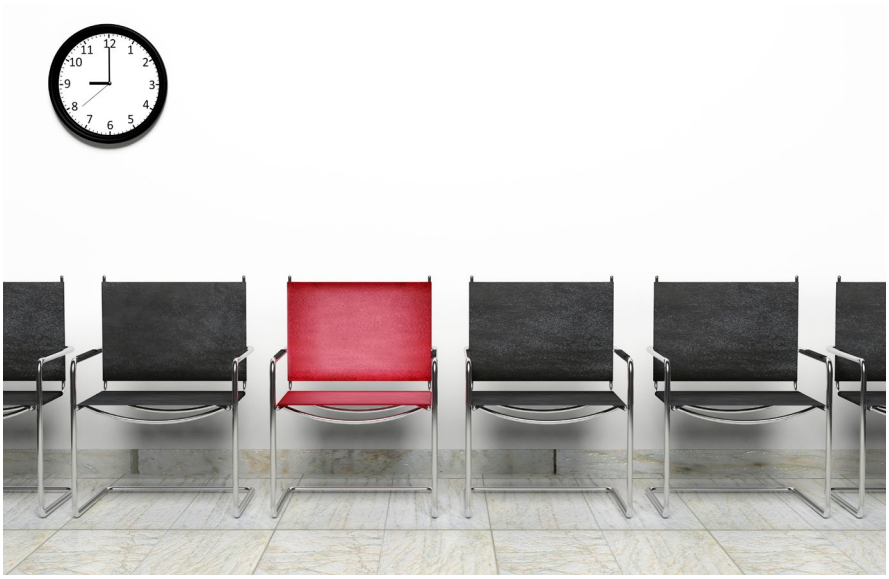
This article was first published on the Clearinghouse Community, January 6,

How to Protect Clients Receiving Public Benefits When Modernized Systems Fail:

Apply Traditional Due Process in New Contexts

BY GINA MANNIX, MARC COHAN, AND GREG BASS

Fifty years ago *Goldberg v. Kelly* infused public benefits administration with due process principles of fundamental fairness by requiring agencies to give notice and the opportunity for a pretermination hearing to benefits recipients.[1] States today employ sophisticated technology to transform public benefits administration, but the result too often is chaos and arbitrary exclusions of eligible households when systems fail. These developments challenge advocates to revisit the meaning of due process and fundamental fairness and to consider how due process can shape their advocacy. Here we present a broad overview of the due process issues and highlight recent advocacy by Community Legal Services of Philadelphia.



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When Public Benefits Modernization Fails

States have been "modernizing" administration of public benefit programs—including the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and Temporary Assistance for Needy Families (TANF)—for over a decade. Modernization generally refers to a range of strategies such as automated eligibility determination and case management systems; Web-based systems for submitting applications, reporting changes, and finding case status and notices; call centers that may be used in the application process for reporting changes, giving case status information, and conducting eligibility interviews; digitized document imaging; and business process reengineering that revises case management workflow and typically moves away from a model in which a caseworker is assigned to a case toward a model in which workers perform designated functions.[2] The consequences have too often been

1 *Goldberg v. Kelly*, 397 U.S. 254 (1970).

2 The Patient Protection and Affordable Care Act has encouraged ambitious improvements by requiring states to streamline processing of applications for Medicaid and health coverage through the new health insurance marketplaces. Enhanced federal funding (i.e., 90 percent) is available for state Medicaid information technology (IT) upgrades to accomplish the streamlining and data sharing requirements. Federal waivers allow related state human services programs to benefit from the Medicaid IT upgrades and improve eligibility determination systems for these other programs (see, e.g., Terri Shaw et al., Center on Budget and Policy Priorities & Social Interest Solutions, State Innovations in Horizontal Integration: Leveraging Technology for Health and Human Services (March 24, 2015)). For a review of state online services, see Center on Budget and Policy Priorities, Online Services for Key Low-Income Benefit Programs (March 18, 2015).

disastrous for benefits applicants and recipients when system failures lead to rampant delays, denials, and terminations of otherwise eligible people.[3]

While developments spurred by the Patient Protection and Affordable Care Act have created huge opportunities for states to improve their human services eligibility systems and better serve low-income families, many states have struggled with modernization. Design and implementation failures, inadequate staffing, ineffective leadership, inability to oversee technology vendors, and reduced in-person service for vulnerable persons mean systemic failures that prevent eligible people from establishing and maintaining eligibility for desperately needed benefits. For example, computer systems may be programmed to close or terminate cases automatically if a worker has not entered an instruction to the contrary; workers' failure to act timely on applications and submitted documents means that cases are inappropriately and routinely closed without an individualized review.[4] Inadequate document imaging systems result in backlogs and large numbers of documents that are not matched to a case and are essentially lost, leading to benefit denials and delays.[5] Overloaded and inadequately staffed call centers—with lengthy waits and large numbers of abandoned or interrupted calls—prevent people from completing mandatory SNAP eligibility interviews or dealing with eligibility issues.[6] Inaccessible websites and call centers can present additional barriers to people with disabilities.[7] Families who experience procedural denials and terminations resulting from these and other systemic failures must reapply and suffer from the loss of benefits in the interim.

Litigation has been necessary to fix systemic delays in getting benefits to eligible households in states where modernization has fallen short.

This phenomenon, known as "churn," creates avoidable additional administrative tasks and costs for the agency, but state agencies have not adequately focused on understanding and avoiding churn.[8]

The U.S. Department of Agriculture's Food and Nutrition Service has developed extensive technical assistance materials on SNAP modernization design, challenges, and best practices; sought state improvements through its corrective action process; ramped up administrative enforcement of application processing requirements since late 2014; and supported outside technical assistance for some

3 For examples of disastrous rollouts of new computer systems, see Mary R. Mannix et al., *Public Benefits Privatization and Modernization: Recent Developments and Advocacy*, 42 Clearinghouse Review 4 (May–June 2008). See also Kim Lewis, National Health Law Program, Lessons from [California]: Halting the Medi-Cal Application Backlog in Court (Sept. 29, 2015) (IT problems with new eligibility and enrollment system).

4 The National Center for Law and Economic Justice and its partners achieved elimination of Medicaid autoclosure at renewal in *Davis v. Birch* (Amended Stipulation and Order of Settlement Concerning Department of Health Care Policy and Financing, *Davis v. Birch*, No. 04-CV-7059 (Colo. Dist. Ct. Feb. 25, 2011)). See Order Granting Motion to Enforce Compliance, *Hatten-Gonzales v. Squier*, No. 88-cv-0385 (D.N.M. May 20, 2014) (granting motion to enforce prior consent decree requiring timely Medicaid and Supplemental Nutrition Assistance Program (SNAP) application processing and requiring, inter alia, agency to stop automatic denials and terminations without individualized eligibility review); *Salazar v. District of Columbia*, 954 F. Supp. 278 (D.D.C. 1996).

5 See, e.g., Joel Ferber, *Bureaucracy Limits Access to Health Care for Missouri Children and Families*, PedsLines, Fall–Winter 2014, at 4.

6 See, e.g., State of Georgia, Division of Family and Children Services, SNAP Corrective Action Plan: 6 Month Update: 11/1/2014 (in our files).

7 See Stipulation and Order of Settlement, *Rafferty v. Doar*, No. 13-cv-1410 (S.D.N.Y. Oct. 23, 2015) (requiring Medicaid and SNAP agencies to issue notices and written material in alternative formats to those who are blind and visually impaired and including requirements for accessibility of website portal); Cary LaCheen, National Center for Law and Economic Justice, The Closed Digital Door: State Public Benefits Agencies' Failure to Make Websites Accessible to People with Disabilities and Usable for Everyone (June 22, 2010); National Center for Law and Economic Justice & Maximus, Modernizing Public Benefits Programs: What the Law Says State Agencies Must Do to Serve People with Disabilities (2010).

8 State data on the extent of churn is limited, but advocates are very familiar with their clients' experiences. For background, see Dottie Rosenbaum, Center on Budget and Policy Priorities, Lessons Churned: Measuring the Impact of Churn in Health and Human Services Programs on Participants and State and Local Agencies (March 20, 2015).

states.[9] Nonetheless, litigation has been necessary to fix systemic delays in getting benefits to eligible households in states where modernization has fallen short. In its litigation in various states and discussions with local advocates in other states, the National Center for Law and Economic Justice and its colleagues have seen the serious harms and deprivations that flawed modernization causes applicants and recipients.[10] Such systemic failures and the resulting exclusion of families from benefits challenge advocates to consider anew how fundamental due process principles apply in increasingly complicated, technology-driven eligibility systems and how they may shape advocacy strategies.[11]

Overview of Procedural Due Process

The "due process revolution of the 1970s" began with the U.S. Supreme Court's decision that afforded procedural due process rights guaranteed by the Fourteenth Amendment to welfare recipients prior to discontinuation of their benefits.[12] The landmark case of *Goldberg v. Kelly* remains the foundation for the acknowledgment

The Court since *Goldberg* has continued to emphasize the flexibility and adaptability of due process and the corresponding need to adapt procedural protections to changing circumstances.

that persons seeking to vindicate their entitlement to welfare assistance possess a property interest in those benefits; the property interest entitles them to due process protections of predeprivation notice and an opportunity for an evidentiary hearing.[13] In by-now familiar language, the Court elaborated upon the compelling need for pretermination due process protections:

> For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. Thus the crucial factor in this context … is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy.[14]

Quoting the district court below, the *Goldberg* Court emphasized that "'[t]he stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great,'" to forgo adequate due process protections for these individuals.[15]

Addressing the contours of the pretermination hearing, the *Goldberg* Court emphasized that the procedures mandated by due process must be flexibly "adapted to the particular characteristics of welfare recipients, and to the limited nature of the controversies to be resolved."[16] This adaptability requires that the hearing "must be tailored to the capacities and circumstances of those who are to be heard."[17] The Court concluded that, in the welfare benefits context, due process requires a pretermination hearing consisting of the following minimum procedural safeguards: notice detailing the reasons for the proposed termination; the opportunity at the hearing to confront and cross-examine witnesses, to present oral arguments, and to be represented by counsel; and adjudication by an impartial decision maker who states reasons for the determination and indicates the evidence for it.[18]

The Court since *Goldberg* has continued to emphasize the flexibility and adaptability of due process and the corresponding need to adapt procedural protections to changing circumstances.[19] This flexibility is in the "scope" of due process—"a recognition that not all situations calling for procedural safeguards call for the same kind of procedure."[20]

The Court described its approach to due process in *Wilkinson v. Austin*: "[W]e generally have declined to establish rigid rules

9 See, e.g., U.S. Department of Agriculture (USDA) Food and Nutrition Service, Call Center/Contact Center Support for States: A Framework and Reference Guide (Aug. 2011); Press Release, USDA Food and Nutrition Service, USDA Awards Grants to Improve SNAP Processing, Technology (Sept. 16, 2015); Memorandum from USDA Food and Nutrition Service to Regional Administrators (Oct. 1, 2014) ("State Guidance on Improving Low [SNAP] Application Processing Timeliness Rates"); Memorandum from USDA Food and Nutrition Service to Regional Directors (May 13, 2014) ("Supplemental Nutrition Assistance Program—Guidance for State Agencies on Novel Waivers"). For USDA Food and Nutrition Service materials on modernization, search fns.usda.gov for "SNAP modernization."

10 See, e.g., Stipulation and Order of Settlement, *Melanie K. v. Horton*, No. 1:14-CV-710 (N.D. Ga. Feb. 2, 2015) (approved Aug. 6, 2015); *Briggs v. Bremby*, No. 3:12-cv-324 (D. Conn. Dec. 4, 2012), aff'd, 792 F.3d 239 (2d Cir. 2015); *Leiting-Hall v. Phillips*, No. 4:14-CV-03155 (D. Neb.) (pending). See also Marc Cohan & Mary R. Mannix, *National Center for Law and Economic Justice's SNAP Application Delay Litigation Project*, 46 Clearinghouse Review 208 (Sept.–Oct. 2012).

11 As to the due process issues raised by increased automation, see Danielle Keats Citron, *Technological Due Process*, 85 Washington University Law Review 1249 (2008).

12 Jason Parkin, *Adaptable Due Process*, 160 University of Pennsylvania Law Review 1309, 1320 (2012).

13 *Goldberg*, 397 U.S. at 264–71.

14 *Id*. at 264 (citation and footnotes omitted).

15 *Id*. at 266 (citation omitted).

16 *Id*. at 267.

17 *Id*. at 268–69 (footnote omitted).

18 *Id*. at 268–71.

19 See *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands."). See also *Connecticut v. Doehr*, 501 U.S. 1, 10 (1991) ("Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.") (internal quotation marks omitted).

20 *Morrissey*, 408 U.S. at 481.

and instead have embraced a framework to evaluate the sufficiency of particular procedures."[21] The Court established that framework six years after the *Goldberg* decision in *Mathews v. Eldridge*.[22] In rejecting the contention that the discontinuation of social security disability benefits without a pretermination hearing violates the due process clause, the Court adopted a new approach to determining what procedures are required by due process when the government seeks to deprive an individual of a constitutionally protected interest. The Court mandated consideration of three distinct factors as part of a fact-intensive balancing approach:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[23]

The Court continues to cite the *Goldberg* and *Mathews* holdings with approval in determining the extent of due process safeguards for persons possessing property interests in disputes involving other public benefits, such as food stamps.[24] Medicaid benefits constitute similarly protectable property interests that mandate due process safeguards.[25] While the Supreme Court has not yet ruled on the question, each circuit to examine the issue has held that applicants for benefits (as opposed to current recipients) may possess a property interest in receiving public welfare entitlements, sufficient to trigger due process safeguards.[26]

Courts have often declared that due process entails a foundation of fundamental fairness and rational decision making that serves as a buffer for recipients against arbitrary governmental action. In addressing the reduction of Medicaid home care services, the court in *Mayer v. Wing* held: "At a minimum, 'due process requires that government officials refrain from acting in an irrational, arbitrary, or capricious manner.'"[27] Due process further "demands that decisions regarding entitlements to government benefits be made according to 'ascertainable standards' that are applied in a rational and consistent manner."[28] In the public benefits context, "due process requires that welfare assistance be administered to ensure fairness and freedom from arbitrary decision-making as to eligibility."[29]

Due Process Considerations When Modernization Fails

Fundamental procedural due process protections are tools for advocates seeking to remedy many of the failures and disentitlements that can result from modernization. The array of advocacy strategies is far too extensive to be covered here, but we welcome direct conversation with advocates looking to combat disentitlement resulting from modernization or other reasons. However, several approaches merit brief discussion.

The advocate typically needs to show that there are systemic unlawful practices notwithstanding nominally adequate written policies and that such systemic failures cause widespread improper denials and terminations.

All too often in a modernized system, workers do not individually create the notices of denial or of adverse action that inform applicants or recipients of the reason(s) why an application has been denied or benefits are being terminated. Instead the workers may use an automated notice system that has generic drop-down screens or that lists multiple alternative reasons for the proposed adverse action. The use of such a system may violate due process requirements.

For example, in *Weston v. Cassata* the challenged notices were issued by the county using computer-generated text developed by the state agency.[30] In preparing individual sanction notices, county workers selected standard messages from

21 *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005).

22 *Mathews v. Eldridge*, 424 U.S. 319 (1976).

23 *Id*. at 335.

24 See, e.g., *Atkins v. Parker*, 472 U.S. 115, 128 (1985) ("Food-stamp benefits, like the welfare benefits at issue in *Goldberg v. Kelly*, 'are a matter of statutory entitlement for persons qualified to receive them.' Such entitlements are appropriately treated as a form of 'property' protected by the Due Process Clause; accordingly, the procedures that are employed in determining whether an individual may continue to participate in the statutory program must comply with the commands of the Constitution" (quoting *Goldberg*, 397 U.S. at 262–63 (footnote omitted))).

25 See, e.g., *NB v. District of Columbia*, 794 F.3d 31, 42 (D.C. Cir. 2015) (due process attached to claims of entitlement to prescription drug coverage under Medicaid).

26 See *Kapps v. Wing*, 404 F.3d 105, 115–16 (2d Cir. 2005) (citing cases). In the application context, the process due "is notice of the reasons for the agency's preliminary determination, and an opportunity to be heard in response" (*Kapps*, 404 F.3d at 118 (citation omitted)).

27 *Mayer v. Wing*, 922 F. Supp. 902, 911 (S.D.N.Y. 1996) (quoting *Pollnow v. Glennon*, 757 F.2d 496, 501 (2d Cir. 1985)).

28 *Id*. (quoting *Holmes v. New York City Housing Authority*, 398 F.2d 262, 265 (2d Cir. 1968)).

29 *White v. Roughton*, 530 F.2d 750, 753 (7th Cir. 1976).

30 *Weston v. Cassata*, 37 P.3d 469 (Colo. Ct. App. 2001).

The Court since *Goldberg* has continued to emphasize the flexibility and adaptability of due process and the corresponding need to adapt procedural protections to changing circumstances.

the state's computer system but did not include case-specific information. One of the results was that the challenged notices did not specify the particular conduct that led to the sanction but instead simply listed multiple possible reasons. One set of notices generically said that the individual facing termination failed to cooperate with the "works requirement, child support requirement, or immunization requirement of the Colorado works program."[31] The *Weston* court found that the notices deprived recipients of due process, and that ruling was affirmed on appeal.[32] After the lower-court decision, the county reportedly paid over $500,000 to some 900 families who received welfare.[33] Many other courts have found notices to violate due process when they contained information too scant to enable the recipient to determine whether to request a hearing.[34]

But simply giving notice and opportunity for a hearing is not enough. More critical is that arbitrary government action may deprive applicants and recipients of their property without due process. Mounting a broad-based litigation due process challenge to widespread procedural denials and terminations of otherwise eligible households arising from the systemic failures of a modernized system is certainly novel and difficult. As to actions involving individual workers, state agencies are unlikely to acknowledge that "staff determine eligibility based upon their own unwritten personal standards."[35]

The advocate typically needs to show that there are systemic unlawful practices notwithstanding nominally adequate written policies and that such systemic failures cause widespread improper denials and terminations. Precedent does exist. In *Salazar v. District of Columbia* the court found that the defendant's persistent pattern of terminating eligible households based on incorrect information and a seriously flawed computer system was itself a due process violation.[36] The *Salazar* court focused not only on the massive number of incorrect determinations of ineligibility but also on the agency's long-standing knowledge of the problems and its persistent failure to take serious steps to remedy the violations.

Due process principles impose an obligation upon the state agency to ensure that the facts underlying the proposed adverse action are correct and that the person threatened with the adverse action correctly fits within the scope of persons intended to be affected. In *Mayer v. Wing* persistent reductions in home care hours for elderly and homebound Medicaid recipients violated due process principles despite their receiving timely and adequate notice because the reductions were determined to be "capricious" and not issued pursuant to ascertainable standards.[37] The *Mayer* court noted that the recipients won their fair hearings 92 percent of the time; however, the court concluded, the fair hearing system is a particularly poor remedy because many recipients do not request hearings and, when they do and subsequently prevail, the state resends a new notice of reduction predicated on the same facts that led to the issuance of the successfully challenged notice.[38]

The failure of an agency to consider adequately the information available to it in making individual eligibility determinations and to ensure that the information is correct may be arbitrary and capricious enough to give rise to a due process violation. In *Henry v. Gross* the trial court, which was affirmed on appeal, found that New York City's program of terminating cash assistance cases when computerized bank matches reveal that the household has assets in excess of $1,000 violated, inter alia, due process.[39] Among the city's failures was its not investigating whether the money in the bank account was actually available to the household.[40] The *Henry* court further observed that recipients were not given an adequate opportunity to show that even if the money was in the account, the money was not effectively available to the household.[41] In the context of a dysfunctional modernized system, fundamental fairness should arguably require that each person have a chance to establish eligibility and

31 *Weston v. Hammons*, No. 99-CV-412, at 10 (Colo. Dist. Ct. Nov. 5, 1999).

32 The court of appeals concluded after extensive analysis that the "record demonstrates that the notices contained the patent deficiencies noted by the trial court" (*Weston*, 37 P.3d at 478).

33 National Center for Law and Economic Justice, Colorado TANF Recipients Win Due Process Challenge to Sanction Notices (July 2001).

34 See, e.g., *Ellender v. Schweiker*, 575 F. Supp. 590 (S.D.N.Y. 1983) (notice of overpayment of federal benefits that listed only amount owed was found unconstitutional); *Willis v. Lascaris*, 499 F. Supp. 749, 755–58 (N.D.N.Y. 1980). See also *Corella v. Chen*, 985 F. Supp. 1189 (D. Ariz. 1996) (Medicaid termination notices unconstitutional where notices stated only that household was no longer eligible because of excess income); *Cherry v. Tompkins*, 1995 U.S. Dist. LEXIS 21990, at *51–52 (S.D. Ohio March 31, 1995) (Medicaid termination notices, which included only "generic reason" along with "legalistic citation," violated due process).

35 *White*, 530 F.2d at 754.

36 *Salazar*, 954 F. Supp. at 327–28.

37 *Mayer*, 922 F. Supp. at 910–11.

38 *Id*. at 911.

39 *Henry v. Gross*, 803 F.2d 757 (2d Cir. 1986).

40 *Id*. at 760.

41 *Id*.

receive an individualized determination of eligibility through a fairly operated system.

That individuals who are denied or terminated win their fair hearings while the agency obdurately refuses to correct the underlying action leading to the hearing requests may be sufficient to raise due process issues. In *Jones v. Califano* the Second Circuit concluded that the court had jurisdiction to hear a challenge to the refusal of the U.S. Department of Health, Education, and Welfare secretary to abandon an unlawful policy even though the policy was consistently reversed following administrative hearing; the court noted that the secretary's failure to follow the hearing results raised colorable due process and equal protection issues.[42] The *Jones* court observed that "the Secretary is forcing claimants to proceed by the tedious method of adjudicating their claims on an individual basis, even though eligibility is conceded."[43]

At the application stage as well as during renewal and other case actions, the worker in the modernized system may act arbitrarily. Due process protections may offer an opportunity for the advocate to attack systemic abuses. For example, in *Reynolds v. Giuliani* plaintiffs—New York City applicants for SNAP, Medicaid, and TANF—sought preliminary injunctive relief from city defendants' reengineering of traditional welfare centers into modernized job centers.[44] The plaintiffs alleged that New York City, through the conversion, erected hoops and hurdles that prevented otherwise eligible applicants from receiving assistance. They further claimed that the city gave applicants "false and misleading information in an effort to prune the welfare rolls."[45]

The *Reynolds* court granted preliminary injunctive relief. In addition to finding violations of federal statutes and implementing regulations, the court concluded that "plaintiffs' allegations concerning various practices..., such as providing false or misleading information to applicants about their eligibility [and] arbitrarily denying benefits to eligible individuals ..., state a viable due process claim under [42 U.S.C.] § 1983."[46]

Undergirding the change from welfare centers to job centers in *Reynolds* was New York City's decision to vest greater discretion in the granting of aid in workers whose primary responsibility was not to determine eligibility for assistance but to assist applicants in finding employment.[47] As a consequence, eligible applicants were frequently denied assistance through no fault of their own, largely through the worker's failure to follow well-established rules consistently.[48] Even though written, objective, and ascertainable standards are "an elementary and intrinsic part of due process," no well-developed case law explains how the requirement for objective standards applies in a context where such standards exist but rampant technology system failures (e.g., applicants cannot get through to call centers for mandatory eligibility interviews and are denied) mean that the standards are not actually fairly applied.[49]

Due process protections are critical to ensuring fundamental fairness in the operation of any bureaucracy. However, bringing effective challenges, particularly to unlawful patterns of conduct as opposed to illegal policies, can be very resource-intensive. The successful pattern-and-practice case often requires marshaling many examples of unlawful conduct, engaging in extensive discovery, making a strong factual showing through data, and engaging in a fact-finding hearing. Advocates will likely first want to rely upon statutes and implementing regulations for their litigation challenges, but due process claims can be a valuable strategic and tactical tool in a systemic lawsuit.[50]

The National Center for Law and Economic Justice is interested in hearing from advocates who are working on these issues. We would like to establish regular communication among such advocates. Please contact us.

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42 *Jones v. Califano*, 576 F.2d 12 (2d Cir. 1978).

43 *Id*. at 19.

44 *Reynolds v. Giuliani*, 35 F. Supp. 2d 331 (S.D.N.Y. 1999).

45 *Id*. at 336.

46 *Id*. at 341.

47 Committee on Social Welfare Law, *The Wages of Welfare Reform: A Report on New York City's Job Centers*, 54 Record of the Association of the Bar of the City of New York 472, 474–83 (1999).

48 *Reynolds*, 35 F. Supp. 2d at 347.

49 *Baker-Chaput v. Cammett*, 406 F. Supp. 1134, 1140 (D.N.H. 1976); cf. *Henry*, 803 F.2d 757.

50 See, e.g., Stipulation and Order of Settlement, *Rafferty*, No. 13-cv-1410.

Protecting Access to Benefits in Philadelphia's Modernized Benefits System

BY KRISTEN DAMA AND AMY HIRSCH

In response to repeated cuts in its operations budget and a prolonged hiring freeze, the Pennsylvania Department of Human Services (then called the Department of Public Welfare) attempted, beginning in 2005, to "do more with less" in running its assistance offices.[1] The department emphasized an online portal and call centers for customer service, while staff telephone numbers were no longer publicized and caseworkers lost access to voicemail.[2] Offices went "paperless," and all documentation had to be scanned and attached to clients' electronic case records before it could be acted upon.[3] Neighborhood offices were consolidated; in Philadelphia, mergers reduced offices from 18 to 11.

Meanwhile, demand for public benefits exploded due to the recession.[4] The intersection of "streamlined" operations and caseload increases was disastrous, and low-income Philadelphians were denied meaningful access to benefits. Most lacked Internet access to use the department's online portal, and hundreds of calls to call centers went unanswered each day.[5] Caseworkers discouraged clients from submitting documents by fax or mail because of processing delays. Frustrated clients flooded offices, only to be told to come back another day.

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Clients who did access offices faced severe delays in having their documents scanned and attached to their case files.[6] They then lost benefits erroneously, and this drove them back into offices to reapply or file appeals or both. Clients turned to social service agencies and legal aid offices, including Community Legal Services of Philadelphia, in record numbers.

After years of trying to resolve these problems administratively, Community Legal Services and pro bono cocounsel from Dechert LLP sent in July 2012 an "intent to sue" letter to Pennsylvania's legal counsel. We alleged that inaccessibility of Philadelphia's neighborhood offices and failure to process benefits applications properly violated constitutional requirements of due process and equal protection as well as federal statutory requirements.[7] We then launched prelitigation negotiations with the Department of Human Services. For nearly a year, negotiations were fruitless, and we prepared to file federal class action litigation. After a more responsive secretary of human services was appointed, the department agreed in May 2013 to negotiate significant changes in Philadelphia operations and thereby forestalled litigation.

While a new secretary contributed to meaningful negotiation and an eventual agreement, we used three strategies to achieve change:

1 Pennsylvania Department of Public Welfare, Modern Office Phase II Final Report and Assessment (Sept. 24, 2009) (in our files).

2 *Id*. at 11.

3 *Id*. at 16–18.

4 E.g., between 2008 and 2011, Pennsylvania's Supplemental Nutrition Assistance Program (SNAP) caseload increased by 46 percent, and the Medicaid caseload increased by 20 percent (Pennsylvania Department of Human Services, Medical Assistance, Food Stamps and Cash Assistance Statistics Reports (2015)).

5 Persistent complaints of unanswered telephones prompted the U.S. Department of Agriculture (USDA) to conduct a program access review of one Philadelphia office in 2011. The USDA reported that "[t]elephone operation procedures are not adequately serving households" (USDA, Program Access Review 1 (Sept. 1, 2011) (in our files)).

6 These problems with managing, filing, scanning, and tracking paperwork are documented in findings from an audit of a Philadelphia neighborhood office conducted by the Pennsylvania Department of Human Services' Office of Administration, Bureau of Financial Operations (Letter from Tina L. Long, Acting Director, Pennsylvania Department of Public Welfare, to Phillip Abromats, Acting Deputy Secretary, Office of Income Maintenance (Aug. 5, 2011) ("Finding No. 1—Case Record Filing is Disorganized and Backlogged.... There were 474 boxes of files and other documents observed sitting around the office waiting to be filed. Of the 21 case records requested for review, West District could only locate 11.... Finding No. 3—Documents Are Not Being Scanned Timely Or At All.")).

7 See, e.g., 7 U.S.C. § 2020(e)(2)(B)(iii), (3), (4), (9) (2014) (SNAP); 42 U.S.C. § 1396a(a)(8) (2012) (Medicaid).

1. Story Banking. Community Legal Services' model combines individual client representation with systemic advocacy. Our attorneys identified dozens of Philadelphia clients with particularly egregious experiences. Advocates worked with a team of law students to organize client stories to share with executive staff at the Department of Human Services (and potentially to use in eventual litigation).

2. Collecting and Analyzing Data. While the department's new secretary found individual client stories compelling, other department staff dismissed them as anecdotal. Community Legal Services built nine questions into its case management system, LegalServer, to capture operational problems during client intakes; such problems included long wait times in offices and poor telephonic access. Advocates used the data to generate reports that showed hundreds of affected cases, identified particularly troubled neighborhood offices, and demonstrated that operational problems were worsening over time.

3. Identifying Concrete Remedies. When the Department of Human Services' lawyers insisted that budgetary constraints precluded systems changes, Community Legal Services and Dechert asked to meet with high-level operations staff and, drawing from best practices in other states, presented a menu of concrete steps that the department could take to fix problems. Some of the menu items were new to the department, and its operations staff agreed that some were feasible. The department identified other steps that staff could take.

Advocates used the data to generate reports that showed hundreds of affected cases, identified particularly troubled neighborhood offices, and demonstrated that operational problems were worsening over time.

As a result, the Department of Human Services programmed its Philadelphia call center telephones so that overflow calls would "roll over" to less trafficked centers elsewhere in Pennsylvania. The department launched a pilot to allow Philadelphia's initial Supplemental Nutrition Assistance Program applicants to call a dedicated hotline for interviews during two-hour windows and agreed to explore a true "interview-on-demand" system. The department expanded reviews of terminations or denials for documentation, made review data available to Community Legal Services, and made other computer changes to safeguard against erroneous terminations due to documentation. The department publicized and retrained staff on a new policy: if cases had been closed recently, they could be reopened without applications having to be filed anew. And the department began collecting and sharing data on clients who "churned" on and off benefits rolls.

Community Legal Services continues to track operational problems at client intake. In 2013, of clients who had interactions with Philadelphia assistance offices, 86 percent encountered operational problems, and such clients had an average of 2.75 problems per case. So far in 2015, the number is down to 61 percent having operational problems at an average of 1.78 problems per case. Like assistance offices nationwide, Philadelphia's offices continue to operate far from perfectly. But advocacy has had a measurable impact, and Community Legal Services continues to work cooperatively with the Department of Human Services to find additional solutions.

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