

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BARBARA BIZJAK, on behalf of herself and
her three minor dependent children and all
others similarly situated,

Plaintiff,

- against -

BARBARA BLUM, individually and in her official
capacity as Commissioner, New York State
Department of Social Services,

and

MICHAEL NASSAR, individually and in his
official capacity as Commissioner, Oneida
County Department of Social Services,

Defendants.

CONSENT DECREE

80-CV-381

ABM
This matter having come before the Court pursuant to joint
motion of plaintiffs and defendant ^{BLUM} for entry of an agreed order and
consent decree in this case, the Court being fully advised in the
premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I. JURISDICTION

This Court has jurisdiction over the parties, and over
plaintiffs' constitutional and statutory claims, under 28 USC
§ 1343(3) and (4).

II. CLASS CERTIFICATION

This action is properly maintainable as a class action
pursuant to FRCP 23(a), and 23(b)(2). The class consists of:

All persons within New York State who presently have or will have in the future a "fair hearing" request pending with defendant Blum on issues relating to the operation of either the Aid to Families with Dependent Children (AFDC) or Medical Assistance (MA) programs.

III. DEFINITION OF TERMS

As used herein, the following terms have the meanings indicated:

1. "Fair Hearing" -- Administrative hearing conducted by the New York State Department of Social Services pursuant to 18 NYCRR Part 358.
2. "Fair Hearing Appellant" -- Applicant for or recipient of public assistance in the form of AFDC or MA who requests DSS to review local agency determination or failure to act.
3. "DSS" -- The New York State Department of Social Services, which administers the AFDC and MA programs within New York.
4. "Local Agency" -- County social services agency which under Social Services Law, § 65 is responsible for the administration of all care and assistance programs administered by DSS, including AFDC and MA.
5. "Case Record" -- All paper records and machine readable data that can readily be converted to a comprehensive paper record relating to a fair hearing appellant's application for or receipt of AFDC or MA public assistance.
6. "AFDC" -- Aid to Families with Dependent Children: Care and grant public assistance program administered by DSS and partially funded by federal government.

7. "MA" -- Medical Assistance: Care and grant public assistance program administered by DSS and partially funded by federal government.

8. "ADM" -- Administrative directive issued by DSS and binding on local agencies, which is a written communication providing directions to be followed in the administration of public assistance and care programs.

IV. TERMS OF SETTLEMENT

1. 45 CFR § 205.10(a)(13)(i), applicable to both AFDC and MA programs, requires that:

"(a) State Plan Requirements. A State plan * * * shall provide for a system of hearings under which:

* * *

"(13) The claimant, or his representative, shall have adequate opportunity:

* * *

"(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing."

2. 42 CFR § 131.242 provides, in relevant part that:

"The applicant or recipient, or his representative, must be given an opportunity to --

"(a) Examine at a reasonable time before the date of the hearing and during the hearing:

"(1) The content of the applicant's or recipient's case file; and

"(2) All documents and records to be used by the State or local agency at the hearing; * * *"

3. New York State, having elected to participate in the AFDC and MA programs, is required to comply with applicable federal law and regulations. Pursuant to 42 USC §§ 602(a)(4), 1396(a)(3) and 1302, DSS is bound by 45 CFR § 205.10(a)(13)(i) and 42 CFR § 131.242

4. DSS regulations 18 NYCRR 357.3(c) and 358.12 are hereby declared invalid and contrary to law insofar as they purport to limit fair hearing appellants' access to the contents of case records.

5. From the date of this decree, defendant Blum, her successors in office, and DSS are enjoined from failing to comply fully with the requirements set forth in section 205.10(a)(13)(i) and section 131.242 in operating fair hearings. Defendant Blum, her successors in office, and DSS shall hence forth afford all AFDC and MA fair hearing appellants the opportunity to examine the contents of their case files at a reasonable time in advance of and during their fair hearings, in accordance with federal law. Attached hereto as Exhibit "A" is a proposed ADM which defendant Blum shall issue as final, which ADM complies with and expresses the terms of this decree. Defendant Blum, her successors in office and DSS shall hence forth make reasonable efforts to insure compliance with said ADM and this decree by any local agency.

6. From the date of this decree, defendant Blum, her successors in office, and DSS shall inform all AFDC and MA fair hearing appellants of their right to access to the contents of their case records at a reasonable time prior to and during the fair hearing. Attached hereto as Exhibit "B" is a written notice which defendant Blum, her successors in office and DSS shall affix to or otherwise incorporate in all notices of fair hearing, which written notice shall suffice as compliance with this paragraph.

7. Defendant Blum or her successor in office shall cause DSS's rules and regulations to conform to federal law and the terms of this stipulation, by commencing the rule-making procedure required by the State Administrative Procedure Act within 30 days of judicial approval of this stipulation.

8. The Court will retain jurisdiction over this matter in order to enforce the provisions of this decree. The action is discontinued against defendant Blum in her individual capacity only. The matter of attorneys' fees is hereby expressly reserved.

E N T E R:

July 24, 1981
Sydney, N.Y.

Neal P. McCurn
NEAL P. McCURN
United States District Court Judge

DATED: _____ 1981

APPROVED:

Michael Bagge
MICHAEL BAGGE
Legal Aid Society of Oneida
County, Inc.
Bankers Trust Bldg., 14th Floor
Utica, New York 13501
Counsel for Plaintiffs

David A. Dietrich
DAVID A. DIETRICH
Assistant Attorney General
of the State of New York
The Capitol
Albany, New York 12224

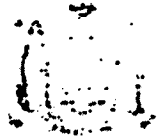
Susan M. Keating
SUSAN M. KEATING
Bureau of Litigation
New York State Department of
Social Services
40 North Pearl Street
Albany, New York 12243
Counsel for Defendant Blum

V. MICHAEL LICCIONE
800 Park Avenue
Utica, New York 13501
Counsel for Defendant Nassar

Department of Social Services
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

BARBARA B. BLUM
Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]



ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.:

DRAFT

DATE:

TO: Commissioners of Social Services

SUBJECT: Client Access to Records

SUGGESTED DISTRIBUTION: Income Maintenance Workers, MA Workers, Caseworkers, Administrative Personnel, Public Welfare Attorneys

CONTACT PERSON: Any questions relating to the Policies or procedures set forth in this Administrative Directive should be addressed to Sue Keating at 40 North Pearl Street, Albany, New York 12243 (800-342-3715, extension 31922.

I. PURPOSE:

The purpose of this administrative directive is to advise all Social Services districts that all clients, regardless of whether or not they are fair hearing appellants, are entitled to receive access to the entire contents of their case files as described herein, and to set forth appropriate conditions and procedures for providing access.

II. BACKGROUND:

As a result of a preliminary injunction granted in Bizjak v. Blum and Nassar (USDC/NDNY), this Department has been ordered to provide all ADC and MA fair hearing appellants access to the entire contents of their files both prior to and during their fair hearings, as well as providing notice of the right to access. Local districts were sent a Mailgram to this effect on June 25, 1980 which, for administrative

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Social Services Law and Other Local References | Bulletin/Chapter Reference | Miscellaneous Reference |
|--------------------|--------------------|-------------|--|----------------------------|-------------------------|
| | | | | | |

EXHIBIT A

DSC-296 (Rev. 5/78)

purposes, expanded the group of individuals to whom access is granted to include Home Relief Recipients. Since that date, this Department has been sending notices to all fair hearing appellants that they have the right to examine their files.

Given the Court of Appeals decision in Dunbar v. Toia and its application to access in the fair hearing context and recent developments in State and Federal legislation which indicate a definite trend in public policy toward disclosure of records absent some showing of a specific reason not to disclose, this Department has been for some time attempting to formulate a change in its access policy. The most recent communication prior to the response to developments in Bizjak was the circulation of 79 JNF-25 dated December 31, 1979, which proposed a change in policy and invited comments on the proposal.

III. PROGRAM IMPLICATIONS:

The "case file" or "case record" for access purposes includes all paper records and machine readable data that can readily be converted to a comprehensible paper record relating to an individual's receipt of Home Relief, Aid to Dependent Children, Medical Assistance, Emergency Assistance, Child Support Enforcement or Title XX Services. A simple test for whether a particular file is covered is whether it is filed under the name of the requesting individual. Access to these records shall be granted only to the person to whom they pertain or his or her authorized representative.

In the case of records which relate generally to a household, eligibility and income maintenance payment records shall be made available to any member authorized to act on behalf of a household.

Any records which are in fact maintained by the district with respect to an individual are subject to access by that individual whether or not the records are required to be maintained.

Medical records, whether or not that are marked "confidential," must be made available for review.

The only exceptions to access are:

- 1) those materials to which access is governed by separate statute, such as child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purpose of the Child Care Review Service; 2) those materials which are being maintained separate from public assistance files for purposes of a criminal prosecution and referral to the District Attorney's office; 3) the county attorney or welfare attorney's files.

If the case file review is in connection with a fair hearing and documents from a particular file not ordinarily open to the client will be used at the fair hearing by the agency, then the entire file from which those documents are taken must be open to inspection. This proviso will enable the client to inspect the file for possible exculpatory evidence.

Fraud files being maintained separate from the public assistance files for possible referral to the DA's office shall not ordinarily be available for inspection. However, if the agency intends to use information from the fraud file in the fair hearing context, the entire file shall be open to review.

Similarly, a Child Support Enforcement file kept in the name of a deserting parent is not ordinarily available to anyone other than that parent. However, if any document from the file is to be used in the fair hearing context, the individual against whom it is to be used may inspect the entire IVD file.

IV. REQUIRED ACTION:

Districts must, at a minimum, take the following steps to insure that clients or their authorized representatives receive access:

1. An individual or individuals in the employ of the district must be designated as responsible for locating all relevant files, setting up appointments for review, apprising clients of the status of file searches, making files available at a designated time and place, and overseeing access.
2. If the district receives a request for a review of a particular file, only that file need be produced. If, however, a general request for review is made with no specificity, every file pertaining to the requesting individual should be identified and gathered for that individual's review.
3. An appointment schedule may be set up for the purpose of case file review. If there are difficulties in locating the file, the client or his representative must be called.

No more than five working days should elapse between the date of receipt of request for review and notification that either the file is not yet located or the file is available at a specific date, time and place for review.

4. At the time of review, proper identification from the person requesting the file must be obtained: an applicant must present a fair hearing notice or some other form of identification; a recipient must present an ID card or notice of fair hearing and an attorney, paralegal or representative must present authorization signed by the applicant or recipient.

5. The option of allowing the client to make copies of documents from the file will rest with the local district. It is suggested that copying be allowed if the request is reasonable and copying facilities are available. The districts may charge a fee up to 25¢ per page for copying.

6. Districts must post a conspicuous notice in a location at which applications for assistance are taken indicating that applicants and recipients are entitled to access to case records in accordance with this Administrative Directive. Posting of a copy of this Administrative Directive will meet this requirement.

V. ADDITIONAL INFORMATION:

Since this access policy represents a substantial change in providing client access to records, districts should consider whether their current operating practices have or will lead individuals providing information to believe that the source or content of information provided will not be disclosed to the applicant or recipient to whom it relates, and whether and in what manner they should inform these sources of the consequences of this policy change.

The policy set forth in this Administrative Directive should be construed wherever possible in favor of providing access to case files. Any questions as to access in particular circumstances should be referred to the contact person designated.

NOTICE TO ALL FAIR
HEARING APPELLANTS

Dear Sir or Madam:

You should be aware that you are entitled to access your case record. If you desire to review your case record, you should contact your local social services department for instructions. If you believe that the information in your case record may be helpful to you at your fair hearing, you should obtain access to it prior to your hearing date. Hearings will not be adjourned for the purposes of reviewing your file unless you have made such a request. You do not have to request a fair hearing or attend a fair hearing in order to review your case record. Any denial of access to case records should be brought to the attention of the hearing officer.