

RESOLUTION

of

The New York State Board of Social Welfare
January 16, 1968

WHEREAS, a complete review of the Department's fair hearing procedure has been undertaken by the Board and the Department; and

WHEREAS, as a result of such review, proposed rules of the Board relating to fair hearings were developed which were intended to adequately protect the rights of applicants for and recipients of public assistance; and

WHEREAS, notice was given at the July meeting of the Board, in accordance with Article VIII of the by-laws, of intent to move, at the September meeting of the Board, amendment of Part 24 of the Rules of the Board, to add twenty-two proposed new sections thereto, subject to such revisions as might be recommended as a result of the public hearing or hearings to be held by the Rules Committee; and

WHEREAS, public hearings relating to such proposed rules were held by the Rules Committee on July 21 and 22, 1967 in the City of New York and on August 9, 1967 in the City of Rochester; and

WHEREAS, such proposed rules have been revised as deemed necessary and appropriate in consequence of such public hearings and of further consideration thereof by the Rules Committee; and

WHEREAS, the Department and the Rules Committee of the Board recommend that such proposed rules as so revised be adopted by the Board; and

WHEREAS, notice was given at the November meeting of the Board, in accordance with Article VIII of the by-laws of intent to move, at the December meeting of the Board, such resolution amending the Rules of the Board to accomplish such purpose; and

WHEREAS, the New York Public Welfare Association requested that action on such resolution be deferred; and

WHEREAS, in response to the request of said New York Public Welfare Association the Board postponed action on said resolution to the January meeting of the Board; therefore

PURSUANT to the authority vested in the State Board of Social Welfare by Section 2 of Article XVII of the New York State Constitution and Sections 17 and 18 of the Social Services Law, it is

RESOLVED, that the Official Rules of the State Board of Social Welfare, being Chapter I of Title 18, NYCRR, be and hereby are amended in the following respects, effective March 1, 1968, except that no provision of these amendments shall apply to Fair Hearings or requests therefor pending on March 1, 1968.

Part 84 is hereby amended by adding thereto twenty-two new sections, to be 84.2 through 84.23 inclusive, to read as follows:

(See annexed)

84.2. Definitions. (a) Appellant. An applicant or recipient who requests a fair hearing shall be termed an appellant.

(b) Board. Board means the State Board of Social Welfare.

(c) Commissioner. Commissioner means the State Commissioner of Social Services.

(d) Department. Department means the State Department of Social Services.

(e) Fair Hearing. Fair hearing is the procedure by which an applicant for or recipient of public assistance may appeal to the Commissioner from certain decisions or actions of a social services official and have a hearing thereon.

(f) Hearing Officer. Hearing officer means an attorney who is employed by the Department exclusively to conduct hearings for the Commissioner.

(g) Parties. The parties to a fair hearing shall be the appellant and the social services official whose decision or action is being reviewed.

(h) Social Services Official. Social services official means the county, city or town official responsible for the administration of public assistance and care. The term shall also include the Director of the Bureau of Mental Health Affairs or the head of any other bureau of the Department to which is assigned responsibility for furnishing public assistance and care to persons in Family Care on conditional release from an institution in the State Department of Mental Hygiene in accordance with the provisions of section 138-a of the Social Services Law and responsibility for furnishing medical assistance for the needy to eligible persons who are sixty-five years of age or older who are patients in state hospitals for the mentally disabled or for the treatment of tuberculosis in accordance with the provisions of subdivision 2 of section 365 of the Social Services Law.

84.3. Right to a fair hearing. The following persons shall be entitled to a fair hearing:

(a) Applicants for or recipients of Aid to Dependent Children, Aid to the Aged, Blind or Disabled, Medical Assistance for Needy Persons, Home Relief or Veterans Assistance on the following grounds:

- (1) Denial of assistance,
- (2) Failure to determine the applicant's eligibility and, if found eligible, to grant or authorize assistance within thirty days from the date his application therefor was made,
- (3) Inadequacy in amount or manner of payment of assistance,
- (4) Discontinuance or suspension of assistance, in whole or in part.

(b) Recipient of Aid to Dependent Children or Home Relief who is dissatisfied in relation to assignment in a federal Economic Opportunity Act Title V work experience and training program.

84.4. Informing applicants and recipients of right to fair hearing. Each social services official shall inform applicants and recipients in writing, and orally whenever practicable, of their rights with reference to fair hearings and the method by which a fair hearing may be obtained. Applicants shall be so informed when they apply for assistance and recipients shall be so informed whenever the social services official makes any decision adversely affecting their receipt of assistance or the amount thereof.

84.5. How request for fair hearing is made. Any clear written or oral communication made to the Department by or on behalf of an applicant or recipient requesting review of a social services official's decision, action or failure to act shall constitute a request for a fair hearing if made within sixty days after the action or failure to act complained of.

84.6. When hearing to be held. The hearing shall be held promptly and in any event within ten working days from the date the request is received by the Department in cases involving discontinuance or suspension of assistance and within thirty-three working days from the date the request is received by the Department in all other cases.

84.7. Time and place of hearing. The hearing shall be held at a time and place convenient to the parties as far as practicable, and, if requested, necessary transportation for the appellant and his representative and witnesses, and other costs and expenditures reasonably related to the hearing, shall be provided by the social services official.

84.8. Notice of hearing. At least five working days prior to the date of the hearing in cases involving discontinuance or suspension of assistance and at least ten working days prior to the date of the hearing in all other cases, written notice thereof shall be sent to the parties and their representatives. The notice to the parties shall inform them:

(a) Of the date and place of the hearing;

(b) Of the appellant's rights with respect to transportation and other costs and expenditures;

(c) Of the name and address of the hearing officer who will conduct the hearing;

(d) Of the issues which are to be the subject of the hearing;

(e) Of the manner in which the hearing will be conducted;

(f) Of the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence;

(g) That the time and place of the hearing are subject to change if convenient.

84.9. Examination of documents before hearing. Opportunity shall be afforded the appellant or his attorney, on five working days' written request, to examine copies of documentary evidence in the possession of the social services official which the social services official plans to introduce at the hearing but such documentary evidence need not be produced more than five working days prior to the hearing.

84.10. Hearing Officer. The hearing shall be conducted by an impartial Hearing Officer.

84.11. Powers of Hearing Officer. The Hearing Officer shall have all the powers conferred by law and regulations of the Department to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

84.12. Who may be present at hearing. The appellant, his representative (which may be an attorney or other person representing him), counsel or other representatives of the social services official, witnesses of both parties and any who may be called by the hearing officer, and representatives of the Department may be present at the hearing, together with such other persons as may be admitted by the Hearing Officer in his discretion with the consent of the appellant.

84.13. Conduct of hearing - Rights of parties. (a) The Hearing Officer shall preside. He shall make an opening statement describing the nature of the proceeding, the issues and the manner in which the hearing will be conducted.

(b) Technical rules of evidence followed in a court of law shall not apply, but evidence must be relevant and material.

(c) Each party has a right to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party.

(d) The hearing may be adjourned by the Hearing Officer for good cause on his own motion or at the request of either party.

(e) A verbatim record of the hearing shall be made.

84.14. Examination of record after hearing. The record of the hearing shall be confidential, but it may be examined by either party.

84.15. Decision after hearing. (a) The fair hearing decision shall be made and issued by the Commissioner on the basis of the hearing record. It shall be issued as promptly as feasible and not later than twelve working days from the close of the hearing; but such time may be extended with the consent of the parties. The decision shall describe the issues, recite the relevant facts, the pertinent provisions of law, Board Rule, Department Regulation and State approved local policy provisions, make appropriate findings, determine the issues, state the reasons for the determinations, and, when appropriate, direct specific action by the social services official.

(b) A copy of the decision shall be sent to each of the parties.

84.16. Notification of right to judicial review. In the letter transmitting the decision, clear reference shall be made to availability of judicial review.

84.17. Direction relative to similar cases. When a fair hearing decision indicates that the social services official has misapplied provisions of law, Board Rule, Department Regulation, or such official's own State approved policy, the Commissioner's letter transmitting such decision to such official shall contain a direction to such official to review other cases with similar facts for conformity with the principles and findings in the decision.

84.18. Decision without hearing. (a) The appellant shall have the option request that his appeal from a social services official's determination, act or failure to act be decided by the Commissioner without a hearing. In such cases, opportunity shall be afforded each party to submit written evidence and to review and comment on the evidence submitted by the other party.

(b) If at any stage of an appeal from a social services official's action or failure to act, it clearly appears to the Commissioner that the social services official's action or failure to act is contrary to law, Board Rule, Department Regulation or the social services official's own State approved policy, he may issue a decision directing the social services official to perform specific actions for the benefit of the appellant.

84.19. Compliance with decision. When a decision of the Commissioner (whether made after or without a hearing) directs a social services official to perform specific actions, such official shall comply promptly with such directions and make a report thereof to the Department within thirty days after receipt of the decision.

84.20. Compliance with direction relative to similar cases. When a direction has been given to a social services official to correct misapplication of law, Board Rule, Department Regulation or such official's own State approved policy in all cases similar to the one in which a decision has been issued, such official shall report the actions he has taken to comply with such direction to the Department within thirty days after receipt of the direction. The social services official shall make such additional reports as the Department may require.

84.21. Need for revision of Board Rule and Department Regulation indicated by appeals and fair hearings. When, as a result of appeals and fair hearings, there are indications that provisions of Board Rule or Department Regulation or both may be inadequate, review of such provisions shall be promptly initiated by the Department, which shall make appropriate periodic reports to the Board on the issues raised by hearings and the results thereof.

84.22. Local procedure for consideration of complaints. Nothing in these Rules shall be construed to restrict or limit the right of any social services official to establish and maintain a local, internal procedure for consideration and disposition of complaints by applicants for or recipients of public assistance or other benefits, provided that such procedure shall not be conducted or used so as to inhibit the exercise of any of the rights to a fair hearing granted under these Rules.

84.23. Application of Rules to Cases for which Department is Responsible. These rules shall apply to cases for which the Department is responsible for furnishing public assistance and care pursuant to the provisions of section 138-a and subdivision 2 of section 365 of the Social Services Law. In such cases the reports required to be made to the Department by sections 84.19 and 84.20 of these rules shall be made to the Commissioner or any Deputy Commissioner designated by him.