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MEMO

TO: Public Benefits Staff

FROM: Greg Read, Waterbury *GR*

DATE: October 22, 1985

SUBJECT DIM Fair Hearing Appeals  
Labbe v. Norton  
Agency Action Deadlines

Enclosures:

1. Labbe v. Norton, Civ. No. H-136 (1974), U.S. Dist. Conn. (Clarie, J.) Ruling on Plaintiffs' Motion for Summary Judgment, filed November 4, 1974;

2. Labbe v. Norton Judgment Order, filed November 4, 1974;

3. Labbe v. Norton Supplemental Judgment Order, filed March 31, 1975.

NOTE: Please distribute copies of memo and enclosures to local staff working with elderly.

## INTRODUCTION

Federal Constitutional and statutory law establish the fair hearing right for aggrieved participants in programs established by the Social Security Act, as amended. Goldberg v. Kelly, 397 U.S. 254 (1970), invoked procedural due process to require pre-termination fair hearing opportunities for welfare recipients. The fair hearing rights afforded to applicants are expressly mandated in statutes that establish the state plan requirements of the various federal-state public assistance programs, e.g., 42 U.S.C. Sec. 602(a)(4) (AFDC); 42 U.S.C. Sec. 1396a (a)(3) (Title XIX).

## AGENCY DEADLINES - Federal Requirements

Federal regulations governing Title XIX fair hearings do not specify time limits within which a fair hearing decision must be rendered and executed, although 42 C.F.R. Sec. 431.246 demands prompt corrective agency action when necessary after a hearing decision favorable to the appellant is issued. The provisions of 42 U.S.C. Sec. 1396a (a)(8) appear to be the source of this requirement, inasmuch as they mandate that Title XIX assistance "shall be furnished with reasonable promptness to all eligible individuals" (Emphasis added). See 42 U.S.C. Sec. 602(a)(10) (A) for the equivalent AFDC state plan requirement.

However, as to cash assistance programs under the Social Security Act, e.g., AFDC, the provisions of 45 C.F.R. Sec. 205.10(a) (16) clearly specify that:

Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

## Labbe v. Norton and Conn. Gen. Stats. Secs. 17-2a and 17-2b (Current)

The Labbe Judgment Order, filed November 4, 1974, requires that DIM conduct a fair hearing, that the hearing officer render a hearing decision, and that "all final administrative action," including the issuance of a cash payment when necessary, be completed "within 90 days of the claimant's (fair hearing) petition"<sup>1/</sup> (whenever the hearing decision made in the 90 day period requires agency action). See Paragraphs 1 and 2 of the Order.

The Judgment Order applies to all fair hearings requested for categorical Social Security Act programs, and therefore excludes food stamps and general assistance.

The "sole exception" to the Judgment Order's all-encompassing 90 day requirement occurs when the appellant has requested a delay or has failed to appear at the hearing.

Although not made explicit in the Court Order, it must be assumed that a requested delay extends the Labbe period only by the length of time delay requested.

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<sup>1/</sup>Paragraph 11 of the Order refers to the date an appeal petition is filed.

The Court Order also demands that in cases when the 90 day hearing/corrective action period is violated, DIM must "grant whatever relief is requested in (the) fair hearing (request)."

The Labbe Supplemental Judgment Order, filed March 31, 1975, demands, inter alia, that all DIM employees keep "from reviewing, changing, addending, modifying, altering or amending decisions of the Fair Hearings Officers rendered within the course of their duties" as hearing officers.

Connecticut statutes add requirements to the Labbe Orders. Conn. Gen. Stats Sec. 17-2a requires that a fair hearing be held within 30 days of the receipt of the fair hearing request, except that a "reasonable period of continuance" may be granted to the appellant "for good cause."

Section 17-2b further requires that the hearing decision be rendered "no later than sixty (60) days after such hearing," although the statute also incorporates the overriding Labbe requirement that "final definitive administrative action" be taken within 90 days after the Sec. 17-2a hearing request.

Note, therefore, that a requested hearing delay which postpones the hearing for 10 days does not relieve DIM of the statutory requirement that a hearing decision be made within 60 days after the actual hearing date, but it does extend the overriding "final agency action" Labbe period from 90 days to 100 days.

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

COURT  
HARTFORD, CONN.

NORMA LABBE, et al, on behalf :  
of themselves and all others :  
similarly situated :

-vs-

Civil No. H-136

NICHOLAS NORTON, Commissioner :  
of Welfare, & IRVING BERNSTEIN, :  
Director of Administrative Af- :  
fairs for the Connecticut Wel- :  
fare Department :

RULING ON PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT

The plaintiffs have moved, pursuant to Rule 56, Fed. R. Civ. P., for summary judgment. There are no remaining factual issues to be decided, the parties having stipulated to the relevant facts. The Court finds that the defendants have by policy and practice failed to provide prompt, definitive, and final administrative action on those cases that petition for an administrative hearing within ninety (90) days from the request for said hearings and accordingly enters summary judgment for the plaintiffs and grants the equitable relief requested for themselves and the other members of their class as represented.

This complaint was brought against the State Commis-

sioner of Welfare, in his individual and official capacity, as well as the Director of Administrative Affairs of said Department, pursuant to the Civil Rights Act, 42 U.S.C. § 1983; and jurisdiction was alleged under 28 U.S.C. §§ 2201, 2202, and 1343<sup>2/</sup>(3). The three named plaintiffs are all residents of the State of Connecticut who were receiving public assistance from the State and have brought this action in behalf of themselves and all others similarly situated, as provided in Rule 23, Fed. R. Civ. P. They allege that they are members of a class of more than 100 recipients of Public Assistance in the State of Connecticut, who have been or are being denied a "fair hearing" with final administrative action had within ninety (90) days from the date of their request, as provided under amended Federal Social Security Regulation 45 CFR 205.10(16), formerly CFR 205.10<sup>3/</sup>(11).

The named plaintiffs requested fair hearings to demonstrate what they believed to be lawful claims for welfare benefits. The State admittedly has not processed their claims to finality within the time prescribed by the federal law and the regulations promulgated pursuant thereto. The State in its brief concedes this fact and would excuse its failure to lawfully act with the explanation that it underestimated the anticipated number of hearing requests. They explain that their backlog problem should be resolved by December 15, 1975 without the additional expense of hiring more Fair Hearing Officers. They argue that this Court should deny the relief

sought, because all benefits to which the plaintiffs are found to be entitled will be ultimately repaid to them, back to the date of the original denial, termination, suspension, or reduction.

All during the period from September 1, 1972 to the present date, the administrative force in this division of the Welfare Department has been comprised of six Fair Hearings Officers and one clerk. There are no pending authorizations to increase that number of personnel assigned to this administrative function. In the calendar year 1972, 3,183 fair hearing requests were received and from January 1973 through September 1973, 2,348 were received. From September 1, 1972 to October 31, 1973, only 20.5% of the fair hearing requirements were heard by the State within the prescribed 90-day period. The parties are agreed that the defendants are required under federal law and regulations to provide final decisions in fair hearings cases within 90 days from the date of the petitioner's request. 45 CFR 205.10(11) (now 45 CFR 205.10(16)).

The pertinent Social Security regulation clearly provides:

"Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing."

While the challenged regulation under CFR 205.10 has been

extended to 90 days from the original 60-day requirement, the defendants' compliance is non-existent under either mandate. Illustrative of this condition, between October 1973 and June 1974, the defendant received 923 requests for a fair hearing, but only 84 were processed to finality within the 90-day requirement and only 19 of such applicants were processed within the 60-day provisions of the Connecticut General Statutes § 17-2(a)<sup>4/</sup> and § 17-2(b)<sup>5/</sup>.

The United States Supreme Court has made it crystal clear in the case of Goldberg v. Kelly, 397 U.S. 254 (1970), that welfare benefits "are a matter of statutory entitlement for persons qualified to receive them" and that administrative state action affecting those rights must be circumscribed with due process protections. This doctrine of protective rights guarantees an evidentiary hearing to the recipient before such benefits are terminated or materially reduced.

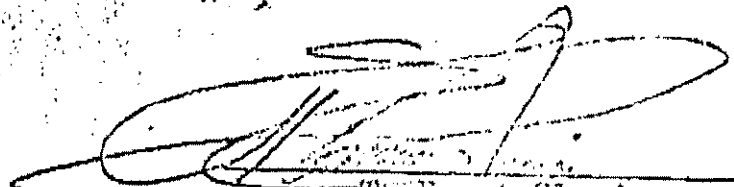
The Court finds that the defendants have consistently failed to follow the final decision fair hearing requirements of the Social Security Act, 42 U.S.C. §§ 301 et seq. and the federal regulations CFR 205.10(1) <sup>through</sup> CFR 205.10(16) as promulgated pursuant to said Act. Not only the present pending applicants, but future applicants who require fair hearings have an interest in preventing the continuation of this practice. The Court also finds this to be a proper class action.

- 5 -

and that the plaintiffs are entitled to prospective injunctive relief from this date forward.

Accordingly, the Court grants the plaintiffs' motion for summary judgment as a class action in accordance with the order for equitable relief as hereto attached and incorporated herein by reference. SO ORDERED.

Dated at Hartford, Connecticut, this 4th day of November, 1974.



T. Emmet Clark  
Chief Judge



FOOTNOTES

1/ 42 U.S.C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

2/ 28 U.S.C. § 1343 provides in pertinent part:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

3/ 45 CFR 205.10(16) provides:

"Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing."

4/ Conn. Gen. Stat. § 17-2(a) provides in part:

"An aggrieved person authorized by law to request a fair hearing on a decision of the welfare commissioner, or the conservator of any such person on his behalf, may make application for such hearing in writing over his signature to the commissioner and shall state in such application in simple language the reasons why he claims to be aggrieved. Such application shall be mailed to the commissioner within thirty days after the rendition of such decision. The commissioner shall thereupon hold a fair hearing within thirty days from the receipt thereof and shall, at least ten days prior to the date of such hearing, mail a notice, giving the time and place thereof, to such aggrieved person."

5/ Conn. Gen. Stat. § 17-2(b) provides in part:

"(a) Not later than thirty days after such hearing, the commissioner or his designated hearing officer shall render a final decision based upon all the evidence introduced before him and applying all pertinent provisions of law, regulations and departmental policy, and such final decision shall supersede the decision made without a hearing."

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT COURT  
HARTFORD, CONN.

NORMA LAMBE, et al, on behalf  
of themselves and all others  
similarly situated

-vs-

Civil No. H-136

NICHOLAS NORRION, Commissioner  
of Welfare, & IRVING BERNSTEIN,  
Director of Administrative Af-  
fairs for the Connecticut Wel-  
fare Department

JUDGMENT ORDER

IT IS HEREBY ORDERED that judgment be entered herein  
as follows:

IT IS HEREBY ADJUDGED that defendants' policy and prac-  
tice of failing to provide final administrative action, in-  
cluding implementation of fair hearing decisions within re-  
quy (90) days for those who petition for administrative fair  
hearings, violates rights secured plaintiffs and members of  
their class by the Social Security Act, 42 U.S.C. §§ 301 et  
seq., and the regulations promulgated thereunder, 45 CFR  
205.10(16).

IT IS FURTHER ORDERED AND ADJUDGED THAT:

(1) From the date of issuance of this decree, Defendant Commissioner, Nicholas Norton, and Kevin Berestoff, of the Connecticut State Welfare Department, are enjoined, ordered and directed to schedule and conduct hearings for all petitioners requesting hearings under the Social Security Act, 42 U.S.C. §§ 301 et seq., and to render decisions on these hearings within ninety (90) days from the date of a fair hearing petition (as defined in 45 CFR 205.10(16)) subject only to the exception stated in paragraph 5, infra.

(2) Defendants, are enjoined, ordered, and directed, to cause all final administrative action, including when necessary, the mailing of a check to a claimant, to be taken within ninety (90) days of claimant's petition whenever the fair hearing decision orders the Welfare Department to take some action, subject only to the exception stated in paragraph 5, infra.

(3) Defendants are enjoined, ordered and directed to schedule and conduct hearings, and to render decisions on these hearings within ninety (90) days of the date of claimant's petition for a hearing or within forty-five (45) days of the date of this Decree's issuance, whichever is greater, for all claimants who have already petitioned for a fair hearing, but have not received a hearing or a decision, subject only to the exception in paragraph 5, infra.

(4) Further, defendants are enjoined, ordered, and directed to cause and order the Connecticut Welfare Department to cause all final administrative actions including,

When necessary, the mailing of checks to claimants to be taken within ninety (90) days of the date of claimant's petition for a hearing, or within forty-five (45) days of the date of the issuance of this Decree, whichever is greater, for all claimants who have already petitioned for a fair hearing, but have not received final administrative action on their claim, subject only to the exception in paragraph 5, infra.

(5) The sole exception to the 90-day requirement, as defined in Paragraphs 1, 2, 3, and 4 occurs in those cases in which the petitioner for a fair hearing has requested a delay, or has failed to appear for a scheduled hearing.

(6) Within thirty (30) days from the date of this Decree, defendant Nicholas Norton, shall submit to the Court and to plaintiffs' attorneys a detailed statement as to the method for implementing the relief required by Paragraphs 2, 3, and 4. Any disputes between the parties as to whether the procedures and steps outlined by the defendant will fulfill the requirements of this Decree will be resolved by a Court.

(7) Within sixty (60) days from the date of this Decree, defendant, Nicholas Norton, shall submit to the Court and to plaintiffs' attorneys a statement or chart detailing the number of fair hearing petitions which have received administrative action within the most recent full month.

which have not been delayed by actions of the petitioner, each of these cases, the chart or statement will state the time elapsed from the date of petition to the date of final administrative action. Where final administrative action requires the issuance of a check, said chart or statement will contain the date on which such check was mailed (or otherwise given) to the petitioner.

(8) Defendant Nicholas Norton is directed to provide copies of this Decree to the director of each Regional Office of the State Welfare Department, and to issue to each of said offices a general letter of intent within thirty (30) days of the entry of this Decree incorporating the provisions of this Decree.

(9) Beginning with petitions received on the 31st day after the entry of this Decree, and continuing thereafter, defendant Nicholas Norton, is directed to notify each petitioner for a fair hearing of his rights under this Decree by including in each form acknowledging the receipt of a petition for a fair hearing, a brief statement of the rights secured by this Decree.

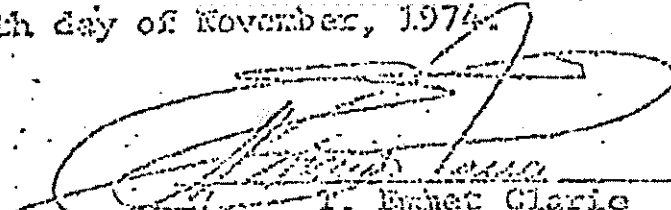
(10) This Decree shall be binding upon the Connecticut Welfare Department, Commissioner and Kevin Bachstein, Director of Administrative Affairs for Connecticut Welfare Department and their officers, agents, servants, employees, and their

... persons in active contact or participation with them who receive actual notice of the order by personal service or otherwise.

(11) Defendants are further ordered to grant whatever relief is requested in fair hearing requests filed by applicants for and recipients of categorical assistance benefits from the State Welfare Department in whose cases final administrative action is not taken within ninety (90) days of the date they originally filed their request for a fair hearing with the defendants or their agents and employees

(12) This Court shall retain continuing jurisdiction over this cause for all purposes.

Entered this 4th day of November, 1974.

  
T. Ernest Glavin

Chief Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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CLERK  
U.S. DISTRICT COURT  
HARTFORD, CONN.

NORMA LABBE, et.al. on behalf  
of themselves and all others  
similarly situated,

PLAINTIFF,

vs.

CIVIL NO. H-136

EDWARD W. RAHER, Successor to  
NICHOLAS NORTON, Commissioner of  
Welfare,

DEFENDANT

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SUPPLEMENTAL JUDGMENT ORDER

IT IS HEREBY ORDERED that a Supplemental Judgment be entered here  
as follows:

This cause coming to be heard on a Motion for Contempt or Other  
Relief filed by the Plaintiff, and the Court having heard counsel  
and being fully advised in the premises doth find:

1. That on November 4, 1974, a Judgment Order was entered by the  
Court.
2. That the Defendants have failed to comply with certain portions  
of said Judgment Order.

IT IS FURTHER ORDERED AND ADJUDGED THAT:

II.

1. From the date of issuance of this Decree, Defendant, EDWARD W. HANER, Commissioner of the Connecticut State Welfare Department, is enjoined, ordered, and directed to publish <sup>(publish)</sup> in the Connecticut Law Journal in conformance with the Connecticut Administrative Procedure Act, Defendant's Interdepartment Memo of February 25, 1976, which subject matter concerns Fair Hearing procedures to conform with this Court's previous Order of November 4, 1974. The purpose of said publication is to establish said procedure as regulations of the Connecticut State Welfare Department.

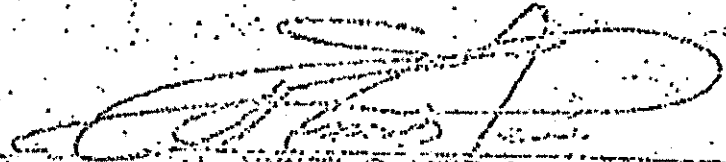
2. Defendant is enjoined, ordered, and directed to submit to the Court and to Plaintiff's counsel, a detailed statement or chart showing the number of Fair Hearings petitions which have received final administrative action within the most recent month and which have not been delayed by actions of the petitioner. For each case the chart or statement will state the time elapsed from the date of the petition to the date of final administrative action. When final administrative action requires the issuance of a check, said chart or statement will contain the date on which such check was mailed (or otherwise given) to the petitioner, Defendant is ordered to submit these charts or statements on a monthly basis until further ordered by this Court.



III.

4. The Defendant, EDWARD W. MAUER, his officers, agents, servants, employees, and their successors, and those persons in active concert or in participation with him are enjoined from reviewing, changing, attending, modifying, altering, or amending decisions of the Fair Hearing Officers rendered within the course of their duties as Fair Hearing Officers designated to hold such Fair Hearings.

ENTERED, this 31st day of March, 1975.



T. ERNEST CLARK  
 Chief Judge, U.S. District Court

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 MAR 31 1975  
 HARTFORD

U.S. DISTRICT COURT  
 HARTFORD, CONN.  
 MAR 31 1975