

# DUE PROCESS AND PUBLIC BENEFITS

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# BASIC ELEMENTS OF DUE PROCESS

Any time a state actor (i.e., government agency, or organization acting on behalf of government agency) deprives an individual of a protected property interest they must provide the individual:

## 1) Notice of:

- Action to be taken
- Reason(s) for action
- Effective date of action
- How to appeal

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

## 2) Hearing

“Some form of hearing is required before an individual is finally deprived of a property interest” *Mathews v. Eldridge*

# *GOLDBERG V. KELLY*

# KEY HOLDINGS:

A. Confirmed that public assistance payments (i.e., public benefits, welfare benefits) are a protected property right subject to the procedural due process requirements of the 14<sup>th</sup> Amendment of the US Constitution before they can be reduced or taken away

B. Before termination of public assistance payments, procedural due process requires: (1) a timely and adequate written pre-termination notice detailing the reasons for the proposed termination and (2) an opportunity for a pre-termination evidentiary hearing to present defenses, confront adverse witness, and present evidence orally

# WHAT DOES THIS ACTUALLY MEAN?

- Before a government agency can reduce or terminate an individual's public assistance (food stamps, cash assistance, medical assistance, etc.) they must do the following three things:
  - (1) Provide timely and adequate written notice detailing the reasons for the adverse action;
  - (2) Allow the individual an opportunity to appeal the decision and present their case at an evidentiary hearing; and
  - (3) Allow the individual the opportunity to request and continue receiving benefits pending appeal

# *NOTICE*

# WRITTEN NOTICE REQUIREMENTS

“...[T]imely and adequate notice detailing the reasons for a proposed termination...”

- What is timely and adequate?
  - Must state *what* the adverse action is – Denial? Termination? Reduction? Overpayment?
  - Must state *when* the action will take place
  - Detail the *why/reason* for the adverse action and the legal basis for the decision
  - Provide *enough time* to request continuing benefits and request an appeal
  - *Explain* right to request continuing benefits (if public assistance), right to appeal, and explain the *procedure* to follow to do both
  - Must do these things in easily understandable format

# ADEQUACY

- Can the individual read the notice and know what is happening? Can they understand why?
- Is there enough information for the individual to be able to tell if they have any basis for appeal?
- Agencies get away with providing very little detail regarding the “why” in their notices
  - Once the individual appeals, they get more information regarding the adverse action (appeal summary, file review, etc.)
  - Due to the little/mitigated harm there is very little litigation on notice adequacy issues



# TIMELINESS

- Two timeliness issues agency needs to satisfy when taking adverse action on public benefits:
  - (1) providing enough time to appeal the adverse decision; and
  - (2) providing enough time to request that benefits continue during the appeal
- Generally, agencies do not need to provide the same amount of time for each
  - The time to request benefits pending appeal is much shorter than the time to just request an appeal

# BENEFITS PENDING APPEAL

- 10 days has been found to be enough time for notice to request benefits pending appeal in most instances
  - MFIP: Minn. Stat. 256J.40
  - MSA: Minn. Stat. 256D.51, subd. 2
  - SNAP: 7 CFR § 273.13
- This may be changing!
  - SSA recently increased the time to request continuation of benefits from 10 days to 60 days as part of a lawsuit settlement
    - Reasoning: COVID-19 made it more difficult for recipients to file appeals and request continuing benefits and SSA has failed/continues to fail to process these requests in a timely manner

# APPEAL DEADLINES

- Appeal deadlines vary from benefit to benefit; it is very important to look it up for each program
- SSA is 60 days (20 CFR § 404.909)
- UI is 45 days (Minn. Stat. § 268.105)
- SNAP is 90 days (7 CFR § 273.15(g))
- Most state/county benefits (cash, medical, childcare) are 30 days (Minn. Stat. § 256.045, subd. 3(i))
- Most programs allow a good cause exception for late appeal (not UI)
  - State/County Benefits: Minn. Stat. § 256.045, subd. 3(i) (limited to 90 days)
  - SSA: 20 § 404.911

# PROCEDURE FOR APPEALING

- An appeal request or request for benefits pending appeal must usually be in writing
  - Does not need to be formal – can be an email to a financial worker or a simple letter
  - Many programs have online forms that can be used to file an appeal
- **Important: The notice of adverse action must explain the deadline and procedure for appealing. Agencies cannot hold the individual to a procedure that is not explained to them.**

# IN CLASS EXERCISE

Good notice/Bad notice

# CHECKLIST FOR EACH NOTICE

- Is the notice timely?
  - Does it state when the adverse action will take place?
  - Does it provide enough time to request benefits pending appeal?
  - Does it provide enough time to appeal the decision?
- Is the notice adequate?
  - Does it state what the adverse action is?
  - Does it detail the reason for the adverse action?
  - Does it explain the legal basis for the decision?
  - Does it explain the right to request continuing benefits, right to appeal, and explain the procedure to follow to do both?
- Is it in an easily understandable format?

# *HEARING*

# RIGHT TO BE HEARD

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*

- If a welfare benefit is being denied/terminated/reduced the individual ALWAYS has a right to an *evidentiary* hearing prior to deprivation per *Goldberg v. Kelly*
- BUT if a government agency is denying or taking away another property interest—such as disability benefits (not based on financial need) or an employment license—something less than a pre-termination evidentiary hearing may be sufficient



# *MATHEWS V. ELDRIDGE*

- *Mathews v. Eldridge* lays out the test that courts use to determine what level of due process a government agency must follow – i.e., what type of hearing they must provide - before depriving an individual of a property interest
  - Is a hearing required?
  - What type of hearing?
  - When is the hearing required?
- Key Concept: “Due process is flexible and calls for such procedural protections as the particular situation demands.”

# *MATHEWS V. ELDRIDGE* TEST

- (1) Is the individual being deprived of a protected property interest?
- (2) If yes, what specific process is required? Weigh the following factors:
  - a) What is the nature of the property interest at stake?
  - b) What is the risk of erroneous deprivation of such interest through the current procedures used, and the probable value of additional or substitute procedural safeguards?
  - c) What is the Government's interest, including the function involved and fiscal or administrative burdens additional procedural requirements would entail?

# TYPES OF HEARINGS

Common types of hearings that come up in poverty law cases:

- (1) Evidentiary Hearing
  - Live hearing with all parties present; Neutral decision-maker; Sworn testimony and evidence
- (2) Reconsideration / Written Review
  - No live/scheduled hearing
  - Parties can submit written evidence and testimony
  - Decisionmaker (not always neutral) reviews written submissions and makes decision
- (3) Informal Conference or Meeting
  - Something between evidentiary hearing and written review
  - Live meeting
  - No sworn testimony or formal introduction of evidence
  - Decisionmaker is not always neutral

# TWO EXAMPLES FROM DHS BACKGROUND STUDIES

## **Maltreatment Determination**

*Fosselman v. Commissioner*

Evidentiary hearing is required.

- 1) Strong private interest – ability to work in chosen profession
- 2) High risk of erroneous deprivation without hearing – credibility is an important issue; fact-intensive; final order is conclusive
- 3) Gov. interest in protecting individuals would not be obstructed by providing a hearing; DHS already has hearing procedures they can use

## **Disqualification Based on Criminal Conviction**

*Sweet v. Commissioner*

Evidentiary hearing is not required.

- 1) Important, but less so - Only DQ'd from working in state-regulated facilities, not entire profession
- 2) Burden on individual to prove not a risk of harm; opportunity to present case in writing; no controverting evidence from agency; basis for underlying DQ is criminal convictions and client had opportunity to be heard in crim case
- 3) Gov has important interest in protecting vulnerable individuals; saving money

# DISCUSSION QUESTION:

- Shelter pending appeal
  - Should an individual being evicted from a homeless shelter funded by the county have the right to an evidentiary hearing *before* termination and the right to shelter while their appeal is pending?
    - Is shelter a public assistance benefit?
      - If yes – *Goldberg v. Kelly* applies
    - If not, should a pre-termination evidentiary hearing still be required?  
Something less?
      - Apply *Mathews v. Eldridge* balancing test

# EVIDENTIARY HEARING REQUIREMENTS

- Basic requirements:
  - Opportunity to present case orally
  - Right to counsel or other advocate
  - Right to present evidence and call witnesses
  - Right to cross-examine witnesses
  - Decision based only on evidence presented at hearing
  - Written decision explaining reasoning
  - Impartial decision-maker

# TYPES OF EVIDENTIARY HEARINGS

- Several types of administrative evidentiary hearings
  - Unemployment Insurance through DEED
  - Social Security
  - Office of Administrative Hearings
    - Most licensing appeals (outside DHS BGS); some education appeals
  - Subsidized housing hearings (through individual public housing authorities)
  - DHS Fair Hearings
    - State government benefits appeals – MFIP, SNAP, childcare, medical assistance, DHS BGS, maltreatment
    - Minn. Stat. § 256.045 and 256.0451
- Most of these hearings are similar - some a little more formal some a little less
- Focus today will be on DHS fair hearings – most common for MN poverty law issues

# DHS FAIR HEARING - PROCEDURAL RULES

- Human Services Judge – DHS employee, but separate appeals division
- Preponderance of the evidence – burden on party asserting truth of a fact
- Before the hearing:
  - Agency required to provide an agency summary laying out the evidence and basis for the adverse decision 3 days prior to hearing
  - Can email/fax exhibits and witness list to judge and agency before hearing (no deadline, but 1 or 2 days before is usually okay)
  - Pre-Hearing Conference: In more complicated cases, judge may have a pre-hearing conference and actually set dates for parties to exchange exhibits and witnesses



# PROCEDURAL RULES

- Hearings usually by phone, sometimes video
  - If necessary, could push for in person hearing. But need to have a really compelling reason
- Opening statements
- All exhibits accepted at beginning of hearing
  - Can object to an exhibit at beginning of hearing, or when introduced by agency during testimony (or both)
- Testimony from parties and witnesses
  - Advocates will question first, other side will cross, and then judge will ask any follow up questions
- Closing statements
  - Sometimes will be written, depending on the case and judge
- Written decision after hearing
  - HSJ makes recommended decision, Co-Chief HSJ will adopt, modify, or reject (usually adopt)

# FURTHER REVIEW

- Right to request reconsideration
  - Reviewed by Director of Appeals (not the same HSJ)
- Right to judicial review
  - First to district court, then COA
    - Other agency decisions: usually straight to COA
  - Scope of review *See* Minn. Stat. 14.69

Court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) unsupported by substantial evidence in view of the entire record as submitted;

or

(f) arbitrary or capricious.

# DHS FAIR HEARING - EVIDENTIARY RULES

The human services judge shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the hearing. Minn. Stat. 256.0451, subd. 19

- Anything relevant and reliable is admissible, including hearsay
- Evidence is rarely excluded by HSJ

# HEARSAY OBJECTIONS (FOR ALL ADMINISTRATIVE HEARINGS)

- Decisions are not supposed to be based solely on hearsay, there needs to be substantial evidence to support the decision
  - If agency's only evidence is hearsay, point it out
- The evidence is not reliable
  - Or better: it is inherently unreliable
    - Witness refusing to testify
    - Inadmissible in a court proceeding, even under hearsay exceptions
    - Questionable veracity
- Allowing or relying on specific piece of hearsay is a due process violation
  - Risk of erroneous deprivation – one eyewitness, decision depends on who is telling the truth

# DISCUSSION QUESTION:

- Preponderance of the evidence disqualification based solely on police records from dismissed criminal case
  - After MPD executed a search warrant, Black/African American client was arrested and charged with felony sale of a controlled substance. The judge determined that the warrant was issued and executed in violation of the client's right to due process, and dismissed the criminal case.
  - DHS then disqualified client from being a PCA after finding that she committed felony sale of a controlled substance by a POE. DHS's only evidence for determination was MPD's police records.
  - Client appeals the POE and requests a fair hearing.
  - Should/can the Human Services Judge (a) admit the MPD police records; or (b) base their decision on the MPD police records?