



Public Advocate for the City of New York

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# **Hearing Problem: An Analysis of Human Resources Administration Fair Hearing Outcomes in New York City**

**A REPORT BY PUBLIC ADVOCATE BETSY GOTBAUM  
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# Office of the New York City Public Advocate

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## EXECUTIVE SUMMARY

Forty years ago, in *Goldberg v. Kelly*, the U.S. Supreme Court recognized that the Fourteenth Amendment of the Constitution gave welfare recipients the right to due process prior to the termination of their public benefits. This due process takes the form of fair hearings, which give applicants for and recipients of public benefits the opportunity to challenge a decision made by a local social services agency, such as the New York City Human Resources Administration (HRA), about their public assistance, Food Stamps, Medicaid, or emergency shelter case.

Administrative Law Judges (ALJs), also known as hearing officers, conduct fair hearings for the state Office of Temporary and Disability Assistance (OTDA). Local districts share the cost of providing fair hearings. According to the New York State Division of the Budget, “[a]fter first paying the full cost of these hearings, the state then ‘charges back’ the local share to local social services districts.”

There are a number of reasons individuals may request a fair hearing. For example, current public benefits recipients may request a hearing if they believe HRA wrongly reduced or terminated their benefits or if they believe they are not receiving the correct amount of cash assistance or Food Stamps. Applicants for public benefits may challenge HRA’s decision to deny their application.

HRA has been frequently criticized for creating barriers to public benefits. While HRA has made attempts to reduce these barriers and improve service, surveys of HRA clients and eligibility specialists by the Office of the Public Advocate indicate that clients continue to face a range of obstacles to accessing public benefits, including excessively long wait times, workflow problems such as misplaced documents and non-working computers, and lack of a clear explanation of rules and requirements.

These barriers may compel clients to request fair hearings. For example, in a 2008 report by the Brennan Center Strategic Fund, Inc., *Improving New York City’s Public Benefits System: A Key Role for Help Desks*, advocates report that clients are often sanctioned because the agency misplaces their documents or because a computer generated appointment notice was sent to the wrong mailing address.

Concerned that the problems identified by HRA clients and eligibility specialists could lead to unnecessary fair hearings, the Office of the Public Advocate decided to examine the fair hearing process.

This report is based on an analysis of cash assistance and medical assistance fair hearing data provided by HRA. There are different models for determining HRA’s success rate in the fair hearing process. The difference lies primarily in whether client defaults and withdrawals are counted towards the agency’s success rate and whether agency withdrawals are counted towards the agency’s failure rate. Instead of developing its own success rate formula, the Office of the Public Advocate has chosen to simply represent each outcome category as a percentage of total fair hearing outcomes.

Report findings include:

- **While the number of cash assistance recipients in New York City has declined significantly since fiscal year (FY) 2000, requests for cash assistance fair hearings have increased 44.9 percent from FY 2000 to Fiscal Year to Date (FYTD) 2009.**
- **HRA actions regarding cash assistance cases are rarely affirmed in the fair hearing process. In FYTD 2009, only 3.7 percent of HRA actions addressed at a cash assistance fair hearing were affirmed.**
- **HRA's low affirmation rate is particularly striking in light of the dramatic 73.6 percent increase in agency withdrawals since FY 2000.**
- **HRA's affirmation rate for medical assistance fair hearings dropped 43.4 percent from FY 2000 to FY 2009.**
- **HRA has been charged a total of \$58.6 million for its fair hearing activity from state fiscal year 2000 to state fiscal year 2008.**

An increase in fair hearing requests, a low affirmation rate, and a high agency withdrawal rate all suggest that HRA is frequently in error when taking actions such as denying applications for public benefits and sanctioning clients and that HRA may be too aggressive in taking such actions. Erroneous actions have an obvious financial impact on clients, especially those who are not deemed eligible for "aid continuing." However, they also have a serious impact on HRA and the city as a whole.

HRA has undergone significant budget cuts at a time when demand for services, such as Food Stamps enrollment, is growing. Any unnecessary cost is a cost the city simply cannot afford at this time. With the state planning to raise the local fair hearing chargeback by 37 percent to reflect the increase in fair hearing caseloads since 2004-05, it is imperative that HRA eliminate the problems that lead to unnecessary fair hearings and devote more resources to its primary function: delivering public benefits to New Yorkers in need.

In order to eliminate the problems that lead to unnecessary fair hearings, HRA must first address barriers to public benefits that compel clients to request them. The Office of the Public Advocate provided recommendations for addressing barriers to public benefits in its reports *Barriers to Benefits* and *Paper(less) Jam*.

In addition, HRA must review its process for resolving disputes prior to a fair hearing, develop procedures to eliminate administrative errors that lead to sanctions, examine the reasons clients withdraw and default from the fair hearing process, and provide information on its fair hearing outcomes and its fair hearing chargeback on its website.

## INTRODUCTION

Forty years ago, in *Goldberg v. Kelly*, the U.S. Supreme Court recognized that welfare recipients had the right to “notice and a meaningful opportunity to be heard prior to any termination of substance benefits.”<sup>1</sup> This decision was rooted in the Fourteenth Amendment’s due process clause and granted welfare recipients the right to an administrative fair hearing.<sup>2</sup> Fair hearings give applicants for and recipients of public benefits the opportunity to challenge a decision made by a local social services agency, such as the New York City Human Resources Administration (HRA), about their cash assistance, Food Stamps, Medicaid, or emergency shelter case.<sup>3</sup>

There are a number of reasons an individual may request a fair hearing. For example, public benefit recipients may request a hearing if they believe HRA wrongly reduced or terminated their benefits or if they believe they are not receiving the right amount of cash assistance or Food Stamps.<sup>4</sup> Applicants for public benefits may challenge HRA’s decision to deny their application. Between fiscal years (FY) 2000 and 2009, 1,196,171 fair hearings were requested for cash assistance and 322,292 fair hearings were requested for medical assistance programs.<sup>5</sup>

HRA has been frequently criticized for creating barriers to public benefits.<sup>6</sup> While HRA has made attempts to reduce these barriers and improve service, surveys of HRA clients and eligibility specialists by the Office of the Public Advocate indicate that clients continue to face a range of obstacles to accessing public benefits, including excessively long wait times; problems due to workflow inefficiencies, such as misplaced documents or inoperative computers; and lack of a clear explanation of rules and requirements.<sup>7</sup>

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<sup>1</sup> Loffredo, S. and Friedman D. “Gideon Meets Goldberg: The Case for a Qualified Right to Counsel in Welfare Hearings,” *Touro Law Review*, 2009, p. 276.

<sup>2</sup> *Ibid* and Lens, Vicki and Susan Elizabeth Vorsanger, “Complaining after Claiming: Fair Hearings after Welfare Reform,” *Social Service Review* (September 2005), The University of Chicago.

<sup>3</sup> Applicants for and recipients of emergency shelter may challenge a decision by the Department of Homeless Services (DHS) at a fair hearing. Project Fair, “Fairing Hearing Information.” See: [http://www.projectfair.org/getting\\_ready.html](http://www.projectfair.org/getting_ready.html).

<sup>4</sup> Project Fair, “Fairing Hearing Information.” See: [http://www.projectfair.org/getting\\_ready.html](http://www.projectfair.org/getting_ready.html).

<sup>5</sup> Cash assistance fair hearing data was only available for eleven months of fiscal year 2009. Email from Joseph Polito, HRA’s Office of Legislative Affairs, “Fair Hearing Data Update,” to Office of the Public Advocate, July 17, 2009.

<sup>6</sup> Federation of Protestant Welfare Agencies, “The State of New York’s Social Safety Net for Today’s Hard Times,” April 2009. See: <http://www.fpwa.org/cgi-bin/iowa/policy/article/158.html>; Community Voices Heard, *Missing the Mark: A Report on NYC’s Back to Work Program & Its Effectiveness in Meeting Employment Goals for Welfare Recipients*, November 2008. See: <http://www.cvhaction.org/reports>; Urban Justice Center, “Nourishing NYC: Increasing Food Stamps Access in Immigrant Communities,” July 2008. See: [http://www.urbanjustice.org/pdf/publications/NOURISH\\_NYC\\_FINAL\\_WEB.pdf](http://www.urbanjustice.org/pdf/publications/NOURISH_NYC_FINAL_WEB.pdf); Brennan Center Strategic Fund, Inc., “Improving New York City’s Public Benefits System: A Key Role for Help Desks,” February 2008. See: [http://www.brennancenter.org/content/resource/improving\\_new\\_york\\_citys\\_public\\_benefits\\_system\\_a\\_key\\_role\\_for\\_help\\_desks/](http://www.brennancenter.org/content/resource/improving_new_york_citys_public_benefits_system_a_key_role_for_help_desks/); and Legal Services NYC, “Translation Woes: Language Barriers at New York City’s Human Resources Administration,” 2007. See: <http://www.legalservicesnyc.org/storage/lsny/PDFs/translation%20woes.pdf>.

<sup>7</sup> Office of the Public Advocate, “Barriers to Benefits: A Survey of Clients at New York City Human Resources Administration Job Centers,” November 2008. See: <http://pubadvocate.nyc.gov/> and Office of the Public Advocate, and “Paper(less) Jam: A Survey of New York City Human Resources Administration Eligibility Specialists,” March 2009. See: <http://pubadvocate.nyc.gov/>.

Such obstacles may compel a client to request a fair hearing. For example, in a 2008 report by the Brennan Center Strategic Fund, Inc., *Improving New York City's Public Benefits System: A Key Role for Help Desks*, advocates report that clients are often sanctioned because the agency misplaces their documents or because a computer generated appointment notice was sent to the wrong mailing address.<sup>8</sup>

Concerned that the problems identified by HRA clients and eligibility specialists could lead to unnecessary fair hearings, the Office of the Public Advocate decided to investigate the fair hearing process. This report is based on an analysis of cash assistance and medical assistance fair hearing data. It also includes a summary of the Office of the Public Advocate's surveys of HRA clients and eligibility specialists, a review of the fair hearing process, an explanation of the report's methodology and findings, and recommendations for HRA.

## **SUMMARY OF PREVIOUS REPORTS RELEASED BY THE OFFICE OF THE PUBLIC ADVOCATE**

### *Barriers to Benefits*

For the Office of the Public Advocate's November 2008 report, *Barriers to Benefits: A Survey of Clients at New York City Human Resources Administration Job Centers*, Public Advocate staff interviewed HRA clients who indicated they were currently receiving public benefits and had visited an HRA Job Center more than once in the past year. Surveyors collected a total of 100 surveys, twenty from five randomly selected HRA Job Centers, one in each borough. Survey findings include:

- 82 percent of respondents said long waits were a problem when dealing with public benefit offices. On average, clients spent 20.3 hours per year in Job Centers.
- 73 percent of respondents returned to a Job Center two or more times in the past year because of problems with their benefits case.
- More than half of clients (52 percent) experienced workflow problems, including no record of a prior visit, HRA misplacing their documents, or computers not working at HRA Job Centers, and 24 percent reported that their HRA worker did not clearly explain the rules and requirements for receiving public benefits.
- Miscommunication with the caseworker was the second most frequently cited problem, after long waits. The third most frequently cited problem was HRA misplacing their documents.

The Public Advocate recommended that HRA take the following actions to address these problems (see Appendices I and II for a detailed description of each of the report's recommendations):

- Evaluate and revise the current intake and appointment process to reduce wait times.

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<sup>8</sup> Brennan Center Strategic Fund, Inc., "Improving New York City's Public Benefits System: A Key Role for Help Desks," February 2008. See: [http://www.brennancenter.org/content/resource/improving\\_new\\_york\\_citys\\_public\\_benefits\\_system\\_a\\_key\\_role\\_for\\_help\\_desks/](http://www.brennancenter.org/content/resource/improving_new_york_citys_public_benefits_system_a_key_role_for_help_desks/).

- Provide clients with proof of program compliance to avoid erroneous sanctioning of benefits due to computer or record-keeping mistakes.<sup>9</sup>
- Develop clear and concise materials (e.g. pamphlets, frequently asked questions) on public benefits application procedures and compliance requirements.
- Improve customer service.

The Public Advocate also recommended that the New York City Council pass the Ready Access to Assistance Act (REAACT), a bill, introduced in 2006 by Public Advocate Betsy Gotbaum and co-sponsored by Councilmembers Bill de Blasio and Eric Gioia that would allow non-profit advocates to set up help desks in New York City public benefits offices.

### *Paper(less) Jam*

For the Office of the Public Advocate's March 2009 report *Paper(less) Jam: A Survey of New York City Human Resources Administration Eligibility Specialists*, The Office of the Public Advocate conducted a survey of HRA eligibility specialists at Job Centers, Food Stamp and Medicaid Offices. A total of 148 surveys were collected. Survey findings include:

- Of those obstacles respondents rated "most difficult," "not enough staff" was the most frequently cited, followed by both "computers are not reliable" and "clients do not bring the necessary documents when applying for benefits." The third most frequently cited problem rated "most difficult" was "interpreters not available to translate for clients."
- Seventy-three percent of respondents reported that the computer system for processing intake applications electronically was non-operational either "some of the time" (39.3 percent) or "occasionally" (33.3 percent) during working hours in the last year.
- Sixty-one percent of respondents reported that scanners, which are used to make electronic records of clients' documents, were non-operational either "some of the time" (27.9 percent) or "occasionally" (32.9 percent) in the last year.
- More than half of eligibility specialists surveyed (55 percent) said it takes between 1 and 4 days for the computer system or scanners to be repaired after they report a problem.
- Seventy-five percent of eligibility specialists surveyed said HRA had not instructed them to tell clients they have a legal right to bring an attorney or other representative to assist them with their public benefits case.

The report included six recommendations for HRA:

- Hire and/or reassign eligibility specialists to high-traffic centers and offices.
- Improve and regularly assess maintenance of all technology and equipment necessary for processing public benefit applications.
- Simplify materials (e.g. pamphlets, frequently asked questions) on public benefits application procedures and requirements.
- Develop a system for regularly obtaining feedback from staff.
- Ensure that interpreters and bilingual staff are available at all HRA centers and offices.

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<sup>9</sup> In a meeting between the Public Advocate and HRA Commissioner Doar on December 23, 2008, HRA indicated that it would consider implementation of this recommendation.

- Instruct staff to inform clients they have the right to bring a third party to assist them with their public benefits case.

## **FAIR HEARING PROCESS**

The state Office of Temporary and Disability Assistance (OTDA) oversees an array of programs in New York State that provide assistance and support to low-income residents.<sup>10</sup> HRA is the local agency responsible for providing and determining eligibility of New York City residents for a variety of public benefits, including cash assistance and public health insurance, such as Medicaid. A public benefit applicant or recipient can request a fair hearing to contest an action taken or not taken by HRA.<sup>11</sup>

Fair hearings provide applicants and recipients of public benefits the opportunity to “challenge the reduction, discontinuation, restriction, suspension, or denial of any public assistance benefit”<sup>12</sup> and are governed by federal and state law.<sup>13</sup> Administrative Law Judges (ALJs), also known as hearing officers, conduct fair hearings for OTDA.<sup>14</sup> The typical docket for an ALJ is twenty to thirty hearings per day.<sup>15</sup> In New York City, the average time it takes to conduct a welfare fair hearing is approximately seven minutes.<sup>16</sup> OTDA conducts fair hearings at 14 Boerum Place in Brooklyn and at 330 34<sup>th</sup> Street in Manhattan.<sup>17</sup>

There are two other parties whose presence at the fair hearing is required, a representative from the city and the appellant.<sup>18</sup> The appellant, the individual who requested the fair hearing, may bring a representative, such as a lawyer or community advocate.<sup>19</sup> In general, however, appellants represent themselves. According to Project FAIR, the only advocacy organization located on-site at the main fair hearing office, “[i]n the hundreds of fair hearings held each day to resolve problems with these benefits, almost 95 percent of individuals appear without representation or assistance.”<sup>20</sup>

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<sup>10</sup> OTDA, “OTDA Mission.” See: <http://www.otda.state.ny.us/main/about/mission.asp>; and OTDA, “About OTDA.” See: <http://www.otda.state.ny.us/main/about/default.asp>.

<sup>11</sup> Legal Services of NYC, “Public Assistance Advocacy and Fair Hearings,” training materials, February 9, 2009 at The Brooklyn Family Defense Project; Loffredo, S. and Friedman D. “Gideon Meets Goldberg: The Case for a Qualified Right to Counsel in Welfare Hearings,” *Touro Law Review*, 2009.

<sup>12</sup> Legal Services of NYC, “Public Assistance Advocacy and Fair Hearings,” training materials, February 9, 2009 at The Brooklyn Family Defense Project, p. 7.

<sup>13</sup> In addition, regulations found in 18NYCRR 358 also govern fair hearings. Legal Services of NYC, “Public Assistance Advocacy and Fair Hearings,” training materials, February 9, 2009 at The Brooklyn Family Defense Project

<sup>14</sup> Legal Services of NYC, “Public Assistance Advocacy and Fair Hearings,” training materials, February 9, 2009 at The Brooklyn Family Defense Project.

<sup>15</sup> Loffredo, S. and Friedman D. “Gideon Meets Goldberg: The Case for a Qualified Right to Counsel in Welfare Hearings,” *Touro Law Review*, 2009.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Supra* note 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 14.

<sup>20</sup> Project Fair, “Mission.” See: <http://www.projectfair.org/mission.html>.



## *Pre-Fair-Hearing Resolution Process*

There are several opportunities to resolve disputes prior to a fair hearing. HRA or the client can request a conciliation meeting to resolve a dispute before the agency issues a Notice of Intent (NOI) to sanction.<sup>21</sup> At this meeting, an HRA worker must decide if the client failed to comply and did so willfully and without good cause.<sup>22</sup> If the decision is favorable to the client, then the agency will not impose a sanction. If the agency's decision is unfavorable, however, then HRA sends a NOI to the client.<sup>23</sup> The NOI explains what action HRA intends to take and when the change will take effect.<sup>24</sup> According to a recent report by the Federation of Protestant Welfare Agencies, a quarter of New York City's engageable<sup>25</sup> caseload was either under sanction or going through the sanction process as of February 2009.<sup>26</sup>

Once the client receives a NOI, he or she may request a case conference.<sup>27</sup> The case conference is an informal meeting at an HRA center at which the client can ask an HRA worker to review and change the decision to reduce or terminate benefits.<sup>28</sup> If HRA does not agree to change the decision and the client wishes to challenge it further, the next step is to request a fair hearing.<sup>29</sup>

After clients request a fair hearing, HRA may schedule a Mandatory Dispute Resolution (MDR) prior to the hearing.<sup>30</sup> According to legal service providers, HRA's process for deciding which clients to schedule for a MDR is unclear.<sup>31</sup> If HRA decides to resolve the issue in the client's favor, the client may withdraw his or her fair hearing request but is not required to do so.<sup>32</sup> If HRA decides not to resolve the issue in the client's favor or the client is dissatisfied with the resolution proposed by HRA, he or she may proceed with the fair hearing. If a client does not attend a scheduled MDR and does not have "good cause" for missing the appointment, the hearing officer may count this against him or her at the fair hearing.<sup>33</sup>

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<sup>21</sup> *Supra* note 14 and Friedman, Don, Esq. "An Advocates Guide to Welfare Work Rules," Empire Justice Center, 2008. See: <http://www.empirejustice.org/issue-areas/public-benefits/cash-assistance/work-rules/new-advocates-guide-now.html>.

<sup>22</sup> *Ibid.*

<sup>23</sup> If a client receives a notice of conciliation and does not request a meeting or does not show up for the meeting, he or she will also receive a sanction notice. *Supra* note 14.

<sup>24</sup> *Supra* note 14 and South Brooklyn Legal Services (SBLs), "How to Request A Fair Hearing." See: <http://www.sbls.org/index.php?id=66>.

<sup>25</sup> "Engageable caseload" refers to those who are fully or partially able to work.

<sup>26</sup> Federation of Protestant Welfare Agencies, "The State of New York's Social Safety Net for Today's Hard Times," April 2009. See: <http://www.fpwa.org/cgi-bin/iowa/policy/article/158.html>.

<sup>27</sup> South Brooklyn Legal Services (SBLs), "How to Request A Fair Hearing." See: <http://www.sbls.org/index.php?id=66S>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Supra* note 14 and New York State Comptroller H. Carl McCall, "Office of Temporary and Disability Assistance New York City Human Resources Administration Fair Hearing Process," Report 2000-N-6, October 15, 2001. See: <http://www.osc.state.ny.us/audits/allaudits/093002/00n6.pdf>.

<sup>31</sup> Conversation between Daliz Pérez-Cabezas, The Public Advocate's Senior Policy Analyst and the Welfare Taskforce, July 16, 2009.

<sup>32</sup> *Supra* note 14..

<sup>33</sup> *Supra* note 14 and *Supra* note 27.

## *Fair Hearing Procedures*

In general, the party that is trying to change the status quo has the burden of proof or the obligation to demonstrate that the evidence supports their claim.<sup>34</sup> For example, if HRA intends to sanction a client, this would change the status quo; as such, HRA must prove that the client violated a work rules requirement.<sup>35</sup> On the other hand, if the appellant is challenging HRA's decision to deny his or her application for public benefits, the appellant is requesting a change in his or her current situation and thus has the burden of proof.<sup>36</sup>

Appellants must request a fair hearing within sixty days of the date of the notice from the agency, within ninety days for Food Stamps cases.<sup>37</sup> Those clients that request a hearing within ten days of the date of the mailing of the NOI may be granted "aid continuing" by OTDA.<sup>38</sup> "Aid continuing" means a client's public benefits will continue unchanged until the fair hearing decision is delivered.<sup>39</sup> In general, it takes four to six weeks for a fair hearing to be scheduled and an additional four to six weeks to receive a decision.<sup>40</sup> Appellants can request an expedited fair hearing when they have been denied an emergency benefit, such as rent arrears, denial of which may result in imminent eviction.<sup>41</sup> An expedited fair hearing can be scheduled in one to three weeks and a decision is rendered in approximately the same amount of time.<sup>42</sup>

If the appellant wins the case, the judge reverses the action taken by HRA. The city then must comply with the fair hearing decision within 30 days of receiving the decision.<sup>43</sup> However, according to a 2001 New York State Comptroller report, clients who won their fair hearings but were ineligible to receive "aid continuing" waited an average of 45 days to receive their benefits in 1999.<sup>44</sup> The report notes that "[w]hile these individuals may have had their benefits retroactively restored as a result of the Hearing decision, they may have experienced hardship and inconvenience during the waiting period."<sup>45</sup> HRA is currently involved in active litigation regarding the timeframe in which it complies with fair hearing decisions.<sup>46</sup>

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<sup>34</sup> *Supra* note 21.

<sup>35</sup> Friedman, Don, Esq. "An Advocates Guide to Welfare Work Rules," Empire Justice Center, 2008. See: <http://www.empirejustice.org/issue-areas/public-benefits/cash-assistance/work-rules/new-advocates-guide-now.html>.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Supra* note 27 and *Supra* note 35.

<sup>38</sup> *Supra* note 14 and *Supra* note 27.

<sup>39</sup> This only applies to clients whose benefits are being reduced or terminate, it is not available to applicants who were rejected for benefits. *Supra* note 14.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> If the city doesn't comply the appellant can write the Office of Administrative Hearings, Compliance Unit or get legal representation. *Supra* note 4 and *Supra* note 14.

<sup>44</sup> New York State Comptroller H. Carl McCall, "Office of Temporary and Disability Assistance New York City Human Resources Administration Fair Hearing Process," Report 2000-N-6, October 15, 2001. See: <http://www.osc.state.ny.us/audits/allaudits/093002/00n6.pdf>.

<sup>45</sup> *Ibid.*

<sup>46</sup> Letter from Robert Doar, Administrator/Commissioner, HRA, to the Office of the Public Advocate, June 12, 2009.

If the judge affirms—or deems correct—the action taken by HRA, the appellant can then appeal the decision to the New York State Supreme Court.<sup>47</sup> This is called an “Article 78” proceeding. The appellant must file an Article 78 appeal within four months of the date of the decision.<sup>48</sup>

A fair hearing may not proceed if HRA and/or the appellant withdraw. For example, the appellant may withdraw a fair hearing request if HRA “grants benefits because the agency determined that its initial decision would not be upheld by the process.”<sup>49</sup> If the agency withdraws, however, it does not pursue the case or implement its intended decision. In some cases, clients default or fail to appear for their fair hearing. If a client defaults, “the agency can proceed with the action that is the subject of the hearing.”<sup>50</sup> For example, HRA could proceed with its decision to deny an applicant public benefits.

### *Fair Hearing Chargeback*

Local districts share the cost of providing fair hearings. According to the New York State Division of the Budget, “[a]fter first paying the full cost of these hearings, the state then ‘charges back’ the local share to local social services districts.”<sup>51</sup> In an email to the Office of the Public Advocate, OTDA explains that “[t]he chargeback is based on agency specific hearing activity in the Family Assistance, Safety Net and Medical Assistance programs.”<sup>52</sup> The state is planning to raise the local fair hearing chargeback by 37 percent to reflect the increase in fair hearing caseloads since 2004-05.<sup>53</sup> The state estimates that the fiscal impact of increasing the local fair hearing chargeback will be \$1.6 million statewide. Of this, \$1.5 million will be charged to New York City per year.<sup>54</sup>

## **METHODOLOGY**

### *Analysis of New York City Fair Hearing Data*

The Office of the Public Advocate conducted an analysis of fair hearing outcomes for cash assistance and medical assistance programs (i.e. public health insurance) using data provided by HRA for fiscal years 2000 to 2009.<sup>55</sup> Fair hearing outcomes include the following categories: Agency Affirmed, Agency Reversed, Agency Withdrawal, Correct When Made, Other, Remands,<sup>56</sup> Client Defaults, and Client Withdrawals (see Appendix III for a glossary of terms).

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<sup>47</sup> *Supra* note 14.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Supra* note 44, p. 6.

<sup>50</sup> *Supra* note 46.

<sup>51</sup> New York State Division of Budget. “2009-10 Enacted Budget Financial Plan,” April 28, 2009. See: [http://www.budget.state.ny.us/budgetFP/0910enactedInitiatives/0910enacted\\_humanServices.html](http://www.budget.state.ny.us/budgetFP/0910enactedInitiatives/0910enacted_humanServices.html).

<sup>52</sup> Email from Robin White, OTDA’s Office of Intergovernmental Affairs, “Information on Fair Hearings,” to Office of the Public Advocate, March 27, 2009.

<sup>53</sup> New York State Division of Budget. “2009-10 Executive Budget – Briefing Book,” April 28, 2009. See: <http://publications.budget.state.ny.us/eBudget0910/fy0910littlebook/HumanServices.html>.

<sup>54</sup> *Supra* note 51.

<sup>55</sup> Email from Joseph Polito, HRA’s Office of Legislative Affairs, “Fair Hearing Data Update,” to Office of the Public Advocate, July 17, 2009.

<sup>56</sup> Remands are when a matter is sent back to the agency for their reconsideration. According to OTDA’s Deputy Commissioner John M. Paolucci, “OAH [the Office of Administrative Hearings] has consistently asked Hearing

Additional data on the local fair hearing chargeback for state fiscal years 2000-2008 was provided by OTDA.<sup>57</sup>

There are different models for determining HRA's success rate in the fair hearing process.<sup>58</sup> The difference lies primarily in whether client defaults and withdrawals are counted towards the agency's success rate<sup>59</sup> and whether agency withdrawals are counted towards the agency's failure rate. In a letter to Public Advocate Betsy Gotbaum received on June 12, 2009, HRA Commissioner Robert Doar explains that "[d]efaults are included as wins [in HRA's success rate formula] because, following the default, the agency can proceed with the action that is the subject of the hearing."

Conversely, HRA does not count agency withdrawals as losses,<sup>60</sup> even though withdrawing means the agency has essentially settled the case in the client's favor and cannot proceed with the action that is the subject of the hearing (the opposite of Commissioner Doar's definition of a win). When asked specifically about whether the agency counts withdrawals as losses, the Commissioner stated:

"It is important to note that withdrawals can occur for a number of reasons. For example, the client may realize the hearing is unnecessary, the client may have submitted verification or documentation after HRA's action but before the hearing or at the hearing, which HRA accepted and results in a withdrawal, a later action may overtake the original action that was the subject of the hearing, or the agency may have already taken steps to address the action that is the subject of the hearing. Therefore, it is best not to characterize them as wins or losses. In effect, they are neutral which is consistent with the computation of the "Win Rate" by OTDA for fair hearings."<sup>61</sup>

Vicki Lens and Susan E. Vorsanger, professors at Columbia University, take a different approach. In a 2005 empirical study of fair hearing systems in New York, Texas, and Wisconsin, Professors Lens and Vorsanger include agency withdrawals but exclude client withdrawals and no-shows from their calculation of hearing outcomes.<sup>62</sup> They argue that none of the three states they studied, including New York, track the reasons for withdrawals and no-shows and that these outcomes can represent success for either the client or the agency.<sup>63</sup> For example, a client may

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Officers [i.e. ALJs] to avoid remand decisions and direct specific relief wherever possible. It is an unfortunate fact that the common experience of insufficient local district evidence (in NYC) limits the ability of Hearing Officers to do so." Memo from John M. Paolucci, Deputy Commissioner, Division of Program Support and Quality Improvement, OTDA, "Fair Hearings Issues," to Edwin Pearson, ALJ November 27, 2006.

<sup>57</sup> Email from Elizabeth Segal, Director, OTDA's Office of Intergovernmental Affairs, "Fair Hearings Info," to Office of the Public Advocate, July 29, 2009.

<sup>58</sup> *Supra* note 44; The City of New York, Mayor's Office of Operations, *Preliminary Fiscal 2009 Mayor's Management Report, Human Resources Administration, Indicator Definitions*. See:

[http://www.nyc.gov/html/ops/html/mmr/mmr\\_sub.shtml](http://www.nyc.gov/html/ops/html/mmr/mmr_sub.shtml); and Lens, V. and Vorsanger, S., "Complaining after Claiming: Fair Hearings after Welfare Reform," *Social Service Review*, vol. 79, no. 3, Sept. 2005, pp. 430-453.

<sup>59</sup> Lens, V. and Vorsanger, S., "Complaining after Claiming: Fair Hearings after Welfare Reform," *Social Service Review*, vol. 79, no. 3, Sept. 2005, pp. 430-453.

<sup>60</sup> *Supra* note 46.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Supra* note 59.

<sup>63</sup> The authors apply this explanation to all three states. *Ibid.*

withdraw or fail to show up because, after speaking with an HRA worker, he or she determines that the case has no merit—a success for the agency. On the other hand, a client may withdraw or fail to show up because HRA resolved the matter to his or her satisfaction prior to the hearing—a success for the client. They defined client success as one of the following hearing outcomes: “(1) a settlement is reached in favor of the client, (2) the agency withdraws the adverse notice that triggered the hearing request, or (3) a hearing officer decides to reverse the agency’s decision.”<sup>64</sup>

Instead of developing a success rate formula of its own and potentially adding confusion to this debate, the Office of the Public Advocate has chosen to simply represent each outcome category as a percentage of total fair hearing outcomes. The data is for the most part presented in the form of charts and graphs.

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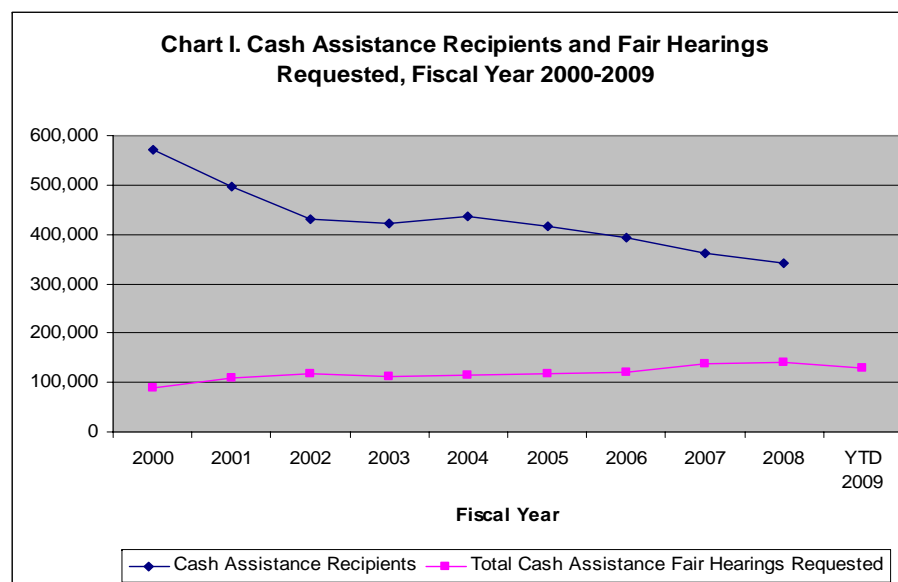
<sup>64</sup> Not all of these categories are used by every state. *Supra* note 59.

## FINDINGS

### *Cash Assistance Fair Hearings*

**While the number of cash assistance recipients in New York City has declined significantly since 2000, requests for cash assistance fair hearings have increased 44.9 percent.**

- Although the number of cash assistance recipients has decreased 40.3 percent from 572,100 in FY 2000 to 341,300 in FY 2008,<sup>65</sup> requests for fair hearings for cash assistance have increased 44.9 percent from 89,773 in FY 2000 to 130,086 in Fiscal Year to Date (FYTD) 2009 (see Chart I).



Source: Mayor's Office of Operations and New York City Human Resources Administration

<sup>65</sup> This information was only available through FY 2008. The City of New York, Mayor's Office of Operations, *Preliminary Fiscal 2009 Mayor's Management Report*, *Fiscal 2005 Mayor's Management Report*, and *Fiscal 2004 Mayor's Management Report*. See: [http://www.nyc.gov/html/ops/html/mmr/mmr\\_sub.shtml](http://www.nyc.gov/html/ops/html/mmr/mmr_sub.shtml).

**HRA actions regarding cash assistance cases are rarely affirmed in the fair hearing process.**

- In FYTD 2009, only 3.6 percent of HRA actions addressed at a cash assistance fair hearing were affirmed (see Table 1).<sup>66</sup>
- HRA’s affirmation rate was at its highest point in FY 2000 when it was 4.4 percent. HRA’s affirmation rate was at its lowest point in FY 2006 when it was only 2.6 percent.
- HRA’s affirmation rate for cash assistance fair hearings dropped 18.2 percent from FY 2000 to FYTD 2009.
- HRA’s low affirmation rate is particularly striking in light of the dramatic 73.6 percent increase in agency withdrawals since FY 2000. For example, in FYTD 2009, HRA withdrew for 28.3 percent of the actions that initiated the fair hearing process, yet only 3.6 percent of the remaining actions were affirmed.<sup>67</sup>

**Table 1. Cash Assistance Fair Hearing Outcomes, Fiscal Year 2000-Year to Date (YTD) 2009**

FY	Agency Affirmed		Agency Reversed		Agency Withdrawal		Correct When Made		Other		Client Withdrawal		Client Defaults		Remands		Total Outcomes	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
FY 00	8,665	4.4%	32,038	16.4%	31,747	16.3%	228	0.1%	6,754	3.5%	37,316	19.1%	63,265	32.4%	15,117	7.7%	195,130	100%
FY 01	9,863	3.6%	50,662	18.7%	13,909	5.1%	415	0.2%	10,173	3.8%	54,461	20.1%	114,746	42.4%	16,562	6.1%	270,791	100%
FY 02	8,765	3.5%	56,506	22.4%	5,925	2.3%	1,768	0.7%	11,661	4.6%	44,329	17.6%	98,607	39.1%	24,677	9.8%	252,238	100%
FY 03	10,090	4.1%	33,915	13.7%	4,261	1.7%	2,737	1.1%	13,273	5.3%	58,980	23.8%	104,557	42.1%	20,467	8.2%	248,280	100%
FY 04	10,008	4.0%	27,255	11.0%	5,852	2.4%	2,908	1.2%	20,324	8.2%	56,145	22.7%	106,964	43.3%	17,687	7.2%	247,143	100%
FY 05	8,342	3.7%	20,540	9.0%	33,699	14.8%	2,972	1.3%	18,324	8.1%	22,829	10.0%	106,076	46.6%	14,736	6.5%	227,518	100%
FY 06	6,349	2.6%	21,492	8.7%	45,131	18.3%	2,691	1.1%	16,196	6.6%	22,197	9.0%	119,769	48.5%	12,987	5.3%	246,812	100%
FY 07	9,399	3.0%	26,762	8.4%	68,189	21.5%	3,659	1.2%	21,931	6.9%	21,755	6.9%	151,207	47.7%	14,162	4.5%	317,064	100%
FY 08	10,127	3.4%	23,260	7.8%	73,177	24.5%	3,562	1.2%	21,416	7.2%	17,605	5.9%	137,323	46.1%	11,695	3.9%	298,165	100%
FYTD 09*	9,300	3.6%	18,205	7.0%	74,217	28.3%	3,359	1.3%	20,432	7.8%	16,767	6.4%	109,413	41.8%	10,106	3.9%	261,799	100%

\*Eleven months of fiscal year 2009.

Source: New York City Human Resources Administration

Note: These numbers are based on actions addressed, not hearings held, because multiple actions can be addressed at the same hearing.

One HRA action may be affirmed and another reversed in a single hearing.

<sup>66</sup> The data for fiscal year 2009 is only available for eleven months of that year.

<sup>67</sup> *Ibid.*

*Medical Assistance Fair Hearings*

**HRA’s affirmation rate for medical assistance fair hearings dropped 43.4 percent from FY 2000 to FY 2009.**

- 2,301 of the HRA actions addressed at medical assistance fair hearings were affirmed in FY 2009 (7.3 percent), compared to 4,269 in FY 2000 (12.9 percent) (see Table 3).
- HRA’s affirmation rate was at its highest point in FY 2000 when it was 12.9 percent. HRA’s affirmation rate was at its lowest point in FY 2007 when it was 5.1 percent.

**Table 3. Medical Assistance Fair Hearing Outcomes, Fiscal Years 2000-2009**

FY	Agency Affirmed		Agency Reversed		Agency Withdrawal		Correct When Made		Other		Client Withdrawal		Client Defaults		Remands		Total Outcomes	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
FY 00	4,269	12.9%	5,691	17.3%	338	1.0%	140	0.4%	331	1.0%	7,479	22.7%	11,929	36.2%	2,789	8.5%	32,966	100%
FY 01	2,719	8.7%	3,848	12.4%	421	1.4%	79	0.3%	310	1.0%	9,690	31.1%	12,013	38.6%	2,065	6.6%	31,145	100%
FY 02	2,502	8.3%	3,516	11.6%	234	0.8%	105	0.3%	355	1.2%	10,084	33.3%	11,634	38.4%	1,888	6.2%	30,318	100%
FY 03	2,198	7.0%	3,670	11.8%	1,703	5.5%	95	0.3%	376	1.2%	10,135	32.5%	10,740	34.4%	2,290	7.3%	31,207	100%
FY 04	3,289	7.5%	8,624	19.8%	1,324	3.0%	1,025	2.3%	1,830	4.2%	9,278	21.3%	16,349	37.5%	1,930	4.4%	43,649	100%
FY 05	3,076	7.3%	8,733	20.8%	220	0.5%	719	1.7%	2,357	5.6%	7,466	17.8%	18,003	42.9%	1,389	3.3%	41,963	100%
FY 06	1,857	5.7%	5,723	17.6%	209	0.6%	200	0.6%	1,410	4.3%	7,608	23.4%	14,788	45.4%	777	2.4%	32,572	100%
FY 07	2,149	5.1%	5,837	13.8%	312	0.7%	101	0.2%	340	0.8%	10,689	25.3%	22,169	52.5%	622	1.5%	42,219	100%
FY 08	2,161	6.1%	5,074	14.3%	547	1.5%	266	0.7%	378	1.1%	9,021	25.4%	17,295	48.7%	779	2.2%	35,521	100%
FY 09	2,301	7.3%	4,882	15.4%	1,362	4.3%	231	0.7%	443	1.4%	7,520	23.8%	14,250	45.1%	622	2.0%	31,611	100%

Source: New York City Human Resources Administration

Note: These numbers are based on actions addressed, not hearings held, because multiple actions can be addressed at the same hearing.

One HRA action may be affirmed and another reversed in a single hearing.



*Fair Hearing Chargeback*

**HRA has been charged a total of \$58.6 million for its fair hearing activity from state fiscal year 2000 to state fiscal year 2008.**

- The cost to HRA of its fair hearing activity increased 37 percent from \$5.6 million in state fiscal year 2000 to \$7.6 million in state fiscal year 2008 (see Table 5).

**Table 5. Fair Hearing Chargeback New York City and All Counties, Processed State Fiscal Year 2000-2008**

State Fiscal Year	Total Chargeback		HRA Chargeback %
	NYC*	All Counties**	
2000-01	\$5,551,902	\$6,084,500	91.2%
2001-02	\$5,848,611	\$6,540,500	89.4%
2002-03	\$6,867,021	\$7,569,500	90.7%
2003-04	\$6,308,079	\$7,050,000	89.5%
2004-05	\$6,396,859	\$7,117,500	89.9%
2005-06	\$6,387,560	\$7,259,000	88.0%
2006-07	\$6,449,721	\$7,517,000	85.8%
2007-08	\$7,143,768	\$8,187,000	87.3%
2008-09	\$7,624,761	\$8,657,863	88.1%
<b>Total (2000-08)</b>	<b>\$58,578,282</b>	<b>\$65,982,863</b>	<b>88.8%</b>

\*HRA is billed for its fair hearing activity.

\*\*Includes NYC

Source: New York State Office of Temporary and Disability Assistance

Note: According to OTDA, the number of fair hearings is based on the prior year's number for the current year's chargeback.

## CONCLUSION AND RECOMMENDATIONS

An increase in fair hearing requests, a low affirmation rate, and a high agency withdrawal rate all suggest that HRA is frequently in error when taking actions such as denying applications for public benefits and sanctioning clients and that HRA may be too aggressive in taking such actions. Erroneous actions have an obvious financial impact on clients, especially those who are not deemed eligible for “aid continuing.” However, they also have a serious impact on HRA and the city as a whole—the agency was charged a total of \$58.6 million for its fair hearing activity for state fiscal years 2000 to 2008.

HRA has undergone significant budget cuts at a time when demand for services such as Food Stamp enrollment is growing.<sup>68</sup> The number of Food Stamp recipients in New York City grew from 1,261,100 in July 2008 to 1,537,284 in July 2009.<sup>69</sup> In addition, demand for cash assistance is beginning to grow for the first time since 2004.<sup>70</sup> Any unnecessary cost is a cost the city simply cannot afford at this time. With the state planning to raise the local fair hearing chargeback by 37 percent to reflect the increase in fair hearing caseloads since 2004-05, it is imperative that HRA eliminate the problems that lead to unnecessary fair hearings and devote more resources to its primary function: delivering public benefits to New Yorkers in need.

In order to eliminate the problems that lead to unnecessary fair hearings, HRA must first address barriers to public benefits that may compel clients to request them. The Office of the Public Advocate provided recommendations for addressing these barriers in its reports *Barriers to Benefits* and *Paper(less) Jam*. One key recommendation is to allow non-profit advocates to set up help desks in New York City public benefits offices. For example, OTDA allows Project FAIR to operate an on-site help desk at the main fair hearing location in Brooklyn.<sup>71</sup> HRA could use this program as a model for its job centers.

Help desks would provide clients with valuable information that can help minimize confusion about the rules and requirements of applying and recertifying for public benefits and assist them in resolving any problems, including administrative errors, that may otherwise lead to a fair hearing. In 2006, Public Advocate Betsy Gotbaum and co-sponsors Councilmembers Bill de Blasio and Eric Gioia introduced the Ready Access to Assistance Act (REAACT) in the City Council to allow help desks in New York City public benefits offices.

In addition, HRA must review its process for resolving disputes prior to a fair hearing and develop procedures to eliminate administrative errors that lead to sanctions. For example, in both *Barriers to Benefits* and *Paper(less) Jam*, the Office of the Public Advocate recommended that HRA give clients a receipt when they have made a required visit or submitted documents so that HRA can quickly reinstate their benefits if they are sanctioned due to misplaced documentation.

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<sup>68</sup> Miles, D. “City Faces a Rising Demand for Food Stamps,” *City Limits*, April 2009. In *Paper(less) Jam*, one eligibility specialist notes, “The stress of the spiraling economy has put great stress on the Food Stamp staff.”

<sup>69</sup> HRA, “HRA Facts,” July 2009. See: [http://nyc.gov/html/hra/html/statistics/hra\\_facts.shtml](http://nyc.gov/html/hra/html/statistics/hra_facts.shtml).

<sup>70</sup> Gomes, N. “First Year-Over-Year Welfare Jump Since 2004,” *City Limits*, August 17, 2009.

<sup>71</sup> *Supra* note 20.

HRA should also examine the reasons clients withdraw and default from the fair hearing process. Currently, HRA counts client defaults as successes for the agency, but the extent to which extenuating circumstances and HRA's own actions contribute to a client's decision to default is unknown. A client with a legitimate case who defaults and subsequently loses her benefits because she can't arrange child care or time off from work should not be considered a success for HRA.

Finally, HRA should provide information on its fair hearing outcomes, which are no longer available in the supplementary indicator tables of the Mayor's Management Report,<sup>72</sup> and its fair hearing chargeback on its website. This information should include fair hearing outcomes for cash assistance and medical assistance programs and its total fair hearing chargeback, including a breakdown by type of fair hearing (e.g. cash assistance, medical assistance, etc.).

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<sup>72</sup> Craven McGinty, Jo. "Statistical Speaking, at Least, the City Is a Quieter Place These Days," *New York Times*, September 10, 2009.

## APPENDIX I

### *Barriers to Benefits:*

#### *A Survey of Clients at New York City Human Resources Administration Job Centers*

#### REPORT RECOMMENDATIONS

##### **The New York City Human Resources Administration should:**

***Evaluate and streamline its current intake and appointment process to reduce wait times.*** HRA should review its current interview and appointment process to determine why clients experience excessively long wait times and require repeat visits. HRA should also consider the following steps to improve the process:

- Hire additional eligibility and job opportunity specialists or reassign eligibility and job opportunity specialists to Job Centers that have a high volume of clients applying or recertifying for benefits.
- Honor scheduled appointment times. Clients should not be penalized because they cannot wait, on average, more than four hours past a scheduled appointment time. Seventy-eight percent of the clients we surveyed had children. It is important that parents are not penalized because they are unable to wait for long periods with a small child in tow or one waiting at home.
- Consider developing, as part of the POS initiative, an online public benefits system that would allow clients to access information about their case, such as how much funds they have available, when they have to reapply for benefits, and why they have been sanctioned. Clients would be able to monitor their benefits on the internet and seek assistance from HRA or community-based organizations (CBOs) when they do not understand why they have been sanctioned.
- Expand the pilot program that allows CBOs to electronically submit applications and supporting documents to HRA on behalf of their clients through the Paperless Office System. This would help reduce wait times and client confusion over what documents they need to bring and how to obtain them.

***Provide clients with proof of program compliance to avoid erroneous sanctioning of benefits due to computer or record-keeping mistakes.*** Clients should not have their benefits terminated or reduced because of problems with HRA's computer or record-keeping systems. HRA should take the following steps:

- Give clients a receipt when they have made a required visit or submitted documents, so they have proof and can have their benefits quickly reinstated should they be sanctioned due to agency error. At Model Centers, the Customer Service and Information Center could provide these receipts to clients after their visits.
- Update the POS and Model Office Initiative to include a system for preventing the incorrect termination or reduction of benefits. For example, supervisors could be required to review sanctioned cases before benefits are terminated or reduced.
- Contact clients before sanctions are finalized in the computer system.

***Develop clear and concise materials (e.g. pamphlets, frequently asked questions) on public benefits application procedures and compliance requirements.*** An important strategy for reducing wait times and confusion about public benefits rules and regulations among clients and eligibility and job opportunity specialists is to provide clear and concise program materials. Currently, clients applying for benefits receive five brochures, an application, and approximately 50 pages of handouts that are not user-friendly or written in laymen’s terms. The brochure titled “What You Should Know About Your Rights and Responsibilities (*When Applying For or Receiving Public Benefits*)” is 32 pages in itself, printed in small typeface, and difficult to understand. HRA should take the following steps:

- Give clients a separate, easy-to-understand pamphlet explaining what application and recertification documents clients need to provide and how to obtain them at the Front Door Reception Information System of Model Centers or at the reception desk of non-Model Centers. The “What You Should Know About Your Rights and Responsibilities (*When Applying For or Receiving Benefits*)” brochure only lists examples of the documents you need to bring and does not explain how to obtain them.
- Give clients a list of nonprofits or CBOs that can assist them in obtaining necessary documents or with their public benefits case.
- Develop a reference sheet or checklist to be used by clients and eligibility and job opportunity specialists that clearly explains the rules and regulations for applying for various public benefits. This would help eligibility and job opportunity specialists explain the rules for participation in public benefits program and ensure that clients understand compliance requirements so they are not sanctioned.
- Give clients a list of benefits they may be entitled to receive when they meet with their eligibility or job opportunity specialist to ensure they apply for all public benefits at one time and do not have to make frequent visits.

***Improve customer service.*** The Model Office Initiative was intended, in part, to improve customer service; however, findings of the Office of the Public Advocate’s survey indicate that HRA still has work to do in this area. HRA should take the following steps:

- Regularly update eligibility and job opportunity specialists on changes to the rules and regulations of public benefits programs and ensure that they are able to clearly and concisely explain this information to clients.
- Ensure that agency staff is able to communicate with LEP clients and comply with Executive Order 120 requiring citywide language access. The agency should expand and update current staff language capabilities through training and/or hire certified interpreters that speak at a minimum one of the city’s six most commonly spoken languages.

**The New York City Council should:**

***Enact the Ready Access to Assistance Act (REAACT).*** This bill, introduced in 2006 by Public Advocate Betsy Gotbaum and co-sponsored by Councilmembers Bill de Blasio and Eric Gioia, would allow non-profit advocates to set up help desks in New York City public benefits offices. In its report, *Improving New York City’s Public Benefits System: A Key Role for Help Desks*, the

Brennan Center Strategic Fund, Inc. argues that allowing advocates to run help desks inside government offices would improve the public benefits system. Help desks would provide clients with valuable information that can help minimize confusion about the rules and requirements of applying and recertifying for public benefits and provide LEP individuals with translation/interpretation assistance. Advocates were allowed in public benefit offices until 1992 when Mayor Giuliani barred them from entering centers unless accompanied by a client.

## APPENDIX II

### *Paper(less) Jam: A Survey of New York City Human Resources Administration Eligibility Specialists*

#### REPORT RECOMMENDATIONS

##### **The New York City Human Resources Administration should:**

***Hire and/or reassign eligibility specialists to high-traffic centers and offices.*** Eligibility specialists report that the lack of sufficient staff at centers/offices is the most difficult obstacle to effectively serving their clients. While DC37's Local 1549 indicates that the POS requires an eligibility specialist to spend approximately an hour and a half with an applicant to complete the entire intake or interview process, nearly three-quarters of survey respondents said they spend only 30 to 45 minutes with each client. Eligibility specialists' inability to spend adequate time with clients may explain, in part, why the majority of clients surveyed for the Office of the Public Advocate's *Barriers to Benefits* report (73 percent) returned to a Job Center two or more times in the past year because of problems with their benefits case.

HRA should consider hiring additional eligibility specialists or transferring eligibility specialists to centers/offices that have a high volume of clients applying or recertifying for benefits. While the Office of the Public Advocate recognizes the city is facing a budget shortfall, it is precisely during these difficult economic times, when the need for public benefits is on the rise, that the city must take action to support low-income New Yorkers. Making the Food Stamp process less burdensome for clients and specialists would increase enrollment in the program and bring additional federal revenue and economic activity to the city.

***Improve and regularly assess maintenance of all technology and equipment necessary for processing public benefit applications.*** The POS was intended, in part, to improve productivity of eligibility specialists; however, findings of the Office of the Public Advocate's survey indicate that non-operational equipment is an obstacle to productivity. HRA should take the following steps:

- Conduct a survey of technology and equipment, including the computer system and scanners, used to process applications electronically at all centers/offices to ensure that it is operational and up-to-date. This survey should also assess whether centers/offices have sufficient equipment to meet demand. HRA should repair any problems identified through this survey.
- Improve repair response time for any technology and/or equipment that is unavailable or non-operational. The agency should survey repair personnel to determine why repair times are so lengthy and which centers/offices have the most frequent repair requests. The agency should ensure that centers/offices that suffer from frequent repair problems have on-site repair personnel and provide these centers/offices with new technology or equipment as needed.

***Simplify materials (e.g. pamphlets, frequently asked questions) on public benefits application procedures and requirements.*** Eligibility specialists identified clients' failure to bring necessary documents as one of the most difficult obstacles to effective service. An important strategy for reducing client confusion about the application process and the required documents for enrollment is to provide clear and concise program materials. As the Office of the Public Advocate recommended in its November 2008 report, *Barriers to Benefits*, HRA should take the following steps:

- Give clients a separate, easy-to-understand pamphlet explaining what application and recertification documents they need to provide and how to obtain them at the reception desk of centers/offices. The "What You Should Know About Your Rights and Responsibilities (When Applying For or Receiving Benefits)" brochure only lists examples of the documents clients need to bring and does not explain how to obtain them.
- Develop a reference sheet or checklist to be used by clients and HRA staff that clearly explains the rules and regulations for applying for various public benefits. This would help staff explain the rules for participation in benefit programs and ensure that clients understand compliance requirements.

***Develop a system for regularly obtaining feedback from staff.*** One respondent suggested, "What we need is to be able to communicate with our director and managers because we sometimes have ideas that may help the Center run smoother and just need to address concerns and problems, and, as of yet, we have not had [a] meeting with either of them." To improve agency policies and procedures, HRA should develop a systematic and non-punitive system of collecting staff feedback from all centers/offices. This would allow HRA to quickly identify problems and develop solutions based on the experiences of employees. In addition, an analysis of HRA staff experiences would allow the agency to determine what office processes are creating problems or confusion for clients and staff.

***Ensure that interpreters and bilingual staff are available at all HRA centers and offices.*** HRA should guarantee that agency staff is able to communicate with LEP clients and comply with Executive Order 120 requiring citywide language access. As the Office of the Public Advocate recommended in *Barriers to Benefits*, the agency should expand and update current staff language capabilities by training and/or hiring certified interpreters that speak at a minimum one of the city's six most commonly spoken languages. As a model, HRA should examine the New York State court system's method for hiring certified court interpreters.

***Instruct staff to inform clients they have the right to bring a third party to assist them with their public benefits case.*** The Office of the Public Advocate's survey indicates that HRA does not instruct all eligibility specialists to inform clients they have the right to bring another person or an attorney with them. The Public Advocate's previous report, *Barriers to Benefits*, found that almost half of clients surveyed were unaware they had this right. Clients should not be expected to hunt through the approximately 50 pages of handouts HRA currently distributes in order to find this information. In addition to simplifying its materials, HRA should ensure that all eligibility specialists are instructed to inform clients of this right and that the information is clearly and prominently displayed in its written materials and throughout its centers/offices.



### APPENDIX III

#### Glossary<sup>73</sup>

<b>Agency Affirmed</b>	The determination of the agency was upheld.
<b>Agency Reversed</b>	The determination of the agency was not upheld.
<b>Agency Withdrawal</b>	The agency withdrew its intended action.
<b>Client Default</b>	The client failed to attend the hearing.
<b>Client Withdrawal</b>	The client withdrew their request for the issue to be reviewed.
<b>Correct When Made</b>	The agency determination was correct when made but evidence at the hearing calls for a different outcome.
<b>Other</b>	The issue is not hearable, the commissioner has no jurisdiction.
<b>Remand</b>	The matter was sent back to the agency for their reconsideration.

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<sup>73</sup> Email from Elizabeth Segal, Director, OTDA's Office of Intergovernmental Affairs, "Fair Hearing Information," to Office of the Public Advocate, September 22, 2009.