

# **Justice Denied**

**A Closer Look at the  
State's "Fair Hearing" Process  
for Massachusetts Families Subject  
to the Welfare Time Limit**

September 27, 1999

In December 1998, Massachusetts began terminating assistance to families that reached the state's 2-year welfare time limit. By September 1, 1999, almost 6,000 families had requested an extension of benefits. What happened to these requests?

The Massachusetts Department of Transitional Assistance (DTA) has denied more than 90% of the requests that families made for temporary extensions of assistance.<sup>1</sup>

- ◆ Why is DTA denying these extensions in such high numbers?
- ◆ Is the fair hearing process -- the final institutional check on DTA's decisions -- fair?
- ◆ Who are the families requesting extensions?

**Justice Denied** analyzes a random sample of 107 DTA time-limit fair hearing decisions issued between January 8, 1999 and July 14, 1999, and profiles six fair hearing decisions. It takes a closer look at the state's administrative fair hearing process to provide a better understanding of what is really happening when families confront the termination of their assistance.

## **Justice Denied**

---

### **Summary of Findings**

- ◆ The final institutional check on the administration of the TAFDC program—the fair hearing—has been subverted by a DTA regulation that severely curtails the ability of a hearing officer to overturn a decision of the DTA Commissioner.
- ◆ DTA fails to follow its own regulations. For example, it consistently denies extensions to families for not participating in a voluntary job search program, even though this is not a requirement for getting an extension, and even though the families are meeting the work requirement and other program rules.
- ◆ DTA denies extensions of the time limit and domestic violence waivers to families seeking education or training, no matter how sorely needed and no matter how close the families are to attaining the skills necessary to become self-sufficient.
- ◆ In reaching its decisions, DTA fails to document and address factors that it must consider under state law and regulations, such as a family's lack of child care.

## **Justice Denied Why Is a Fair Hearing So Important?**

The fair hearing is the final institutional check on DTA's decisions. It also provides a closer look at how DTA is making decisions about time limit extensions. The state welfare reform law and DTA's regulations require DTA to consider a number of factors in granting extensions, including whether:

- ◆ Appropriate job opportunities actually exist locally;
- ◆ A parent has child care;
- ◆ A parent has cooperated with DTA in work-related activities;
- ◆ A parent was sanctioned for not complying with program rules; and
- ◆ A parent received or rejected job offers, or quit or was fired for good cause.

The problem is that:

- ◆ DTA does not consider all these factors.
- ◆ Even if a family does everything DTA asks, DTA still denies the extension.
- ◆ DTA, without any legal authorization, denies extensions to families that do not participate in a voluntary structured job search program.
- ◆ DTA does not consider other factors that are barriers to working, such as learning disabilities and illiteracy.
- ◆ Even after finding that some factors are obstacles to employment, DTA still denies extensions.

This makes the hearing even more important: it is the final place for full review of each family's situation to make sure that the law has been properly applied.

The essence of the fair hearing is an independent review of DTA's decisions. Families losing assistance can request this review. However, in September 1998, DTA issued regulations that severely limit the authority of hearing officers to overturn DTA decisions on time limit extensions, domestic violence waivers, and waivers of the family cap rule. Hearing officers are no longer permitted to weigh evidence under the more common "preponderance of evidence" standard used by state agencies. Instead, these appeals cannot be reversed unless a hearing officer finds that the DTA Commissioner "abused her discretion."

For the first time in the history of DTA, there are two separate standards of appeal: a highly deferential one for time limit-related appeals, and a more common, less-deferential standard for all other welfare appeals. **DTA regulations have established a review standard that makes it almost impossible for families appealing time limit decisions— families who are usually unrepresented and lack knowledge of the program's complex regulations—to convince a hearing**

**officer to make this extraordinary “abuse of discretion” finding.**

For a more detailed legal review of the fair hearing standard, see Appendix A.

## **Justice Denied**

---

### **Summary of Case Data**

**Justice Denied** analyzes a random sample<sup>2</sup> of 107 fair hearing decisions issued by DTA's Division of Hearings between January 8, 1999 and July 14, 1999. What follows is a summary of the case data collected and reviewed.

### **Cases Reviewed**

---

Total cases reviewed	<b>107</b>
Families appealing a denial of an extension	<b>99</b>
Families appealing a denial of a domestic violence waiver	<b>8</b>

### **Outcome**

---

**91%** of families lost their final appeal under the new hearing standard.

**5%** of the denials were remanded to DTA for further consideration.

**4%** of the families won their appeal and DTA's decision was reversed.

### **Legal Representation**

---

**81%** of the families had no legal representation.

In all cases where decisions were reversed, families had legal assistance.

### **Primary Reason for Denial of Extensions**

---

In **88%** of the cases where families lost their final appeal for an extension, the primary reason was their lack of participation in a **voluntary** "structured job search" program.

---

**Structured job search:** This is a program of job search activities -- such as lectures on how to dress, interview for jobs and write a resume -- and meetings with case managers who monitor participants' job search. Vendors under contract with the state provide these services, and in fiscal year 1999 received \$1,500 for each participant and another \$1,500 for each person they placed in a minimum-wage job of 20 hours per week that lasted 30 days. Families who have not reached the end of their time limit may participate in structured job search for 20 hours per week to meet their work requirement. **Neither the welfare reform law nor DTA regulations make structured job search a requirement for an extension**

---

### **Findings Where Families Lost Their Final Appeal for an Extension**

---

In **more than half** of the cases where the hearing officer found that participants failed to participate in a **voluntary** structured job search program, the hearing officer also found that the family had significant barriers to employment. <sup>3</sup>

---

For example, in **30%** of the cases where the hearing officer found that participants failed to participate in a **voluntary** structured job search program, the hearing officer also found that the family **lacked adequate childcare**.

Other barriers to employment reported in hearing decisions included **cognitive impairments, illiteracy, inability to speak English, and the need to care for a disabled family member**.

---

In **23%** of the cases where a family lost their final appeal for an extension, the denial was based on the parent's participation in an **education or training** program.

### **Primary Reason for Denial of Domestic Violence Waivers**

---

In **63%** of the cases (5 out of 8) where the family sought a waiver of the time limit due to domestic violence and lost its appeal, the mother was attending school or training. DTA's position -- that if a mother can do this even part-time, then she can work -- was contradicted by facts reported in each case reviewed.

## **Justice Denied**

### **Fair Hearing Decision Profiles**

---

**Justice Denied** looks at six fair hearing decisions that exemplify the findings in the data reviewed. First we analyzed the decisions to determine whether the actions taken by DTA and the final hearing decisions are supported by law.<sup>4</sup>

In addition, we looked at gaps in information in the decisions. Gaps in information indicate a breakdown of the extension process. They signal that instead of basing decisions on accurate and complete information, **DTA is denying extensions without giving families the right to a full review -- and is ending assistance to families without knowing whether they have the means to survive.**



## **Justice Denied**

### **Decision 1 - Incorrect denial for alleged failure to meet work rules**

---

**Decision dated:** May 12, 1999

**Facts:** A mother who was homeless fulfilled DTA's dual requirements of searching for housing for four days per week and doing community service for 20 hours per week. She was also looking for a job on her own and went once to structured job search, which conflicted with these two other obligations. After being homeless for two years, she had just received a housing subsidy and testified that she "needs benefits for a few more months, so she can pay for her security deposit, rent and food."

**Decision:** DTA denied the mother an extension for "fail[ing] to cooperate with the Department in work-related activities." The four DTA representatives present at the hearing stated that the mother -- who was not represented -- was originally denied an extension because she had not voluntarily participated in structured job search. The hearing officer upheld the termination of benefits to the family under the new appeal standard that prohibited him from "substituting his...judgment for that of the Commissioner."

#### **What's wrong with this picture?**

1. The mother did not fail to cooperate with DTA in work-related activities, but in fact fulfilled her **work requirement**. The work requirement mandates a non-exempt parent of a child over six -- or over three months if subject to the family cap -- to do paid work or participate in community service for 20 hours per week. If a parent fails to comply with the work requirement without good cause, she loses part and then all of her TAFDC grant. This and other decisions reveal that DTA denies extensions to families who complied with the work requirement and other program rules.
2. The welfare reform law and DTA regulations do not make structured job search a requirement for an extension. This decision, as with 88% of the cases reviewed, made the primary reason for denial the person's failure to participate in structured job search.
3. Because DTA has prohibited the hearing officer from reversing DTA's decision unless the hearing officer finds that the Commissioner abused her discretion, the hearing officer was not able to make an independent decision based on the evidence presented at hearing.

## **Justice Denied**

---

### **Decision 2 – Incorrect denial to family with medical emergency**

**Decision dated:** June 2, 1999

**Facts:** The mother, who was unrepresented at the hearing, had assisted her daughter through a very difficult pregnancy and the birth of a premature child. As the decision recorded, “The appellant was then required to care for her daughter’s two children, her premature child in addition to her daughter when she suffered a mental breakdown. The appellant stated that she would like to work and participate in the work program, but because of her daughter and her children she has been unable to attend.” She also testified that she had applied for many jobs in the area, but “has yet to receive a response.” The mother brought in medical documentation of her daughter’s mental instability.

**Decision:** The hearing officer upheld DTA’s decision to terminate assistance on the grounds that there are appropriate jobs available and that the mother “did not take advantage of structured job search or another program that could reasonably be expected to lead to employment.” The hearing officer also found that the mother lacked good cause for not participating in work-related activities.

#### **What’s wrong with this picture?**

1. There is no evidence cited in the decision to support DTA’s claim or the hearing officer’s conclusion that there are indeed jobs available to this woman.
2. While the mother did not “take advantage” of structured job search, DTA’s regulations do not make participation in this program a prerequisite to an extension.
3. Because of the family’s medical emergency, the mother had good cause for not participating in work-related activities. Despite medical documentation in this and other cases, however, DTA fails to find good cause in all but the most extreme circumstances, leading to harsh results in cases such as this.
4. There is no indication that DTA or the hearing officer explored whether caring for a disabled daughter and two very young grandchildren entitled this mother to a statutory exemption from the time limit.

## **Justice Denied**

### **Decision 3 – Incorrect denial based on incomplete information**

---

**Decision dated:** June 15, 1999

**Facts:** According to DTA representatives, this mother participated in structured job search for four months, stopped, and then rejected a job offer. The mother, who appeared without legal representation, testified that she was unable to accept that weekend job. She also testified that “she wanted an interview with [another employer] when they were at the [structured job search] office but was told she could not get one.” The mother submitted documents which included: records of her continued participation in structured job search, job search logs, a letter from her structured job search worker, and letters from her children’s school and doctor.

**Decision:** The hearing officer refused to accept verification of the mother’s continued participation at structured job search because it was not signed by an agency official. He noted that DTA’s denial of this mother’s extension request was premised on the availability of “appropriate job opportunities.” Finally, he approved the termination of the family’s assistance and concluded that the “Commissioner’s designee has not abused her discretion.”

#### **What’s wrong with this picture?**

1. The decision does not include any information on what job opportunities, other than the one weekend job, were available to this mother.
2. DTA regulations require consideration of whether child care is available to a family when evaluating extension requests. The state has acknowledged the severe lack of weekend and evening child care, but there is no indication that the hearing officer or DTA asked whether lack of care prevented the mother from taking the weekend job.
3. There is no indication that DTA or the hearing officer considered DTA’s obligation that “child care services shall be provided” to an employed parent.”
4. The welfare reform law exempts from the time limit and work requirement a parent who must care for a disabled child. Although the mother submitted letters from the children’s doctor and school, there is no indication that the hearing officer or DTA investigated whether the children had any special needs or health care issues.
5. DTA merely asserted that there “are appropriate job opportunities available” to the mother, there was no inquiry into the mother’s skills or education or other problems that may have prevented her from securing a job despite four months’ participation in structured job search.

## **Justice Denied**

---

### **Decision 4 – Incorrect denial to father with cognitive limitations**

**Decision dated:** May 16, 1999

**Facts:** DTA had acknowledged that the father, who was unrepresented at the hearing, had “problems reading and writing.” He is receiving mental health services. DTA also testified that the father was not subject to the work requirement because the family had a young child and the mother was working (although at low wages that still qualified the family for a supplemental grant). The father had tried unsuccessfully to follow up on the only job referral DTA had provided and was searching for a job through other non-DTA sources.

**Decision:** The hearing officer upheld the denial of an extension to the family on the ground that the father had not participated sufficiently in work-related activities and there were appropriate jobs available.

#### **What’s wrong with this picture?**

1. The father was not required to participate in a work program.
2. There was no support in the decision for the conclusion that there were jobs available to this father.
3. The father was looking for a job on his own and through other programs and agencies, and did attempt to follow up on the one referral from the job search program. He was unsuccessful in pursuing that referral because he had mistakenly contacted the employer directly instead of having the structured job search program call the employer first.
4. There was no indication that DTA had ever assessed the father’s cognitive and mental limitations. This and other decisions show that DTA denies extensions to parents with major impediments to employment, without assessing or addressing barriers such as cognitive impairments.

## **Justice Denied**

---

### **Decision 5 – Incorrect denial to family traumatized by domestic violence**

**Decision dated:** February 5, 1999

**Facts:** According to the hearing officer’s summary of the evidence, “[t]he appellant testified that as a result of domestic violence she (and her children) had spent two years living in three different shelters; that her oldest child, now six, had witnessed a lot of abuse, and had needed two years of therapy as a result; that she and her son were both threatened with death at one point, and that she, herself, had been unable to attend school full-time as her child needed extra care and attention, and this delayed her finishing the hygienist program earlier.”

**Decision:** The hearing officer found that the appellant’s testimony was undisputed. He further found that the appellant had been “going to school part-time in order to provide additional care and attention to her then traumatized son.” Despite these findings the hearing officer upheld the termination of TAFDC based on DTA’s position that if the appellant can go to school, she can and should work.

#### **What’s wrong with this picture?**

1. Even though the hearing officer found a direct correlation between the violence against the family and the family’s need for more time to complete a training program and care for a traumatized child, the hearing officer refused to reverse DTA’s decision to deny a domestic violence waiver.
2. Even though DTA’s own regulations state that a domestic violence waiver can be granted where complying with the time limit or work rule would “unfairly penalize the applicant or recipient...as a current or former victim of domestic violence,”<sup>5</sup> DTA consistently refuses to grant domestic waivers under this standard.
3. In five of the eight domestic violence waiver decisions reviewed, the hearing officer failed to reverse DTA’s denial based on DTA’s position that if the mother could go to school even part-time, she could work—despite facts reported in the decisions to the contrary in each case.

## **Justice Denied**

### **Decision 6 – Incorrect denial to mother seeking education**

---

**Decision dated:** May 18, 1999

**Facts:** The mother was enrolled in an associate’s degree program at Springfield Technical Community College. She was not subject to the work requirement because her youngest child was under six. The hearing officer found that “this spring semester the appellant had been doing a student teaching practicum mornings from 8 a.m to noon, and has been attending classes from six to nine in the evenings. She has not participate in the Department’s job search programs because they have conflicted with her student teaching. The [DTA] Case Manager has been supportive of the appellant’s decision to get a two year degree in Early Childhood Education and her plan to obtain full-time employment in her field after graduation.”

**Decision:** DTA denied the extension “because the appellant failed to do job search as it did not fit in with her school schedule, and because an extension can not be granted for the sole purpose of completing an educational or training program....” The hearing officer upheld the termination of assistance to this family with young children because he could not find that the DTA Commissioner had “abused her discretion.”

#### **What’s wrong with this picture?**

1. In an exclusion the legislature did not authorize, DTA regulations deny extensions to families seeking extensions “solely for the purpose of completing an educational or training program.”<sup>6</sup>
2. DTA applies the regulation to bar an extension to a parent enrolled in an education or training program, without inquiry by the DTA representatives or hearing officer into whether the extension is requested “solely” for education or training, or whether there are other reasons for requesting an extension.
3. Neither DTA nor the hearing officer appear to have explored whether this family had other independent reasons for needing an extension in addition to completing education or training. In 23 extension decisions, the hearing officer upheld the denial where a parent attended school, without exploring whether there were independent reasons why the family needed an extension.
4. DTA denied this extension because the mother failed to do structured job search, even though she was not subject to the work requirement or required to do job search. As noted in the decision, she was participating voluntarily in a “work-related activity”—a student teaching internship that conflicted with structured job search.

## **Appendix A**

### **A Legal Review of the Fair Hearing Standard**

---

#### **How did DTA alter the standard for time-limit related cases?**

The U.S. Supreme Court has held that an administrative agency must provide a hearing to recipients of subsistence benefits before terminating that assistance. *Goldberg v. Kelly*, 397 U.S. 254 (1970). A Massachusetts statute expressly requires that the hearing officer be independent. G.L.c.18, §16.

In September 1998, DTA issued a regulation governing appeals of denials of time limit extensions that undermine this independence. The regulation provides that “[w]hen the subject of an appeal is an adverse action regarding a request for a family cap waiver, a domestic violence waiver or an extension of benefits beyond the 24-month time limit, *the hearing officer shall not substitute his or her judgment for that of the Commissioner.*” 106 CMR 343.610(D) (emphasis added) In numerous extension decisions, hearing officers specifically referred to this regulation as requiring them to uphold the agency’s termination of benefits to families.

#### **What is the standard for other administrative appeals?**

Generally, in administrative “fair hearings” agencies use a standard called “preponderance of evidence.” Under this standard, the person challenging the agency decision must prove by the weight of the evidence that the agency made the wrong decision. For example, the Division of Medical Assistance fair hearings regulations instruct the hearings officer to abide by the following regulation in making decisions: “The decision shall be based on a preponderance of evidence.” 130 CMR 610.082(B). The same standard is expressly used in the fair hearings regulations of the Department of Social Services (110 CMR 10.23), the Office for Refugees and Immigrants (121 CMR 1.710(2)), the Department of Veteran’s Services (108 CMR 8.04(1)), the Department of Mental Health (104 CMR 16.11(5)(a)) as well as the fair hearing rules of agencies that operate under the Executive Office of Administration and Finance’s fair hearing rules (801 CMR 1.00).

#### **Why is the standard important?**

The “abuse of discretion” standard that DTA has mandated for hearings involving extensions of the time limit, domestic violence waivers, and waivers of the family cap is a much more onerous standard, and essentially nullifies the fair hearing. It is an especially inappropriate standard to use in reviewing important decisions involving the termination of basic assistance for poor families.

#### **Justice Denied**

---

## Notes

1. As of August 30, 1999, 5,975 families had applied for an extension of benefits. DTA had approved only 382 requests, with almost 1,000 still pending. As of September 2, 1999, families had requested 219 domestic violence waivers of the time limit, and DTA had approved 87.
2. The sample consists of all decisions available from DTA's Division of Hearings on two days in July 1999. Copies of fair hearing decisions – with the family's name and address redacted – are public records maintained by DTA.
3. These findings are likely to understate the incidence of serious barriers among families facing the time limit. They include only the barriers that were both presented by families at the hearing and reported in the decisions.
4. In a number of recent cases, courts have found that DTA has not implemented the time limit lawfully. Judges have invalidated DTA regulations and procedures that made it hard for families with disabled children to obtain an exemption from the time limit (Minnefield v. McIntire, C.A. No. 99-3349, Suffolk, August 27, 1999), resulted in a loss of eligibility or assistance to working families seeking extensions of the time limit (Smith v. McIntire, C.A. No. 99-1044, Suffolk, April 20, 1999), and improperly denied exemptions from the time limit to persons with disabilities. (Thibault v. McIntire, C.A. No. SUCV97-04760C, Suffolk, December 29, 1998).
5. 106 CMR 203.110(C)(2).
6. 106 CMR 203.210(B).



For More Information:

Patricia Baker, Massachusetts Law Reform Institute  
617/357-0700 x 328

Shari Zimble, Massachusetts Law Reform Institute  
Not Enough Time (NET) Documentation Project  
617/357-0700 x 329

Mac D'Alessandro, Family Economic Initiative  
617/371-1270 x 272

Additional copies of this report are available at [www.gbls.org](http://www.gbls.org).