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The Fair Hearing in Public Assistance Administration

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THE FAIR HEARING IN
PUBLIC ASSISTANCE ADMINISTRATION

A Thesis
Submitted to the Faculty of the
School of Social Welfare
of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment
of the
requirements for the degree of

MASTER OF SOCIAL WORK

by
Martha Frances Gandy
B.A., Millsaps College, 1947
June, 1962
MANUSCRIPT THESSES

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The Social Security Act has always required as one of the conditions for federal participation in the state public assistance programs that the state plans provide an opportunity for a fair hearing to any person who is dissatisfied with the action taken by the local agency on his claim for assistance. When the Act was passed in August, 1935, the right to a fair hearing was a new concept in public assistance administration. However, this provision was based on the belief that the claimant who meets the requirements established in the state law has a right to benefits and has a right to a hearing when he is denied these benefits.

This study was undertaken in order to examine the concept of the fair hearing, its procedure and significance in public assistance administration. Emphasis was placed on understanding the legal base and administrative due process.

The historical background of the Social Security Act was studied in relation to its intent of granting assistance to needy people as a matter of right, emphasizing the dignity of the claimants. Current literature was examined to determine the present concept and significance of the hearing procedure in public assistance administration and its effect on agency staff and policy.

This study presents standards for the fair hearing process, steps in conducting the hearing, and some problem areas relating to the procedure. It was concluded that as the public
assistance programs have grown, the use of the fair hearing has played an important role in the administration of the programs. Yet, in order to be effective, the fair hearing procedure must be flexible and adaptable to changing time and developments in public assistance programs.
INTRODUCTION

In keeping with our basic philosophy of government, the principle of due process must be observed in the administration of any law whether it limits the rights of the individual citizen or whether it establishes and secures new rights for him. In this respect, a program for disbursing public assistance funds is no different from any other public program. Therefore, it is essential that the people affected by the program be guaranteed equal protection under the law. An opportunity for the citizen to be heard on decisions affecting his welfare is one of the fundamental democratic safeguards designed to achieve this end.

The Social Security Act defined the concept of the fair hearing procedure. This act has always required as one of the conditions for federal participation in state public assistance programs that the state laws provide an opportunity for a fair hearing to any person whose claim for assistance is denied. Thus, the fair hearing concept emphasized from the outset the basic philosophy of government, the due process of law; that is, providing the citizen with the safeguards to which he is entitled.

The right to a fair hearing was a new concept in public assistance administration when the Social Security Act was implemented. No standards against which procedures could be measured were available to the states in setting up their programs. After a period of operation and a study of the scope and nature of the
problems involved, the Social Security Board issued a set of recommended standards to be used by the State agencies as a guide for developing their procedures.

The purpose of this project was to study the development of the fair hearing process, its effect on public assistance policy, and its importance in administration of public assistance programs. In particular, this report presents the legal base for the hearing procedure and its use as an administrative control device.

Before examining the fair hearing concept and the use of this procedure in the administration of public assistance, it is necessary to understand the historical background of the Federal Social Security Act. It was through the resurgence of the recognition of individual rights in this legislation that the American approach to economic security got its start.

The American social security is a social mechanism for the preservation of individual dignity, a system providing protection as a matter of right and not as a benevolence. In protecting these rights through an established appeals system, various issues related to the hearing procedure have arisen. It was not the purpose of this project to consider all the issues although a discussion of the more important ones is presented.

Since hearings concern themselves predominantly with critical or problem cases, hearing decisions offer particularly significant clues to the manner in which state policies and procedures operate. The hearing procedure itself varies among the states, yet in spite of these divergencies, there are certain basic essentials without which the hearing process would fail to offer the protection
of due process. In this project, the hearing procedure is not discussed in relation to specific cases, but is presented with consideration given to its use and significance in the general administration of public assistance and its effect on agency staff, claimants and agency policy.

Fundamentally, the administrative hearing is an orderly process providing the claimant with an opportunity to tell his story to those who represent the highest authority in the state agency; to question those who took the action to which he objects; to have an objective review of the facts thus brought out; and to get a decision which is the agency's final word. For this reason, this project considered the indispensable procedures for a fair hearing.

The method used in undertaking the study was a survey of the literature. Printed material relative to the areas of discussion were studied and reviewed. This included books, pamphlets, periodicals, public documents, and agency manuals. From the material examined, the concept significance, and implications of the fair hearing procedure in the administration of public assistance programs were delineated and are presented in this report.
CHAPTER I

THE FAIR HEARING

The Social Security Act provides for cooperative administrative relationships between the federal and state governments.\(^1\) In spite of the loose structure of this federal-state cooperation, there are positive requirements in the law for fair hearings and review in cases where the claimant indicates that he is dissatisfied.

**Legal Base**

As one of the conditions for federal participation in state public assistance programs, the Social Security Act requires that the state laws provide an opportunity for a fair hearing to any person whose claim for assistance is denied or is not acted upon within reasonable promptness.\(^2\) This requirement which is contained in the original act of 1935 and which has been maintained in its subsequent amendments is in keeping with the due process principle of the Constitution. The basis of this due process principle is that safeguards have to be created to afford to every person equal protection under the law and to provide him with a means of action against arbitrary decisions affecting his welfare.

\(^1\) *Complete Social Security Law* (Chicago: Commerce Clearing House, 1956), Titles I, III, IV, X.

\(^2\) *Ibid.*, Titles I, IV, X.
Although the constitutional clauses pertaining to equal protection of the laws and full faith and credit are sometimes invoked in challenging the constitutionality of social legislation, it is over the question of taking life, liberty or property without due process of law that the constitutionality of such legislation, is most often challenged. Our federal Constitution contains due process clauses in both the fifth and fourteenth amendments. This clause in the fifth amendment is a prohibition upon Congress and the federal government. The one in the fourteenth amendment applies to the states and provides that no state shall deprive any person of life, liberty, or property without due process of law. Similar clauses are included in the constitution of all the states.

We are indebted to English constitutional history for the requirement of due process of law. The concept appeared in 1215 in the Magna Carta with the declaration that no freeman should be taken or imprisoned, banished or anyway destroyed, nor would the king pass upon him or commit him to prison unless by the legal judgment of his peers or by the laws of the land.

The concept and contents of due process have been enlarged through the centuries. In the thirteenth century in England, it was most often invoked in situations where judgments were pronounced without trial. In the eighteenth century, the American colonies fought because they had been deprived of due process of law through taxation without representation.

In the twentieth century, due process may be given two broad meanings: (1) proper and fair procedure, and (2) proper and fair law. Proper and fair procedure means the administration of equal laws according to well-organized rules not violative of the
fundamental principles of private rights by a competent tribunal having jurisdiction of the case and proceeding upon due notice and fair hearing. Proper and fair law means laws whose very substance is just and reasonable.

Due process means a fair trial and reasonable action. To the average citizen due process means that he is assured a "square deal" if for any reason he has to appear before a court or administrative tribunal. Notice, hearing, impartiality and review are the basic requirements of an administrative due process. Others, such as the right to appear in one's own behalf and the right to counsel, to confront and cross-examine witnesses, to file exceptions, and to present oral arguments are legal requirements also customarily granted in the administrative proceedings. Perhaps the most important thing about these various legal requirements is the fact that administrative due process does not depend on statutory enactments, but is guaranteed by the federal Constitution and by the common law of the nation and that easy access to the courts assures the citizen his rights will be protected.

Administrative rule making and adjudication in the United States are as old as the government itself. John Bradway defines the purpose of the law as a method of making decisions, of disposing finally of controversies, of settling human problems. It may be said to be the system for the just regulation of the conduct of men in relation to each other, the community and the state. Traditionally, we think of law as being composed of statute law—rules enacted by the lawmaking bodies of the federal government or the

states, and case law—principles derived from the decisions of the courts in the administration of justice.

Law is one of the most important methods of social control because laws protect the rights of each citizen and impose duties on each citizen simultaneously. Every person must pay taxes, keep the peace, obey the laws of the land, and if necessary, give his life for his country. Reciprocally, he is entitled to an education, to an orderly community, to fair wages and decent working conditions, to protection from contagious disease, to leisure, to elect his spokesman and policy makers, and to speak his mind about his government.

As civilization and government have grown more complex, more and more laws have been enacted by the lawmaking bodies. Consequently, they have been followed by an ever increasing number of judicial decisions and regulatory governmental agencies to carry out the legislative intent. In 1934, a distinguished English Judge, Lord Macmillan, made this comment:

In contrast with former times Parliament now concerns itself with the regulation of the lives of the people from the cradle—indeed, even antenatally—to the grave, and being unable itself to deal with all the details, it delegates to the government departments the task of carrying out its policy by means of innumerable Statutory Rules and Orders.4

The law-making bodies of our Nation are the United States Congress at the federal level and the state legislatures at the state level. Our constitutions, federal and state, not only provide

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for a division of authority between these two units of government but for a separation of powers into three branches of government. The functions of the executive, legislative, and judicial branches of our federal and state governments are too well known to require a detailed explanation.

Laws are enacted by the law-making or legislative branch; the executive branch carries out the laws. The judicial branch, our system of courts, settles controversies; it determines the constitutionality of the laws and whether the facts brought before it came under the laws.

American Jurisprudence owes much to the English common-law. The separation of governmental powers as a political maxim is old, and our British cousins knew it well. However, it was left for America to accept the separation of powers as a principle of government and sanctify it by elevation to the constitutional level.

But it was left to us to hallow the tripartite ideal of government, wherein all power delegated by the people was in the purported interests of liberty divided neatly between legislative, executive, and judicial. ‘It was left to us, moreover, not merely to make of this division a convenient way of thinking about government, of considering the desirability of checking and balancing a particular power that might be vested in some official or some body, but also by judicial introspection to distinguish minutely and definitively between these powers. That fineness of logic-chopping that characterizes our courts permits us at will to discern a legislative or a judicial power when we are eager for a determination; at the same time it permits us to avoid decision by the establishment of new categories of quasi-legislative and quasi-judicial powers.

The insistence upon the compartmentalization of power along triadic lines gave way in the nineteenth century to the exigencies of governance. Without too much political theory but with a keen sense of the practicalities of the situation, agencies were created whose functions embraced the three aspects of government. Rule-making, enforcement, and the disposition of competing claims made by contending parties were all entrusted to them. As the years passed, the process grew. These agencies, tribunals, and rule-
making boards were for the sake of convenience distinguished from the existing governmental bureaucracies by terming them "administrative." The law the courts permitted them to make was named "administrative law," so that now the process in all its component parts can be appropriately termed the "administrative process."\(^7\)

**Administrative Process**

In areas of public administration where official discretion is greatest and private rights are most affected, the relationship between law and administration assumes its greatest importance for the administrator and the citizen alike. The frontiers of the law are arenas of social conflict, and it is here that administrators operate much of the time.\(^6\) In order that administrative action shall accord with the due process of law clauses of the Constitution, the courts have evolved rules and safeguards that must ordinarily be guaranteed an individual in hearing procedures held by administrative officers. Such rules and safeguards relate to notice, hearing, and the impartiality of the hearing officer; collectively called administrative due process. Decisions under the administrative adjudication of the due process cover a particular case or controversy; therefore, have future applicability only when cited as a precedent. Because these decisions so often affect people at two of their most sensitive points --their pocketbooks and their liberties--administrative adjudication is closely watched and any action that seems arbitrary is likely to elicit sharp response with appeal to the courts if

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necessary.  

The rapid growth in recent years of the administrative functions of government has sometimes been called a "fourth branch of government." With continued expansion of governmental supervision and control of activities and relationships, the legislative bodies have found it impossible to foresee every development and to limit and define every kind of governmental action. Therefore, our lawmaking bodies have enacted statutes creating boards, agencies, departments, and commissions, defining their general policies, and giving them authority to study conditions and make regulations to meet problems encountered.

The increase in the number of governmental agencies providing services for groups and individuals is a characteristic of the twentieth century. The depression of the 1930's and two world wars have left in their wake scores of agencies, created for the purpose of improving economic and social conditions. The federal government, through the exercise of what is termed police power, has increasingly accepted responsibility for enlarging the public welfare.

Police power means the general welfare or public purpose. Although it is extremely difficult to define even in general terms, this police power is the legal source of much of our social legislation. Therefore, it is inevitable that the courts are often called upon to determine whether a particular statute has exceeded the bounds of the legitimate exercise of the police power and

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7Ibid., pp. 5-6.

violated some fundamental constitutional right.

The value of the administrative process as an instrument of justice is not easy to appraise in terms of rules, but rather is measured best in the extent of the effectiveness with which it discharges its functions. It is not feasible to speak of the process as governed by rules as is the judicial process since rules will differ widely with the types of administrative actions that must be taken. In the case of judicial procedure, a controversy may be taken for granted. However, a controversy is not necessarily a part of an administrative action which is usually the receipt and examination of a claim with a subsequent determination of its merits. Any judgment to be applied to the administrative process must be withheld until standards are set up which are predicated upon the purpose of the process and the extent to which it is being attained.

A most fertile field for examination of the administrative process is in the public assistance programs set up under the Social Security Act. Here is a wide field of activity involving different kinds of legal and social determinations. Few of these activities can be considered as controlling or regulating but all are concerned largely with determining the entitlement of individuals to payments from public funds.
CHAPTER II

HISTORICAL BACKGROUND

The Social Security Act

On August 14, 1935, the United States Congress laid the foundation for a new social institution. This institution, social security, is now universal throughout the industrialized world, and is comparable in significance to the family, the church, the school, the court, and the other instrumentalities employed by man in serving those needs and aspirations which are common to all humanity.  

For centuries and in many lands, the problem of social security has challenged the best efforts of man. In our occidental world the profound changes of the industrial revolution loosed technological and social forces which made it impossible for either the family or the churches to do the necessary job of caring for the needy, even when aided by other voluntary associations. Our own governments, which had been called upon to guarantee constitutional rights and privileges and to defend our borders, have now also been called upon to guarantee to every citizen the right to his place as a worker and the right to income received under conditions compatible with self respect when he is unable to work. It

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is not by accident that public aid policies are adopted by our government for without social and economic security there can be no true guarantee of freedom. Our efforts to establish life, liberty, and the pursuit of happiness are not effective unless and until they rest on a firm foundation of social and economic security.

The decade from 1930 to 1940 witnessed far-reaching changes in the provision for the economically insecure population. The elevation of governmental public-aid policy into a national issue was not arbitrary action or accidental development. In large measure it was the inevitable outcome of the economic situation with which the country was faced. The economic depression that set in during the latter part of 1929 involved a diminution or complete loss of private income for large segments of the population. The widespread unemployment and increasing economic insecurity revealed the inability of private and existing public agencies to grapple with a problem of such magnitude. During this period the federal government assumed a substantial share of financial responsibility for certain public aid programs and expanded its influence over standards and policies. At the same time, the responsibility of state governments increased markedly.10

By the beginning of 1934, there was every indication that Congress would enact laws to deal with the various areas of economic need. Feeling, however, the need for further study of the subject and for comprehensive rather than piecemeal legislation, President Franklin D. Roosevelt, following a message to the Congress

on June 8, 1934, appointed a committee to develop a full program on economic security which he would then present for legislative consideration. This committee, the Committee on Economic Security, rapidly completed the major part of its task and filed its report with the President, who transmitted it to Congress in a special message on January 17, 1935. Congress held public and executive hearings on the committee's proposals, made extensive policy and technical changes in these proposals, strenuously debated the controversial issues, and reported out a complex piece of legislation consisting of ten separate programs.11 On August 14, 1935, President Roosevelt placed his signature on this ambitious and comprehensive public welfare act. However, various delays prevented Congress from making appropriations for carrying out the provisions of the act, and not until February 11, 1936, when it did so, were grants-in-aid made to the states. However, the Social Security Board, set up to administer aspects of the act, was organized in October, 1935.

In 1939, shortly before Congress made significant changes in the Social Security Act, a congressional committee made the following summary statement of the purposes of the Act:

The enactment of the Social Security Act marked a new era, the federal government accepting, for the first time, responsibility for providing a systematic program of protection against economic and social hazards...The Social Security Act aimed to attack the problems of insecurity upon two fronts: first, by providing safeguards designed to reduce future dependency, and, second, by improving the method of relieving existing needs. The first objective was promoted by providing a federal system of old-age

insurance and by granting aid to state-administered programs of unemployment compensation; the second objective was promoted by providing federal grants to state programs for aid to the needy aged, aid to dependent children, aid to the needy blind. Funds were also provided to stimulate development and extension of various health and welfare services.\textsuperscript{12}

There are ten distinct phases of the general program of economic security provided for in the Social Security Act. These may be grouped into three areas: public assistance, social insurance, and children's services. Under the public assistance titles of the act, grants-in-aid on a matching basis are made to states adopting approved plans for old age assistance, aid to the blind, aid to dependent children, and, as of 1950, aid to the permanently and totally disabled. Under the social insurance titles, the act provides for a federally administered program of old-age, survivors', and disability insurance and, through the imposition of a pay-roll tax on employers of eight or more persons, has induced the states to enact unemployment compensation legislation.\textsuperscript{13} Under the children's services titles, lump grants are made to states for the extension of aid for maternal and child health, services to crippled children, and child welfare services in rural areas and areas of special need.

These provisions are a combined group of programs which are administered jointly by the national and state governments and which will ultimately become a comprehensive system of social insurance designed to provide reasonable security to the entire

\textsuperscript{12}Clarke, p. 553.

public. Originally, most of the activities of programs started under the Social Security Act were directed toward alleviating unemployment and old age dependence, the two most outstanding hazards to workers. With the amendments of 1939, however, recognition was given to the needs of families of workers in the event of death, and a third element of protection was added in the form of insurance benefits to the survivors of such workers. It was a degree of protection which the federal government attempted to provide to millions of persons through the Social Security Act and it was in acknowledgment of this principle that the United States Supreme Court upheld the Act. In May, 1937, the Supreme Court rendered opinions in four cases which sustained the constitutionality of the controversial sections of the act. The cases were Charles C. Steward Machine Company vs. Davis; Helvering and the Edison Electric Illuminating Company of Boston vs. Davis; Carmichael vs. Southern Coal and Coke Company; and Carmichael vs. Gulf States Paper Corporation.\(^1\)

The Social Security Act, the first major step taken by the government of the United States in its attack on economic security, provides a well-rounded framework for a national program of social insurance.\(^2\) However, it makes no pretensions to completeness and assumes that subsequent amendments will be inevitable and necessary as experience and progress demonstrate its inadequacies or permit a broadened scope. Since its passage, the act has undergone various modifications; nevertheless, one essential feature of protection

\(^1\)Clarke, p. 556.

\(^2\)Leyendecker, p. 79.
and recognition of individual rights, the fair hearing procedure, has been kept intact with each subsequent amendment and modification.

The Concept of the Fair Hearing
In Public Assistance

The early advocates of public aid felt that the social insurance beneficiaries were the only group who receive public aid as a legal right and who are relieved of any relief stigma unless supplementation by the means-test programs of public assistance is necessary. But to an increasing degree provisions have been introduced with the object of making receipt of public aid less destructive to self-respect and of safeguarding the rights of the people. During the decade 1930-40, there was a marked tendency to protect the rights of applicants and recipients of assistance through the programs established by the Social Security Act. The federal law made specific provisions for hearing and review in the administration of the Old-Age and Survivors' Insurance. Furthermore, there was a requirement in the public assistance and unemployment statutes that the state agencies administering them provide for a fair hearing before a properly designated person or agency to claimants who were not satisfied with the original determination of eligibility.

In public assistance, federal requirements have had an important bearing on the conditions of eligibility and the standards of service by the state and local agencies. These requirements are ones that the states must meet in order to receive federal

funds to aid them in financing their programs. The states are free, in principle, to accept or reject both the funds and the conditions.

There are three federal requirements directly related to the treatment and protection of the people. First, the provision in the Social Security Act that anyone shall have the right to apply for public assistance and to have action taken promptly on his application. The importance of this measure is obvious. Delay may have just as much of an effect on the denial of the individual's rights as would an adverse decision.

Second, information relating to people applying for or receiving assistance must be confidential; that is, use or disclosure of such information is limited to purposes directly connected with the administration of the program. In 1951, Congress modified this provision somewhat by passing a law which permits the states to make the names of recipients and the amounts received a matter of public record. The states were required, however, to safeguard against the use of these items for political and commercial purposes.

Third, all state public assistance programs for which federal funds are received must provide the opportunity to applicants or recipients for appeal and a fair hearing. Persons who feel that their cases were not fairly or adequately handled may appeal to the state welfare authority and the state must have established procedures which guarantee a fair and impartial hearing. Such a grievance might be the denial of a request for assistance, what the applicant considers an unreasonably long delay by the

administrative office in taking action or other complaints.

In operation, the state plan deals with the machinery and methods of administration and finance as well as rules governing eligibility for assistance. For all categories of assistance there are some uniform federal administrative requirements for the plans. In addition to the three requirements listed above, the state plan for each category of aid must provide:

1. For the establishment or designation of a single state agency to administer the plan or provide for the establishment or designation of a single state agency to supervise the administration of the plan.

2. That it shall be in effect in all political subdivisions of the state and, if administered by them, be mandatory upon them.

3. For financial participation by the state.

4. Assistance shall be provided in the form of money payments to, or medical care in behalf of, needy individuals.

5. Such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis) as are found by the Social Security Administration to be necessary for the proper and efficient operation of the plan; and the state agency will make reports, in such form and containing such information, as the Administration may from time to time find necessary to assure their correctness.18

Only a few of the early public assistance statutes provided that a dissatisfied applicant could have his case reviewed by the state administrative agency. However, fair hearing or appeal procedures are now universal in public assistance because of the federal requirement under the Social Security Act. The primary purpose of a fair hearing is to prevent discrimination against, or

unjust treatment of, applicants or recipients of public assistance. According to the federal act, this right of appeal must also be included in the state plan for each category of assistance: old age assistance, aid to dependent children, aid to the blind, aid to the disabled, and the recent medical assistance for the aged. The state plan must provide for granting to an individual whose claim for public assistance is denied an opportunity for a fair hearing before the state agency that administers or supervises the administration of the plan. The interpretation of the scope of this requirement includes the individual's right to a hearing for almost any type of grievance he has concerning his claim to assistance: denial of a grant, closure of his case, inadequate grant, or unreasonable delay.19 Because this appeal provision gives the state agency the right to make a mandatory decision on individual cases brought to its attention, it has more far-reaching implications as a measure of control than almost any other power of the state agency.20

The meaning of the term fair hearing is generally understood, but the procedure as defined by the federal agency is "an orderly, readily available proceeding before an impartial official or panel of the state agency in which a dissatisfied claimant of assistance or his representative may present his case with the help of witnesses to show why action or inaction in his case should be


20Clarke, p. 577.
corrected by the state agency".\textsuperscript{21}

The federal agency also requires prompt, definite and final administrative action and it prefers the terms "claim" and "hearing" to that of "appeal". not only because they appear in the assistance titles of the act, but because they... are applicable to both the "applicant for" and "recipient" of assistance, and because the concept of an individual "claiming" public assistance carries with it the connotation of a right. Experience has also shown the desirability of avoiding the terms "appeal" and "appellant," since the hearing is not confined to a review on the record.\textsuperscript{22}

The term "complaint" must be carefully distinguished from fair hearing and appeal. Generally a complaint is regarded as the first evidence of dissatisfaction of an applicant or recipient of assistance. In terms of procedure, a complaint is usually distinguished from an appeal in that it is disposed of by a written or oral response. Also, if the letter or response does not satisfy the complainant, he may protest again and his grievance will subsequently be handled by a more formal review. Development of the procedures and use have contributed to distinguishing between the two. Appeals are considered to cover protests made by a recipient or applicant for assistance, or his representative acting for him, in which he asks for more favorable consideration than has been given. On the other hand, complaints are considered to cover mainly objections to what is considered unnecessary expenditure of public funds and inquiries from citizens for information about

\textsuperscript{21}\textit{U. S., Department of Health, Education and Welfare, "Handbook For Public Assistance Administration" (Washington, D.C., 1954) IV, Section 6210, (Mimeographed.)}

\textsuperscript{22}\textit{Ibid.}
individual grants or for interpretations of the law.

The concept underlying the provision for fair hearings is that the claimant who meets the requirements established in state law has a right to benefits and has a right to a hearing when he is denied these benefits. It is assumed, of course, that the public assistance agency is so organized and administered that the individual has the right to apply and is assured that his application be acted upon and that payment will be made promptly if he is found eligible. If this orderly process breaks down or if the claimant feels that he has not been accorded proper treatment, the hearing process is there to safeguard his rights. However, it is no substitute for sound administration.23

The principles underlying the hearing process as determined by the federal agency are of particular importance. These are:

1. The state public assistance agency is accountable to the claimant for action or lack of action with reasonable promptness in relation to his claim.

2. The claimant may demand a hearing from the agency on any action or failure to act with reasonable promptness on his claim for assistance.

3. The claimant may question the agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if he is aggrieved by their application to his situation.

4. The hearing is subject to the requirements of due process but should be an informal administrative procedure in order to serve best the interests of the claimant.24


The right to appeal the decision of a local department, on the grounds of incorrect decision on eligibility, inadequacy of grant, or unreasonable delay in making decision is a procedure required by the Social Security Act. The worker must inform the client of this right in the application interview and this fact, by federal interpretation, must be recorded in the case record. This fair hearing is to be held before the state agency that administers or supervises the administration of the plan. The state provisions for fair hearing or appeal are found either in the state law, in the agency regulations, or in both.

Clearly the fair hearing is an important procedure. Hearings in public assistance are not an appeals process in which the state agency merely reviews the record of the action taken by the local unit and then either confirms that action or sends the case back for further consideration. Rather the state agency proceeds as if there had been no previous local action and looks at all the facts, reviews all the evidence and listens to witnesses with the sole objective of settling the issue raised by the claimant. This issue may be a decision as to an eligibility factor such as age, residence, or degree of incapacity. It may concern decisions affecting the amount of the assistance payment, such as the availability of a resource, the existence of certain special needs or the value of certain items received in kind. Or it may relate to agency procedure. The promptness with which a new application is acted upon, for example, or the method of investigation or an administrative error may be the main issue in the hearing. It is the purpose of the hearing to settle the issue in question and to produce a decision setting forth the agency's findings definitively
and unequivocally. The fact that through this decision the local agency's action is upheld or modified is a factor in administrative relationships.\textsuperscript{25}

**Standards For Fair Hearing Procedures**

Since public assistance had been administered on a discretionary and arbitrary basis prior to the Social Security Act there was no experience with problems and procedures in hearings. Little precedent had been built up in the areas of determination of eligibility for assistance on the basis of defined criteria and review of these determinations through a clearly defined and publicized process. Hearings were a new concept in public assistance; therefore, there were no standards or guides available when the first state programs were set up in 1935. In meeting the Social Security Act's requirement for state plans, state agencies drafted statements assuring the Social Security Board that they would make a fair hearing available to individuals whose claims had been denied. Consequently, many questions soon arose such as: What constitutes an opportunity for a fair hearing? What is a claim? Has the agency met the provisions of the Act if it fails to advise applicants and recipients of their right to a hearing or if it reserves the right to accept or dismiss a request for a hearing?\textsuperscript{26}

With experience, the problems confronting the public assistance agencies in administering the hearing provisions emerged. It became clear that the basic concepts which have long controlled

\textsuperscript{25}Scholz, p. 15.

\textsuperscript{26}Clarke, p. 577.
administrative hearings in government generally could be applied to the new type of administrative hearings in public assistance. After six years of operation, the Social Security Board issued a set of recommended standards to be used by state agencies as a guide in developing their procedures. The recommendations were issued on January 8, 1941. After six more years of observing, comparing, analyzing, and evaluating the procedures used by various states, the Social Security Administration issued a new policy statement on hearings, Handbook of Public Assistance Administration, issued with State Letter No. 88, Oct. 10, 1947. This release established definite procedural requirements based on the experience gained. These essential elements of the fair hearing with respect to the right of the claimant are summarized as follows:

1. The individual whose claim is denied and who requests a hearing must be given due notice of the time and place of hearing with a reasonable time in which to prepare his case.

2. The hearing must be held within a reasonable time after application for it has been made.

3. The individual must be given an opportunity to present his claim in oral or written form, to produce witnesses, to have an attorney if he so desires, and to review the basis of denial of his claim.

4. Fair hearing shall be privately conducted and shall be open only to the claimant, designated representatives of the state agency, and individuals who have evidence bearing directly on the claim.

5. The decision of the state agency must be based solely upon the evidence introduced at the hearing and other documents as are referred to at the hearing and which the claimant has had an opportunity to inspect.

27 Scholz, p. 15.
6. The individual must be fully informed of the basis of denial of his claim. It is not necessary that confidential case records be produced at the hearing. If they are produced the claimant would be entitled to examine them. For this reason, it may be desirable that documents from the record rather than the entire record be produced.28
Conducting the Fair Hearing

The administrative hearing is an informal process. In public assistance, a hearing should not be an adversary but a fact-finding proceeding in which a group of persons, including the claimant and members of the state and local staff, find out what the claimant's situation is, and which mandatory policies are applicable to this situation. One of the principles of the hearing process is that the procedure is subject to the requirements of administrative due process of notice, hearing, impartiality, and review. Yet it should be an informal administrative procedure in order to serve the best interest of the claimant. The hearing procedure requires that the claimant be given an opportunity to state his case fully, to question the local agency's action, to question witnesses and to correct their statements; to examine evidence; to present witnesses and evidence in his own behalf; to have an objective review of the facts thus brought out; and to get a decision which is the agency's final word. The focus of the hearing is on the client's claim rather than on the local agency's action.29

To accomplish the purpose of the hearing, the agency must be prepared at all times to conduct hearings and to make decisions. Therefore, staff members must be designated to administer this function. Also, the agency must clearly state in its rules and regulations the procedure for the hearing so that the staff and the claimant may know in advance what is expected of them and what procedure to follow. The procedure itself may vary from state to state, yet there are certain basic elements without which the hearing process would fail to offer the protection of due process. One of these essential elements is that the claimant has a right to a hearing on any action or inaction by the agency that affects his claim. In order for him to use this right, the claimant must know from the agency that he has this right and how to go about getting it. One of the most effective means of telling claimants about their rights and obligations is the printed pamphlet that is usually issued to persons who inquire about assistance, as well as to those who make formal application. It offers an opportunity for study at leisure and remains available to the claimant throughout the course of his relationship with the agency. Also a follow-up phase is used in which the agency through the claimant's worker interprets orally the right to a hearing and keeps alive the client's awareness of this right. The worker must record in the case record the fact that he interpreted this right to the client.

The request for a hearing automatically sets the hearing machinery in motion and only the claimant's voluntary withdrawal can arrest the process. Whenever the request for a hearing is received, it then becomes the agency's responsibility to see it
through and to set up the necessary controls that assure prompt and efficient handling of the steps involved. These steps include tentatively scheduling the hearing with the time and place being acceptable to the claimant; holding the hearing at the earliest date possible; seeing that a decision is rendered promptly; and ascertaining that the decision has been carried out without delay. A vital part of this process is that the hearing officer must be designated to act as a representative of the state agency and who will furnish the claimant with information on the procedure used at the hearing itself so that he may prepare himself accordingly.

The request for a hearing can be made orally or in written form and can be addressed to either the local or the state office. When this request is received, the hearing is tentatively scheduled. This automatic scheduling has the dual advantage of informing the local agency how much time it has in which the existing difficulty may be adjusted prior to the hearing and of assuring the claimant that a hearing will be available to him on a certain date if he wishes it even though prior to that date he may be required to participate in various adjustment procedures. If a satisfactory adjustment can be achieved on the local level prior to the hearing, this is usually advantageous to all concerned. The adjustment is to the claimant's advantage since it usually obtains for him what he wanted much more quickly and easily than the hearing process. It is advantageous from the local agency's point of view since it eliminates the need of preparing

30Lansdale, pp. 309-10.
special material for the hearing and of losing additional staff time through attendance at the hearing. A local adjustment procedure, if constructively used, affords an opportunity to strengthen the confidence of the claimant in the local agency's relationship with him, in its desire to make its resources available for his needs and in its competence to deal with him frankly and constructively. It is clearly to the disadvantage of the claimant, however, if it results in delay in the hearing process.

The hearing proper is an orderly but informal proceeding. Formal trial procedures and technical rules of evidence need not be observed because the hearing in public assistance is not comparable to a court hearing on the conflicting claims of two opposing parties. Complex procedures might well block the free discussion of relevant facts and they might make it almost impossible for the claimant to present his case without legal counsel. Instead, the claimant may present his case himself or select someone to assist him. He is entitled to and must be given the opportunity to make full and free statements establishing the facts of his case as he sees them; to present this evidence without interference and with the aid of witnesses if he so desires. Furthermore, it is essential that he have the opportunity to refute testimony and to examine papers, documents and records used at the hearing.31

There are three major steps in the fair hearing procedure. They are the preliminaries or preparation for the hearing, the

31Leyendecker, p. 100.
hearing itself, and the hearing decision. The claimant, the local agency, and the hearing officer prepare for the hearing simultaneously. The claimant decides that he wants the state department to review his situation and files his request for a hearing. This is probably the moment in which he clarifies in his own mind what is actually the issue around which the hearing will be held. Up to this point, he may have felt that he merely had a right to assistance and that his assistance had been discontinued improperly. However, this is not the issue. The issue is the reason for the agency's action and the claimant's reply that the reason does not hold. Therefore, a clear statement of the issue then identifies the point the claimant will have to prove at the hearing by establishing it with the help of witnesses and documentary evidence.

The local agency, upon being notified of the claimant's request for the hearing, prepares for the hearing a summary statement of the facts taken into account in reaching its decision. This summary is generally submitted to the state agency to be reviewed prior to the hearing.

The hearing officer may approach the hearing either prepared or unprepared. That is, he may be as well prepared as possible from a study and analysis of materials available in agency files or unprepared with no advance information other than the statement on the issue made by the claimant in his request for the hearing. If the hearing officer approaches the hearing unprepared, he finds it easier to be objective since he does not come to the hearing with any preconceived opinions about the facts or about the personalities of the participants. Instead, he comes
to the hearing ready to construct his own picture of the situation and the claimant can build up his case as he sees it.

This type of procedure places quite a burden on the sensitivity and resourcefulness of the hearing officer. He may have to help the claimant to formulate his grievance and his arguments; he may have to grope for the basic information until it finally crystallizes out of what may at first seem like a mass of unrelated data. As a result, the hearing record produces an entirely fresh statement of the issue at hand, not related to previous records nor based on facts that were previously agreed on between claimant and local agency and are therefore omitted from the discussion at the hearing. The whole case is built up step by step. This method has disadvantages, however, in that it is most difficult for the hearing officer who is unprepared to secure seemingly unrelated pieces of information, to gradually form a pattern until the whole case has become clear and can be outlined in the final summation.32

When the hearing officer has fully prepared himself about the issue, he may have been furnished a specially developed summary by the local agency or he may have studied the case record. In some cases, he may also have received a separate report from a field representative who attempted to adjust the grievance in the period between the request and the date set for the hearing. This report is able often to throw the issue into sharper focus by giving specific pertinent information obtained from the

viewpoint of the local agency and the claimant. The hearing officer is then able to open the hearing with a well-defined statement of the issue, to point out the facts needed, and to direct from the very beginning of the hearing the testimony in such a way that the required information will be produced with maximum economy. In this procedure, the claimant and local agency can easily recognize the crucial point of the process.

This method of beginning the hearing from the basis of certain established facts provides a more streamlined process. However, it also places more responsibilities on the hearing officer. He must make certain that real agreement exists on the facts which are to be taken as proved, and that the claimant is familiar with the material which he intends to use as the starting point of the hearing. Otherwise, there is danger that the claimant has no real freedom in stating his case as he is too much directed in the presentation of his testimony.

From the standpoint of the state agency, the hearing conducted by a hearing officer who is prepared has the advantage of being more compact, more to the point, and easier to handle as basic material for drawing final conclusions in rendering a decision.

The hearing proper is the one brief moment in the relationship between claimant and agency in which he and the hearing officer who represents the state agency meet face to face to work out a solution to the problem that has temporarily disrupted the relationship between him and the local agency. Each of the three participants in the hearing prepares himself as best he knows how and in accordance with his concept of the nature of a hearing. The
responsibility rests with the hearing officer to assure that from the very beginning it will be clear to the participants that they are sharing in the joint undertaking of producing all the facts needed for a sound, equitable and valid decision. He must help the participants to realize that they are not in a contest to show who was right and who was wrong; rather they are joining forces to assure that the agency does not fail in the purpose for which it was set up and that is to make assistance available to eligible individuals.

The hearing officer conducts the hearing which is attended by the claimant and/or his witnesses, and such local agency staff members as are concerned. The hearing is recorded and on the basis of the facts elicited during the hearing the final decision is made. Actually the hearing can be compared with an initial interview, conducted skillfully and patiently by the hearing officer who gives the claimant full opportunity to contribute anything he wishes to his case situation. Yet the hearing officer retains full control of the discussion at all times and guides it by purposeful questioning. Usually, the hearing officer opens the hearing with an introductory statement, setting forth the agency's philosophy relative to hearings, the purpose of the hearing at hand, the procedure to be followed, and the manner in which the decision will be rendered and communicated to the claimant. The hearing is a proceeding de novo, that is, a process in which the claimant and the local agency present all the facts and figures on which a decision may be based answering the question whether or not the claimant is eligible for assistance. The fact that the local agency has made a decision on the basis of the facts then
available and in relation to its understanding of agency policy is immaterial. It is immaterial in view of the fact that the purpose of the hearing is a joint effort to make a fresh start to make a new determination which will lead to a new decision. The hearing officer will not close the hearing until he is satisfied that all facts have been assembled which will be needed for a decision. If it develops that insufficient data are available at the hearing upon which to make a decision, he will either adjourn the hearing and direct the agency and/or request the client to produce additional data at a reconvened hearing or close the hearing and direct the agency submit specified additional material by a specified date. At the same time, he informs the client he may submit additional material by a certain date all of which material is to be taken into consideration in rendering a decision.33

The role of the hearing officer is important in the hearing procedure. He has the dual role of moderator and interpreter of agency policy to the claimant. From the perspective of total program administration, definite values are gained by the hearing officer's role of interpreter. One of the greatest values of the hearing process as far as the agency is concerned can be derived from its use as a public relations tool. Here it is seen as a medium of interpretation of agency policy and administrative procedures to claimants, their witnesses and friends as well as to local staff on the basis of a specific case situation.

Whenever possible, it is preferable that the hearing officer not only conduct the hearing but also make the decision in

33Leyendecker, p. 101.
accordance with an old legal maxim that "he who hears, shall decide." In most agencies, however, this is not possible or practicable for administrative reasons and one of the highest administrative officers, the commissioner or the state welfare board, renders the final decision. If this is the procedure used, the hearing officer prepares a written statement in which he enumerates the findings of fact that have in his opinion been substantiated by the evidence. He comments on conflicting statements made, evaluates the testimony given, and offers his recommendations for the guidance of those to whom the authority for making the final hearing decision has been delegated. Only by rendering such a report which should be made available to the claimant just like the hearing transcript does the hearing officer fully carry out his function of being the eyes and ears of the state agency.

The hearing decision is based on the hearing record and copies are promptly sent to claimant and the local agency. This decision de novo is based on facts and constitutes an administrative procedure setting forth clearly the facts and legal or policy provisions on which it was based and the reasoning by which it was reached. However, the decision is not in any way an administrative review of the legality or the illegality of the local agency's action or the administrative correctness of its interpretation of the policy. In other words, the state agency makes its decision on the premise that the issue before it is to be decided as if the local agency's action were nonexistent. It is in no way bound by

\[34\] Scholz, p. 16.

\[35\] Ibid., p. 17.
the local agency's action or limited in arriving at the decision by the facts available to them. It can unearth new facts, use the old ones on which the local agency based the decision, or in general, proceed in any direction that guarantees a fair review of the question at issue.36

The state agency makes the final decision which states clearly the results for the claimant and which settles the issue that gave rise to the hearing. No further action to resolve the issue is possible within the agency. In most states, this decision rendered by the state department is final; that is, there is no other recourse available to the claimant through the administrative procedures of the state agency. On the other hand, a few states through legislative acts specify that an appeal from the state agency's decision may be taken to the courts under specified conditions.37

The Effect of the Fair Hearing on Agency Staff and Policy

In a state agency that operates under well-integrated statements of policy, clearly defined standards of assistance and specific, clear procedures both the claimant and the staff accept the hearing procedure with assurance. The staff carries out its duties with the feeling that it is operating uniformly, using objective measurements, and working toward equitable results.


Under these conditions, the hearing is considered a test of policy and procedure rather than a test of the staff member's judgement in making the determination of eligibility or of the local agency's action. If the hearing is accepted as a part and parcel of orderly, responsible administration, the worker recognizes that the hearing is a support to his status and not a threat. Therefore, he will integrate the process into the integral parts of his work and will use it as a medium of interpretation to the claimant. The worker's acceptance of the hearing as the claimant's right will strengthen his relationship with the claimant and this in turn strengthens the claimant's total relationship with the agency. The claimant feels that his own rights are strengthened by a process which the worker accepts and implements because it is in keeping with his belief in democracy.

In the agency where there is no basic acceptance of the right to assistance or where the policies are not clearly defined, the hearing constitutes an attempt to find the claimant wrong and the agency right. The two are aligned against each other and this proves to be a difficult, trying experience for both the staff and the claimant. In this case, the hearing is no longer a test of policy, procedure, review of the facts and interpretation. Rather, it is a questioning of the staff's judgement and becomes a more personal review of an individual's work. The hearing procedure then is considered a threatening experience to the local agency.

The effect of hearings on agency policy is varied. States that accept the requirement of equal treatment under the law also

38 Scholz, p. 17.
accept hearing decisions as precedent and amend their policy when necessary so that it will apply to all similar cases. 39

Hearings frequently involve a challenge to a state regulation. Often the local agency must reject an application even though it may think that the claimant should be awarded a grant but approval of the application would mean a technical violation of a state regulation. In such instances, the local agency is as anxious as the claimant to have the fair hearing by the state agency. In other cases, the local agency faces problems of eligibility on which there is no clear ruling by the state and they may encourage claimants to appeal to the state department in order to obtain a ruling. Although in a well operated state program it should not be necessary to go through the hearing procedure in order to obtain policy rulings, such tactics are likely to be necessary sometimes. Some state agencies recognize that the ultimate test of policy is the manner in which it is applied in fair hearings. It is obvious, therefore, that this important avenue of interpretation is lost to the majority of local agencies since there is access to hearing decisions only in those counties in which the hearing was held. It is for this reason that some state agencies publish their hearing decisions with proper safeguards for the anonymity of the individuals involved. These agencies want to facilitate administrative use of decisions by giving new interpretations of policy the widest possible circulation so that they may have the broadest and most immediate effect on all cases. These releases are part of these agencies' plans for keeping staff

39 Ibid., pp. 17-18.
informed about all aspects of agency action and for furthering uniform interpretation of policy throughout the state. Furthermore, their value is considered cumulative in the sense that the decisions indicate trends.

On the other hand, in states that do not accept the concept of equal rights for all claimants as well as safeguarding these rights, hearings may result in individual rulings that are not considered applicable to the entire case load but serve merely to eliminate special hardship in the individual cases. These states appear to still think of their function in granting assistance as primarily discretionary and the grant as a gratuity. Therefore, they are likely to question the purpose and usefulness of the hearing procedure.\textsuperscript{40}

\textbf{The Significance of Fair Hearings in Public Assistance Administration}

Hearings are not intended to be a substitute for a sound administrative process. They are the claimant's last administrative remedy in cases where the regular administrative procedure breaks down or in the unusual case situation in which the soundness of the local agency's judgement may be in doubt. Hearings concern themselves frequently with exceptional cases; that is, cases which the drafters of policy did not intend to exclude yet which are not expressly covered by state policies. Therefore, hearing decisions offer particularly significant clues to the manner in which state policies and procedures operate as well as to the agency's attitude toward the rights of individuals under its

\textsuperscript{40}Clarke, p. 578.
Experiences of the states with hearings have varied. Some have had hundreds of hearings; others have had few. Some states appear anxious to prevent hearings whenever possible; others welcome them. However, the number of hearings itself provides no ready answer to the question of how many hearing requests may reasonably be expected in a well-administered public assistance program. The receipt of relatively few requests may reflect successful efforts to meet actual and potential dissatisfaction of claimants by other methods. Yet the fact that an agency receives few hearing requests may also indicate that all claimants are not aware of their right to a hearing or that the agency does not completely accept the existence of that right or the operation of both factors. On the other hand, a relatively large number of requests presumably shows that the agency has recognized the right to a hearing by making sure that claimants are told of the right and of the means by which they may implement it. But the agency may sometimes be using the hearing process to meet dissatisfaction that would not arise if agency policies were more clearly defined, equitably applied, and satisfactorily explained to the claimants.

An agency's ready acceptance of requests for hearings on a policy rather than on a questioned decision made under this policy indicates acceptance of the right to claimants to participate in developing policies that vitally affect their rights and their welfare. Furthermore, the agency's follow-up action after a hearing indicates whether the agency puts hearings to effective use by eliminating the weaknesses in policy and procedure that the hearing disclosed. The agency then may make the necessary change either
by direct action through policy revision or whenever necessary, by submitting bills to the state legislature that would broaden or liberalize the program's legal base.

Hearing decisions have a cumulative effect in addition to their significance for policy development. While the individual hearing reflects the effect of a specific policy in a specific situation, an accumulation of hearings on related issues brings out additional information in terms of their usefulness as an administrative tool. This cumulative data does not merely reflect fair hearing practices but also relates these practices to the over-all administrative picture in the state program of which they are an integral part.\(^41\) These decisions give better insight into the problems of policy by showing what a certain policy does in relation to a particular section of a whole case load or in relation to a whole set of similarly constituted case situations. When the over-all policy application has adverse affects, the hearing decisions suggest then a reconsideration of the social effectiveness of the pertinent legislation, thereby becoming a device to test not only the administrative procedure but also the wisdom of the law.\(^42\)

Even though an individual hearing decision may appear fair, the perspective gained from a large number of related decisions may highlight deficiencies not visible in the individual case. Also, the decision reached in the single case may appear superficial and not directed at the core of the problem. Thus, a

\(^{41}\)Boehm, p. 195.

review of hearing decisions by a state agency may result in a new understanding of underlying problems that had not been recognized before. Systematic and periodic collection, classification and analysis of hearing decisions would seem to be a consistent way of forging these decisions into administrative tools. They could furnish the raw materials for new policies and rules and could serve as interpretative materials for state and local staff with the object of improving the administration of public assistance. They could also provide the evidence for the improvement of legislation and for the need to change practices and social policies which are contrary to the underlying philosophy of the social security program.

The Social Security Administration has utilized hearing decisions in various ways. In January, 1947, it began publication of a quarterly periodical, Hearing Decisions in Public Assistance, which was later changed to Hearings in Public Assistance. Through this means, the Bureau of Public Assistance of the Federal Security Administration began to provide a medium of exchange of experience between state agencies, and made available illustrative material for purposes of staff training.43

In general, these publications, which were later discontinued, served to reproduce hearings; to examine the staff participation in the preparation of hearings; to acquaint the reader with the pertinent literature on hearings; to make available the various procedures followed by the states in conducting hearings;

and to analyze the state-local administrative relationship as well as the effectiveness of the hearing procedure in maintaining the client's right to assistance.¹⁴⁺

**Problem Areas in the Fair Hearing**

The hearing procedure has come to stay in public assistance administration, but it is a matter that must be handled intelligently and judiciously as well as sympathetically. Ideally it is a means of insuring justice for the citizens of the state; specifically, it is a procedure whereby the claimant who meets the requirements established in state law has a right to benefits and has a right to a hearing when he is denied these benefits. From time to time the question has been discussed whether the fair hearing procedure is an aspect of administration or a judicial perogative heretofore reserved to the courts but transferred to an administrative body more or less in violation of the principle of separation of powers.¹⁵⁺

An answer to this question may be given by saying that as long as the courts retain the right to judicial review, the hearing process may be considered a legitimate aspect of the state agency's administrative proceeding. Furthermore, the comparative recency of administrative law has given rise to discussions about the relationship between the judiciary and the administrative agency. The non-judicial and the administrative character of the

¹⁴⁺Scholz, p. 21.
¹⁵⁺David R. Hunter, "The Courts and Administrative 'Fair Hearings' in Public Assistance Programs," *Social Service Review*, XIV (September, 1940), 481-82.
hearing procedure may be further highlighted by the fact that it is not considered an appeal. Actually, the state agency through the hearing procedure is not concerned with reviewing the action taken by the local agency, but rather the hearing proceeds as on an initial determination of eligibility. The focus is on the client's claim rather than on the local agency's action.\(^46^\) 

The administrative and judicial relationship is clear in the states where there is a statutory provision for judicial review. In these states, the courts have power to pass on fair hearing decisions. The court, in final action, reviews the decision from an entirely different perspective and with greater detachment than either claimant or agency. If the claimant is not satisfied with the hearing decision and appeals to the court, the court makes a finding on these questions: Has the claimant in fact had a fair hearing? Has the agency reasonably interpreted the laws under which it operates? Has the agency reasonably applied these laws and its interpretation to them to the facts established at the hearing? The court may, and in most cases will, draw on additional materials such as the complete transcript of the hearing with attached copies of all documents and evidence submitted at the hearing, the agency's statement of policy and procedure, and usually the case record. The most important document in this process and the starting point of the court's review, however, is the hearing decision. However, the use of appeal to the courts have been so slight that no final judgement can be reached of its value to applicants and recipients of public assistance.

\(^{46}\)Ibid., p. 483.
In other states, the law declares expressly that the administrative finding based upon a fair hearing is final and binding. An argument which substantiates this plan is that there is no reason to believe that citizens should need to go to the expense, time and trouble of appealing cases to courts if the states establish adequate facilities for fair hearings.\footnote{Lansdale, p. 315.}

Another problem at hand appears to be that some states continue to think of their function in granting public assistance as largely judgmental, therefore, questioning the usefulness of the hearing process. As a result, claimants are not properly informed about their rights or methods may have been developed that interfere with the availability of hearings. Consequently, claimants are forced to work their way through a maze of adjustment and review before they are actually granted an opportunity for a hearing before the state agency. By that time, much tension has developed between the claimant and the agency and the hearing may be a personal battle of emotions. The claimant may be made to feel that he is a trouble maker. The agency may feel so determined in its efforts for a previous adjustment that the hearing must now serve to justify its action. As a result, such a hearing is likely to leave the relationship between the claimant and the agency badly damaged, regardless of the decision.

The method of informing the claimant of the procedure that will be used at the hearing so that he may prepare himself effectively is indeed a problem area of the hearing process. The state agency should set up necessary administrative controls which assure
the claimant that his request for a hearing has been acknowledged and that he will be given an opportunity for a hearing within a reasonable length of time. He should be given ample notice of the date and place of the hearing; however, the agency has not discharged its responsibility by merely informing the claimant when and where the hearing will be held. It is necessary that the claimant understand that his presence at the hearing is essential and that the agency will adjust its schedule and conduct the hearing at another time or another place if such a change will assure the claimant's attendance at his own hearing.48 It is equally important that the claimant have a clear understanding of how the hearing will be conducted and what role he will be expected to play in it. The agency's notice to him may be formal but preferably it should be an informal letter from the hearing officer, containing a comprehensible statement of the manner in which the hearing will be conducted. It is helpful if the notice explains that it is not necessary for him to have legal counsel to represent him but that there is no objection to his having counsel if he wishes; that he may have witnesses of his choosing; and that he may present documentary statements. This notice may also contain a brief summary prepared from his case record which clearly shows the facts that entered into the decision and a statement of the portion of the policies which affected his eligibility for the amount of his grant. This summary, if received prior to the hearing, enables the claimant to make some preparation for the hearing by

gathering facts to substantiate his allegations. Being able to show his witnesses the explanatory notice received from the state agency, the claimant in turn will assure that these witnesses come to the hearing with an understanding of what will be expected of them and prepared to offer the kind of testimony that will enable the agency to arrive at a valid decision. Consequently, it is in the agency's own interest to try to see that every person who will participate in the hearing come as well prepared as possible. By endeavoring to help the claimant prepare himself adequately for the hearing, the agency may be able to relieve some of the claimant's apprehensions about the hearing in addition to increasing his confidence in the agency.

The fair hearing not only protects the claimant but also indicates the way in which policy is executed in the local agency. It gives the state agency an opportunity to review the action of the local agency in that its decisions are subject to review by the state agency at the request of a claimant for a hearing. Therefore, it is a control device serving as a means of state control through the adjustment of errors made by the local unit in individual cases. Through this interpretation of the hearing procedure, it is generally recognized that hearings affect the state and local agency relationship. As required by the Social Security Act, the state agency formulates the rules and regulations which are binding upon the local agencies. However, the question is often raised concerning the affect of this state plan upon relationships in view of the fact that state supervised, locally

\[^{49}ibid.\]
administered programs are an indication of strong feelings for local autonomy. The local agency's objective is to carry out the rules and regulations. However, it is when they feel that they are carrying out correct policy interpretation with appropriate decision and then the claimant requests a fair hearing that the local agency feels some resistance to control. In essence, a hearing necessitates control to some degree; therefore, it becomes evident that it tends to crystallize some of the feelings of resistance to state agency control.

On the other hand, the hearing procedure can become a constructive force in state and local relationships if it is recognized by both agencies as a tool for clarifying interpretations of law and policies and for testing the reasonableness and equitableness of administrative policies. Furthermore, it is a constructive force if the issue at hand is dealt with impartially with the claimant and the local agency being given an opportunity to give information, and the state agency makes a prompt decision based upon the law, policies and facts in the situation.
SUMMARY AND CONCLUSIONS

The decade beginning in 1930 was a period of intense activity in the field of public aid, and as a result, the character of public provision of assistance for the economically insecure was in large measure revolutionized. Probably no legislation during the thirties indicated the long term aspects of public aid policy so clearly as the Social Security Act. The application of the principle of social insurance and public assistance to risks such as old age and unemployment signified both the acceptance of the concept that need arising from these hazards of modern industrial society is a permanent problem and the adoption of collective responsibility for meeting the costs of these risks.

The public assistance titles of the Social Security Act provide for programs of old age assistance, aid to dependent children, aid to the blind, and as of 1950, aid to the permanently and totally disabled. These programs are administered in the states through federal grants-in-aid if the laws of the states provide programs which meet certain minimum standards specified in the Act.

The Committee on Economic Security foresaw the dangers of inadequate treatment of individuals; therefore, their recommendations placed emphasis on the dignity and rights of individual claimants and attached importance to how people were treated and assisted. As a result, the major tenet of the Social Security Act was that assistance to needy people under the terms of the Act was to
be granted as a matter of right. Therefore, provisions were included in the Act with the objective of making receipt of public aid less destructive to self respect and of safeguarding the rights of the claimant.

The three federal requirements most directly related to the protection of individual rights are the provision of the right to apply for assistance, confidentiality of information, and the opportunity for a fair hearing. One of the most important of these is the right to a fair hearing and review in cases where the claimant indicates that he is dissatisfied. A claimant may request a fair hearing, appealing the decision of the local agency to the state agency for review for reason of delayed action, denial, closure of case, inadequate grant, or change in grant. This requirement for a fair hearing was included in old age and survivors' insurance, public assistance, and unemployment compensation, the three most significant programs of the original Social Security Act. This positive provision for the protection of claimants has remained intact and unchanged during the Act's subsequent modifications and amendments.

Although there are differences of opinion as to just what the word "right" means, it can be said that this federal requirement for a fair hearing is an indication of Congressional intent that assistance to needy people be granted as a matter of right. Although the fair hearing is administrative in nature rather than a court process, it is a long step forward in protecting needy people or those who consider themselves to be needy from arbitrary or erroneous decisions on the part of the local agency. This
requirement, at least, assures the presumptively needy person of a legal right to a fair hearing.

In providing this degree of protection to the claimant, law and public administration are intertwined at many points. In order that administrative action shall be in accord with the due process of law clauses of the Constitution, there are rules and safeguards that must ordinarily be guaranteed the claimant in the hearing procedure. Such safeguards relate to notice, hearing, impartiality, and review; collectively they are called administrative due process.

Due process of law is provided for in the federal Constitution in the fifth and fourteenth amendments. In both amendments, due process of law is guaranteed to every person in matters affecting life, liberty, and property.

The fair hearing procedure is set in motion when the request for a hearing is received by the state agency. The hearing is scheduled as soon as possible with the local agency, state agency, and the claimant preparing for the hearing simultaneously. The hearing is an informal administrative process conducted by the hearing officer, the representative of the state agency. The hearing officer gives the claimant an opportunity to present his situation yet he questions the claimant and witnesses in order to bring out pertinent facts and to expedite the proceedings. Likewise, the claimant has the right to appear in his own behalf, the right to legal counsel, to present and to question witnesses, and to give oral argument.50

There appears to be a growing general recognition of the fair hearing procedure as part and parcel of orderly, responsible administration of public assistance. The local staff needs to be increasingly aware that the hearing is a support of their status and not a threat. Only a person convinced that he is doing a competent and responsible job is likely to have sufficient self-assurance to call attention to the fact that his performance is subject at any time to review by higher authority. The fact that the local staffs are increasingly able to do this is an indication of the maturing of the program and of the resultant greater skill of professional staff in the application of objective standards through clearly established procedures.

The effectiveness of the fair hearing procedure can be measured in terms of the following specific objectives:

1. To secure equity of treatment and uniformity in application of the state assistance laws and the state agency's regulations.

2. To afford the local agency, the state agency and claimant the opportunity to determine the facts of the case upon which a just decision may be reached by proper application of law and policy.

3. To make sure that instances of inequitable treatment are remedied by prompt enforcement of the hearing decision.

4. To reveal areas of agency policy that are inequitable and bring to the attention of the state agency evidence indicating the need for modification of policies on a state wide basis.51

As public aid programs have grown, the use of the fair hearing procedure in public assistance has played a vital role in the

administration of the programs. Administration is not static; it must change again and again under the impact of external and internal pressures of which the administrative fair hearing is one. The key to effective administration is that in the constant efforts toward successful and effective operation, the techniques must never become rigid but must be flexible and adaptable to the changing time and progress.

As the concept and use of the fair hearing in public assistance administration are reviewed, the one basis of justice which may be called the American sense of fair play is emphasized. The right to a fair hearing involves a moral principle which was recognized by the common law long before the adoption of the Constitution. This right to a hearing became a legal right because it was a moral right and the age old values have been preserved and guaranteed. The objective which is pursued is what is fair between man and man. This ideal which is firmly implanted as a part of the American tradition of justice is to all citizens a sacred heritage and must never be sacrificed.
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While a member of the staff of The University of Southern Mississippi, Hattiesburg, she became interested in the field of social welfare and accepted employment with the Mississippi Department of Public Welfare in 1954. Having worked three years as a Visitor in the Hinds County Department of Public Welfare, Jackson, Mississippi, she entered the University of Tennessee School of Social Welfare and completed her first year of graduate study in June, 1958.

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