

- SUBJECT:** Administrative and judicial review of decisions about public benefits
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 6 ayes — Rose, J. Davis, Herrero, Naishtat, Parker, Pierson
- 1 nay — Eissler
- 2 absent — S. King, Hughes
- WITNESSES:** For — Dennis Borel, Coalition of Texans with Disabilities; Bruce Bower, Texas Legal Services Center; Jeff Edwards, Texas Access to Justice Commission; Carlos Higgins, Texas Silver-Haired Legislature; Paula Johnson, Texas Silver-Haired Legislature, Texas Senior Advocacy Coalition; Scott McCown, Center for Public Policy Priorities; Jeff Miller, Advocacy Incorporated, Disability Policy Consortium; Madison Sloan, Texas Appleseed; Lora Livingston; (*Registered, but did not testify:* Miryam Bujanda, Methodist Healthcare Ministries; Alison Dieter, Gray Panthers of Austin; Gerald Hill, SETON Family of Hospitals; Jill Johnson, Texans Care for Children; Emily Jones, Texas Access to Justice Commission; Patricia Kolodzey, Texas Hospital Association; James Meadours, Texas Advocates; Gabriela Moreno, CHRISTUS Health; Michele O'Brien, CHRISTUS Santa Rosa; Caroline O'Connor, Texas State Employees Union; Patty Quinzi, Texas Federation of Teachers; Joe Sanchez, AARP-Texas; Betty Balli Torres, Texas Equal Access to Justice Foundation)
- Against — None
- On — Steve Aragon, Health and Human Services Commission
- BACKGROUND:** The Health and Human Services Commission (HHSC) administers public benefits programs, including Medicaid and food stamps. If a request for public benefits is denied, reduced, or suspended, the applicant or recipient can request a fair hearing conducted by an HHSC hearing officer. If the hearing officer upholds the decision, the applicant or recipient can request an administrative review of the hearing officer's decision by an HHSC attorney.

DIGEST:

HB 75 would amend the administrative and judicial review process for eligibility determinations for food stamps and Medicaid. Hearings conducted by HHSC regarding contested benefit decisions would be recorded electronically. The cost of preparing the recording and transcript would not be charged to the applicant.

Before a public benefit recipient or applicant could appeal a hearing ruling, the applicant or recipient would have to request administrative review by an HHSC attorney. The attorney would have 15 days to notify the requestor of the results of the administrative review.

An appeal of the decision of a hearing officer from a public benefit issuance hearing would be ruled by the Administrative Procedure Act (Government Code, ch. 2001, subch. G and H). When HHSC had reached its final decision on a contested case and an attorney had completed an administrative review of the decision, a person aggrieved by the decision would be entitled to judicial review.

A judicial review of a contested case regarding public benefit assistance would be filed in Travis County district court and would be governed by the substantial evidence rule. These judicial reviews would take precedence over all civil cases except workers' compensation and unemployment compensation cases.

The bill would take effect on September 1, 2007, and would apply only to an appeal or final decision by HHSC that was rendered on or after this date.

SUPPORTERS
SAY:

HB 75 would provide public benefit recipients and applicants with the long overdue opportunity to bring contested cases under judicial review. Currently, almost all decisions made by a state agency or regulatory board in Texas are subject to judicial review. Texas is the only state that does not provide state court judicial review of final decisions on any of its public assistance programs. The only review processes on adverse decisions regarding public assistance benefits are conducted by HHSC. HB 75 would afford public benefit recipients and applicants due process through impartial case review by a district court judge at a reasonable cost to taxpayers.

In Texas, a person's only recourse when denied public benefits is to bring suit in federal court because state court judicial review is not permitted.

Successful suits in federal court can be far more costly to the state and the plaintiff because they allow discovery and involve trials. If the state loses the appeal, the plaintiff could be awarded attorney fees. Under state court judicial review, clients are not entitled to attorney's fees. HB 75 would not authorize new trials, new evidence, or new witnesses. The state appeal only would entail review under the substantial evidence rule of existing case documentation and hearing transcripts from the HHSC hearing, so an impartial judge could determine if HHSC properly applied the law.

The citizen party to the contested case would have to exhaust all formal review mechanisms at HHSC before the client could receive judicial review. Only a relatively small number of cases would be addressed through judicial review because plaintiffs likely would require legal aid attorneys, and these attorneys only would invest their limited time and resources on well-substantiated appeals.

OPPONENTS
SAY:

Amending the administrative review process and providing for judicial review in public benefit issuance decisions would cost \$616,022 in fiscal 2008-09, and costs would increase in coming years. The state should not expend these funds for judicial review of public assistance cases when there are already two levels of HHSC case review, including fair hearings and administrative review. These processes provide adequate review of whether the law was applied properly in determining benefit eligibility.

NOTES:

The companion bill, SB 851 by Wentworth, has been referred to the Senate Health and Human Services Committee.

According to the Legislative Budget Board, the bill would cost the state about \$839,780 in all funds in fiscal 2008-09, which would include approximately \$223,758 in federal funds and \$616,022 in general revenue-related funds. Costs for fiscal 2008-09 would include 3.5 FTEs in 2008, 6 FTEs in 2009, transcripts, and system changes.