

**WHEN THE SYSTEM FAILS: WHAT
NOTIFICATION SYSTEM DOES DUE
PROCESS REQUIRE IN THE CONTEXT OF
STATE AID TO THE ELDERLY?**

Stephanie E. Roark

Elder poverty continues to present a significant problem in the United States, even though states maintain programs to aid their elderly citizens. Oftentimes, the elderly face challenges in understanding changes in the amounts of aid they receive. Stephanie E. Roark argues that, many times, state agencies violate the due process rights of their elderly citizens by inadequately notifying them of changes in their aid amounts. To illustrate, she focuses on the Illinois Aid to the Aged, Blind or Disabled (AABD) program and concludes that its notification procedures violate due process. Ms. Roark recommends that, while difficult, recipients of AABD should inform themselves of their rights. Additionally, she proposes specific changes to the AABD notification procedures and suggests the possibility of pretermination safeguards. Finally, Ms. Roark calls on attorneys to increase their knowledge of state policies regarding changes in benefits, to encourage their clients to exercise their rights to appeal when appropriate, and to litigate when necessary.

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I. Introduction

Ruby Stewart is a sixty-seven-year-old recipient of public aid.¹ She, like many other Americans, was employed for many years in the labor industry as a restaurant cook and house cleaner.² In 1991, she retired from work, and her health began to deteriorate shortly thereafter.³ Her reflexes slowed to the point where she gave up her driver's license out of safety concerns.⁴ Since that time, she has had continued problems with walking because of an artificial knee and cartilage deterioration and now uses a walker or an electric chair.⁵ Her diabetes requires her to take insulin shots every morning and night, and she is on a restricted diet because of other medical problems.⁶

Ruby is a long-term recipient of public assistance under the Illinois Aid to the Aged, Blind or Disabled (AABD) welfare program.⁷ She relies on AABD benefits to help with her monthly expenses.⁸ In August of 1997, she received a written notice that her AABD grant amount would total \$32.17 for August through September, and then \$6.76 for each subsequent month.⁹ In September, she received a check for \$55 and food stamps in the amount of \$74.¹⁰ Later that month, she received another written notice, which stated that her grant would decrease to \$14.68, with her food stamps decreasing to \$43.¹¹ Three days later, the Illinois Department of Human Services (IDHS) sent her an additional notification that her food stamps would be reduced to \$19.¹² In each of these instances, IDHS gave her a one-sentence explanation for the reduction in benefits.¹³ It repeatedly failed to include the calculations used to determine her amount of assistance.¹⁴

1. Interview with Ruby Stewart, Urbana, Ill. (Mar. 20, 2003) [hereinafter Stewart Interview].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*; see also *Food Stamp and Financial Assistance Recipients Challenge Illinois's Notification Process*, 32 CLEARINGHOUSE REV. 75, 75 (1998) [hereinafter *Food Stamp*].

8. Stewart Interview, *supra* note 1.

9. *Food Stamp*, *supra* note 7, at 75.

10. *Id.*

11. *Id.*

12. *Id.*

13. Ruby Stewart's February 2002 notice read: "Beginning March 2002 your assistance benefits UNDER THE AABD PROGRAM WILL BE AFFECTED AS FOLLOWS: YOUR FOOD STAMPS WILL BE DECREASED. YOUR HOUSE-

Ruby found that the IDHS notices contained “big long words” that were “useless.”¹⁵ She could not understand all of the information and any of the figures that were given.¹⁶ Ruby called the IDHS office in an attempt to determine the reasons behind the change in benefits.¹⁷ On the phone, the office often told her that a mistake had been made, but on her next notice the amount of aid would continue to decrease.¹⁸ In conversations with her friends and acquaintances, Ruby noticed that many others in her community were having similar problems with their notices.¹⁹

Ruby has become the named plaintiff in a Champaign County, Illinois certified class action suit.²⁰ Over 800,000 plaintiffs, either applicants or recipients of food stamps and financial assistance, allege that the IDHS is in continued violation of their due process rights under the U.S. and Illinois Constitutions.²¹ They contend that this violation occurs when IDHS refuses to include within its notices the calculations that form the basis for its actions in denying or reducing amounts of public assistance.²²

This note proposes that state agencies often fail to comply with due process procedures through their notifications of reductions or denials of governmental assistance. This failure takes the form of incomplete notices that give insufficient information to recipients, thereby precluding them from assessing whether the government made a correct determination and whether they should contest the agency’s decision. This note also analyzes one particular program as

HOLD WILL RECEIVE FOOD STAMPS THROUGH 08/02. New food stamp benefit amount: \$23.00. Reason for this action: YOUR EARNED/UNEARNED INCOME HAS INCREASED.” Letter from the State of Illinois Department of Human Services to Ruby Stewart (Feb. 20, 2002) (on file with The Elder Law Journal).

14. *Food Stamp*, *supra* note 7, at 75.

15. Stewart Interview, *supra* note 1.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Food Stamp*, *supra* note 7, at 75. Ruby Stewart attended a University of Illinois College of Law Civil Litigation Clinic session in which students helped AABD recipients calculate the correct amount of their AABD benefits. Stewart Interview, *supra* note 1. Clinic professor George Bell asked Ruby if she would be willing to act as lead plaintiff for a class action, and Ruby agreed. *Id.* Ruby’s view is “if we hadn’t have done this, it would have gone on the same way.” *Id.*

21. *Food Stamp*, *supra* note 7, at 75. At the time of publication, parties to the suit were still engaged in settlement negotiations.

22. *Id.*

an illustration, the Illinois Aid to the Aged, Blind or Disabled. It will begin with a description of the AABD program and discuss established due process requirements in the context of public assistance in order to delineate the specific, necessary procedures. These requirements will then be applied to AABD with an evaluation of the program's current notifications procedures, including an analysis of how these procedures fall short of constitutionally mandated due process requirements. Finally, this note concludes with recommendations to recipients, state agencies, and practitioners affected by AABD and other welfare programs.

II. Background

A. Poverty of Elders That Public Assistance Helps to Resolve

Elder poverty is a significant problem within the United States.²³ If no government benefits were available to elderly citizens, 49.1% of the U.S. population age sixty-five and older would be poor.²⁴ Even with the receipt of public aid, over three million individuals over sixty-five were officially counted as poor.²⁵ In Illinois, one in four persons over the age of seventy-five has an income below the poverty threshold.²⁶ The availability of government benefits, including Social Security, reduces the elderly poverty rate to 11.9%.²⁷ In 1990, the state of Illinois had almost two million persons over the age of sixty.²⁸ Twenty-five percent of this population lives alone and is among the most impoverished and vulnerable groups within the state.²⁹ Addi-

23. Contrary to some expectations, the elderly poor are not responsible for their own economic state because of improvident financial planning. "A University of Michigan study suggests that the aged poor had never earned enough income to provide for a comfortable living either before or after retirement." BRADLEY R. SCHILLER, *THE ECONOMICS OF POVERTY AND DISCRIMINATION* 89 (7th ed. 1998).

24. KATHRYN H. PORTER ET AL., *CTR. ON BUDGET & POLICY PRIORITIES, SOCIAL SECURITY AND POVERTY AMONG THE ELDERLY: A NATIONAL AND STATE PERSPECTIVE*, at ix n.1 (1999), <http://www.cbpp.org/4-8-99socsec.pdf>.

25. SCHILLER, *supra* note 23, at 84.

26. *A Profile of Illinois' Elderly*, ILL. PARKS & RECREATION, Nov.-Dec. 1994, at 18, <http://www.lib.niu.edu/ipo/ip941118.html>. [hereinafter *A Profile*].

27. PORTER ET AL., *supra* note 24, at ix n.1.

28. *A Profile*, *supra* note 26, at 18. In 1990, there were 41.9 million persons over the age of sixty in the United States. *Id.*

29. *Id.* at 19. The elderly population is particularly at risk for poverty because of dwindling incomes combined with rising health costs. SCHILLER, *supra* note 23, at 92.

tionally, these citizens often have greater functional limitations, including Alzheimer's disease or related disorders.³⁰ Elder poverty will increase as the "baby boom" becomes the "seniors' boom."³¹ The number of elderly will rise from thirty million in 1990 to fifty-one million in 2020, and by 2030, over one-fifth of the U.S. population will be over age sixty-five.³²

Poverty creates a plethora of problems in the elderly population. It can limit individuals' ability to purchase food, depriving them of sufficient nutrients and making them lethargic, weak, and more susceptible to disease.³³ Poverty affects the choice and quality of shelter for a poor household, as the costs of housing can constitute more than half of gross monthly income.³⁴ It can also create problems in the procurement of medications that are necessary for this population's health.

In the 1930s, the federal government became significantly involved in public assistance for the poor.³⁵ During President Roosevelt's administration, massive social welfare programs were created to aid the needy.³⁶ The Social Security Act was passed on August 14, 1935, resulting in social insurance as well as public assistance for disadvantaged citizens.³⁷ The federal government administers the Social Security portion of the Act, while the states and localities administer the public assistance programs.³⁸ A "complex, multilayered, decentralized pattern"³⁹ characterizes the current welfare scheme, which "provides the means to obtain essential food, clothing, housing, and medical care"⁴⁰ to the nation's poor.

Despite federal and state efforts, many governmental programs face significant limitations in their attempts to make aid available to

30. *A Profile*, *supra* note 26, at 19. Approximately ten percent of the elderly population is suffering from Alzheimer's disease or a related disorder. *Id.*

31. SCHILLER, *supra* note 23, at 85.

32. *Id.*

33. Karen Terhune, *Reformation of the Food Stamp Act: Abating Domestic Hunger Means Resisting "Legislative Junk Food,"* 41 CATH. U. L. REV. 421, 422 n.5 (1992) ("Low-income Americans are more likely to consume an inadequate amount of calories and suffer from deficiencies in iron, vitamin A and vitamin C.")

34. *Id.* at 448-49 n.174.

35. See Michele Gilman, *Legal Accountability in an Era of Privatized Welfare*, 89 CAL. L. REV. 569, 585 (2001).

36. *Id.*

37. *Id.*

38. *Id.* at 586.

39. *Id.*

40. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

the elderly population. Financial aid offices are often precluded from providing services to the elderly or disabled, as these populaces are frequently unable to come to the agency to fill out applications, conduct interviews, or collect coupons or checks for aid.⁴¹ Once an application for aid has been received, caseworkers often make mistakes in the screening process.⁴² Erroneous decisions create situations that particularly affect the elderly, as physical and mental limitations often render them incapable of pressing their administrative claims before the system in a thorough and timely fashion.⁴³

B. Aid to the Aged, Blind or Disabled

Aid to the Aged, Blind or Disabled is an Illinois program that “provides financial assistance, medical assistance and social services to individuals who have been determined to be aged, blind or disabled.”⁴⁴ The intent of the program is to fully supplement the federal government’s obligation of “assur[ing] those persons a standard of living compatible with health and well-being.”⁴⁵ AABD is, in effect, “meant to help people meet basic needs” such as shelter, food, utilities, and other expenses.⁴⁶ AABD assistance takes the form of cash or food stamps paid in monthly increments to recipients.⁴⁷ Participants may also receive a MediPlan card that helps with their medical needs by providing governmental payment.⁴⁸

In 1998, approximately 38,000 persons per month received cash assistance through the AABD program.⁴⁹ The average payment was

41. See Terhune, *supra* note 33, at 461–62 n.259.

42. See *id.* at 444 n.143. “Investigations show that food stamp case workers frequently do not process applications in a timely manner, use incorrect eligibility standards, and neglect to screen applicants to determine whether they qualify for expedited service.” *Id.*

43. Willis v. Lascaris, 499 F. Supp. 749, 756 (N.D.N.Y. 1980).

44. ILL. ADMIN. CODE tit. 89, § 113.1 (2000).

45. 305 ILL. COMP. STAT. 5/3-13 (2001).

46. ILL. DEP’T OF HUMAN SERVS., POLICY MANUAL, Introduction, MR 03.17, I-02-00 Cash Programs (1997), http://163.191.134.21/pmwag/PDF_Files/Introduction/INTRODUCTION_Section02.pdf.

47. See ILL. DEP’T OF PUB. AID, BROCHURE DPA 587, AID TO THE AGED, BLIND AND DISABLED (AABD) (1988) [hereinafter BROCHURE DPA 587].

48. ILL. DEP’T OF HUMAN SERVS., POLICY MANUAL, Introduction, MR 04.9, I-03-00 Medical Programs (2003), http://163.191.134.21/pmwag/PDF_Files/Introduction/INTRODUCTION_Section03.pdf. The MediPlan card can be shown to a participating doctor, hospital, drug store, or clinic who will accept payment from the Department of Public Aid. *Id.*

49. ILL. DEP’T OF HUMAN SERVS., AID TO THE AGED, BLIND OR DISABLED, *at* <http://www.state.il.us/agency/dhs/aabdcss.html> (last visited Feb. 2, 2003).

\$59 per person.⁵⁰ Some monthly payments may be as high as \$100 or even more, depending on the recipient's circumstances.⁵¹ For 2002, the number of AABD recipients was an estimated 375,000 persons.⁵² Nationwide, in 1997, 6.5 million people received Supplemental Social Security Income through state programs such as the AABD.⁵³

In order to be eligible for AABD, an applicant must be: (1) age sixty-five or over; (2) receiving Supplemental Security Income; or (3) "disabled."⁵⁴ Additionally, the program is only open to Illinois residents who are either U.S. citizens or within a specified category of noncitizens.⁵⁵ Another prerequisite for the program is financial. In the benefit calculation process, an applicant's allowances must exceed his or her income.⁵⁶ Allowances include the costs of "housing, utilities, clothing, laundry, household supplies, personal essentials, food, and transportation."⁵⁷ These expenses are weighed against the applicant's income, which does not include food stamp benefits, energy assistance grants, earned income tax credits, the first \$25 of income from any other source, and the first \$50 of income generated through work.⁵⁸

50. *Id.*

51. LAND OF LINCOLN LEGAL ASSISTANCE FOUND., ILLINOIS ATTORNEY DESK REFERENCE MANUAL: AID TO THE AGED, BLIND AND DISABLED (AABD), http://illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=338 (last updated July 6, 2003) [hereinafter ATTORNEY DESK REFERENCE MANUAL].

52. Press Release, Illinois Government News Network, Governor Announces that 110,000 Seniors and Persons with Disabilities Benefit from Medicaid Expansion: Income Level for AABD Benefit Increases to 100 Percent of FPL on July 1 (July 1, 2002), at <http://www100.state.il.us/PressReleases/ShowPressRelease.cfm?SubjectID=1&RecNum=1823> [hereinafter *Governor Announces*].

53. *Ford v. Shalala*, 87 F. Supp. 2d 163, 167 (E.D.N.Y. 1999). Of this number, 4.4 million qualified through blindness or disability while 2.05 million qualified through advanced age. *Id.*

54. This aid can take the form of cash, medical assistance, and food stamps. ILL. DEP'T OF HUMAN SERVS., AID TO THE AGED, BLIND OR DISABLED, at <http://www.dhs.state.il.us/ts/fss/aabd.asp?version=print&> (last visited Feb. 27, 2004).

55. *Id.*

56. PRAIRIE STATE LEGAL SERVS., INC., SENIOR CITIZENS HANDBOOK, FINANCIAL ASSISTANCE, AID TO THE AGED, BLIND AND DISABLED 2, http://www.pslegal.org/Publications/Senior_Handbook/Chap%201%20Aged%20Blind%20Disabled.pdf (last updated July 2002) [hereinafter SENIOR CITIZENS HANDBOOK]. Prairie State Legal Services gives an income guideline for aid, recommending that "[i]f your monthly income is less than \$740, it is very possible that you are eligible for AABD, and you are encouraged to apply." *Id.*

57. *Id.*

58. DAVID WOLOWITZ & MICHAEL O'CONNOR, GUIDEBOOK OF LAWS AND PROGRAMS FOR PEOPLE WITH DISABILITIES, ch. 7, § 2, http://www.illinoislawhelp.org/index.cfm?fuseaction=home.dsp_content&contentID=241 (last updated Nov. 20, 2002) [hereinafter GUIDEBOOK].

An applicant may also be ineligible for AABD if she owns assets of \$2000 or more.⁵⁹ This limit is increased to \$3000 if the applicant is living with a spouse or another dependent, with an added \$50 for each additional dependent.⁶⁰ Some assets are not counted toward the total asset amount; these exceptions are labeled “exempt assets” and include items such as the family home, land necessary for self-support, one automobile, and burial spaces.⁶¹

An AABD grant is calculated through a complicated process.⁶² Once a written application has been completed, an applicant must provide verification of income, assets, and expenses.⁶³ IDHS will then determine the grant amount “in accordance with the standards, grant amounts, rules and regulations of the Illinois Department,” with regard to “the requirements and conditions existing in each case, and to the amount of property owned and the income, money contributions, and other support, and resources received or obtainable by the person, from whatever source.”⁶⁴

Due to detailed regulations, the application procedure is very difficult.⁶⁵ Ignorance of the program is widespread, and potential recipients who are aware of the possibility of benefits are reluctant to go through the application process.⁶⁶ In an effort to reduce the complexity of these requirements, IDHS has recently computerized the procedure.⁶⁷ IDHS also provides “home intake applications” that require

59. *Id.*

60. *Id.*

61. *Id.* Other assets which qualify as “exempt” are clothing, personal effects and household furnishings, life insurance policies, money received from the Social Security Administration under a “Plan to Achieve Self-Support,” and, under certain conditions, donations or benefits from fund raisers held for a seriously ill family member. *Id.*

62. *Id.* Some policy analysts have questioned whether an extensive verification process is actually cost-effective in its prevention of erroneous distribution of benefits. Michael Lipsky & Marc A. Thibodeau, *Domestic Food Policy in the United States*, 15 J. HEALTH POL. POL’Y & L. 319, 331 (1990).

63. GUIDEBOOK, *supra* note 58. For example, verification of income can be provided through paperwork such as pay stubs, employer’s statements, social security records, support orders, and veteran’s records. ILL. DEP’T OF PUB. AID, AID TO THE AGED, BLIND, AND DISABLED CATEGORICAL ASSISTANCE MANUAL PR-320(2) (1975) [hereinafter ASSISTANCE MANUAL].

64. 305 ILL. COMP. STAT. 5/3-5 (2001).

65. GUIDEBOOK, *supra* note 58.

66. *See id.*

67. *See id.*

workers to go to the homes of persons who are physically unable to come to the office.⁶⁸

After an applicant has been awarded an AABD grant, the program requires “[p]eriodic redeterminations of eligibility for assistance.”⁶⁹ The *Illinois Administrative Code* mandates that a redetermination be conducted at least every twelve months.⁷⁰ AABD recipients must report any change in circumstances, including receipt of income or assets, that might affect their assistance.⁷¹ They are also responsible for cooperating in the redetermination process.⁷² The verification procedure during redetermination includes a requirement that the recipients send any requested information to the IDHS office within ten days of the initial request.⁷³ IDHS must then verify multiple categories of the recipient’s original application, including actual housing costs, medical expenses, and other inconsistent or questionable information.⁷⁴

If IDHS finds that an applicant or current recipient is either ineligible for assistance or should have his or her grant reduced or terminated, established due process protections are triggered.⁷⁵ IDHS must send a written notice explaining the reasons for its decision.⁷⁶ This written notice often is given through a form letter, such as the

68. *Id.* However, IDHS currently provides no such service to aid recipients who wish for more information about changes in their public aid.

69. BROCHURE DPA 587, *supra* note 47, at 5.

70. ILL. ADMIN. CODE tit. 89, § 113.320 (2000).

71. BROCHURE DPA 587, *supra* note 47, at 5.

72. ILL. ADMIN. CODE tit. 89, § 113.320.

73. ILL. DEP’T OF HUMAN SERVS., POLICY MANUAL, Reviewing Eligibility, MR 03.53, 19-04-02-a Agreement to Cooperate (2001), http://163.191.134.21/pmwag/PDF_Files/PM19/PM19_Section04.PDF.

74. ASSISTANCE MANUAL, *supra* note 63.

75. CLAUDIA SCHLOSBERG, NAT’L HEALTH LAW PROGRAM, STATES IGNORE DUE PROCESS PROTECTIONS—1.6 MILLION MEDICAID BENEFICIARIES AT RISK, *at* <http://www.healthlaw.org/pubs/med1997redeter.html> (Feb. 10, 1997).

76. *Id.* The *Illinois Administrative Code* differentiates between active and bed-fast recipients in personal allowance amounts. ILL. ADMIN. CODE tit. 89, § 113.247. The active recipient receives personal allowances as follows:

Persons Eating Together	Food	Clothing	Household Supplies	Personal Essentials
1	\$38.68	\$8.77	\$2.56	\$12.42
2	\$35.47	\$8.77	\$2.04	\$10.97
3 thru 7	\$32.25	\$8.77	\$1.72	\$10.97
8 or more	\$31.70	\$8.77	\$1.47	\$10.97

Id.

Medicaid Manual's model form.⁷⁷ This form directs a caseworker to enter the county name, date of the mailing of the notice, and the recipient's name and mailing address.⁷⁸ It recommends that the text of the letter state: "Your application for _____ is _____ because:" and gives the following directions to the caseworker:

1. Enter the aid program/category for which the person applied in the first place.
2. Enter "denied" or "withdrawn" in the second space.
3. Explain exactly why the application is denied or withdrawn, using language that is easy to understand. Refer to the text for the automated codes for the appropriate wording. "Your income is more than the income limit." "Your assets exceed the limit. The value of countable assets must be less than ____ to get ____."⁷⁹

The Manual also recommends that the letter refer to the state regulations and instructs the caseworker to "[c]ite the manual reference from the appropriate manual that supports the denial or withdrawal."⁸⁰ However, the caseworker does not have to detail what information is found in that section because he or she has already explained why the application was denied or withdrawn.⁸¹ The letter should also contain a statement of hearing rights, the caseworker's name, a phone number and mailing address for the agency, and information for office use only.⁸²

The guidelines found in congressional regulations governing public assistance such as Medicaid and the Food Stamp Program can be applied to notices of ineligibility for AABD as well.⁸³ These regulations require that the state provide recipients with a timely and adequate notice of the proposed action.⁸⁴ In order to be adequate, a notice must:

- (1) inform the beneficiary of what action the State intends to take;
- (2) the reasons for the intended action;
- (3) the specific regulations that support, or the change in the Federal and State law that requires, the action;
- (4) an explanation of the recipient's right to request an evidentiary hearing and
- (5) an explanation of the cir-

77. ILL. DEP'T OF HUMAN SERVS., AGED, BLIND AND DISABLED MEDICAID MANUAL DSS-8109 (2002).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. 42 C.F.R. § 431.210 (2002).

84. *Id.* § 435.919(a).

cumstances under which Medicaid is continued if a hearing is requested.⁸⁵

The *Illinois Administrative Code* contains specific regulations concerning the minimum requirements of notice. It mandates that the Department must give a notification in writing that sets forth: (1) the reasons for the decision; (2) the right to request a hearing, with details including time, place, legal authority and jurisdiction; and (3) a reference to sections of the statute and rules.⁸⁶

If the applicant or recipient of AABD disagrees with an IDHS decision, he or she may request an appeal, by telephone or in writing, within sixty days of the date of the notice.⁸⁷ If he or she requests an appeal within ten days of the notice, financial assistance may be continued through the date of the hearing.⁸⁸ The local IDHS office is required to provide a form to be used in making the appeal; however, the Department will not pay legal fees.⁸⁹

After the appeal is filed, IDHS will hold a pre-appeal conference, in which the applicant/recipient, caseworker, and a supervisor will meet.⁹⁰ If IDHS does not agree to a restoration of benefits or case approval, the next step in the appeals process is a fair hearing.⁹¹ An impartial hearing officer presides over the hearing.⁹² The hearing also entails representation by any person of the applicant/recipient's choice, including an attorney or pro se representation.⁹³ At the hearing, the applicant/recipient possesses the right:

- To present your testimony and other witnesses in support of your claim;
- To present documents that support your case;
- To examine the records relied on by IDHS; and
- To cross-examine other witnesses.⁹⁴

Following the hearing, the officer will issue a written decision with findings of fact and conclusions.⁹⁵

85. SCHLOSBERG, *supra* note 75.

86. ILL. ADMIN. CODE tit. 89, § 104.204 (2000).

87. SENIOR CITIZENS HANDBOOK, *supra* note 56, at 3.

88. BROCHURE DPA 587, *supra* note 47, at 6.

89. *Id.*

90. SENIOR CITIZENS HANDBOOK, *supra* note 56, at 3.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

If the hearing officer rules against the applicant/recipient, he or she may file a lawsuit in the Illinois circuit court, but the complaint must be filed no later than thirty-five days after the hearing officer's decision.⁹⁶ The circuit court judge can then choose to approve or deny the claim or remand it to IDHS for reevaluation.⁹⁷

III. Analysis

A. Any Discontinuance or Reduction in a Public Assistance Program Is a Deprivation of a Property Right That Requires Compliance with Due Process

In order to apply a due process analysis, a court must determine that there has been a deprivation of life, liberty, or property.⁹⁸ The existence of a governmental aid program creates a right to participate in accordance with established ground rules.⁹⁹ The aid itself is "a matter of statutory entitlement for persons qualified to receive [it]."¹⁰⁰ Termination or reduction in the aid constitutes a serious loss, requiring notice well in advance of the withdrawal of benefits.¹⁰¹ Accordingly, the reduction or termination of public assistance qualifies as a deprivation of a property right, which entitles the affected person to due process protection.¹⁰² Further, welfare applicants have a legitimate expectation of receipt of benefits when they meet the specified objective criteria,¹⁰³ and, therefore, they too have a right to welfare benefits created by statutory entitlement.¹⁰⁴

96. *Id.*

97. *Id.*

98. *Bd. of Regents v. Roth*, 408 U.S. 564, 570-71 (1972).

99. *Foggs v. Block*, 722 F.2d 933, 937 (1st Cir. 1983).

100. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970).

101. *Id.* at 264, 266.

102. *See Foggs*, 722 F.2d at 937-38. The Supreme Court has specifically stated that "the interest of an individual in continued receipt of these benefits is a statutorily created 'property' interest protected by the Fifth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (referring to an individual's interest in social security disability benefits).

103. *Gilman*, *supra* note 35, at 605.

104. *Id.*

B. Due Process Requires a Detailed Notice of the Reasoning Behind a Change in Public Assistance

Because due process has been found to apply to public assistance benefits, the next question that must be answered concerns the level of process to which the applicant/recipient is entitled. The extent of due process protection required by any specific governmental procedure begins with “a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.”¹⁰⁵ Ultimately, society must decide “whether the recipient’s interest in avoiding that loss outweighs the governmental interest in summary adjudication.”¹⁰⁶

In *Mathews v. Eldridge*, the Supreme Court found that the Due Process Clause did not require that a recipient be afforded an opportunity for an evidentiary hearing before the termination of Social Security disability benefits.¹⁰⁷ The Court described due process as a flexible concept that is related to time, place, and circumstances.¹⁰⁸ Similarly, in *Goldberg v. Kelly*, the Court called for a procedure that was tailored to “the capacities and the circumstances of those who are to be heard.”¹⁰⁹ Under the then-current safeguards in termination of disability benefits, the *Mathews* claimant was provided with an effective process for asserting his claim before an administrative hearing and had the right to an evidentiary hearing as well as a subsequent judicial review.¹¹⁰

The Court set forth the *Mathews* balancing test: in order to determine the degree of due process owed to an individual, the court must consider three distinct factors.¹¹¹ First, a court must define “the private interest that will be affected by the official action.”¹¹² Second, the court must weigh “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.”¹¹³ Finally, the court

105. *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961); see also *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Hannah v. Larche*, 363 U.S. 420, 440, 442 (1960).

106. *Morrissey v. Brewer*, 408 U.S. 471, 494 (1972) (Douglas, J., dissenting).

107. *Mathews*, 424 U.S. at 349.

108. *Id.* at 334.

109. *Goldberg*, 397 U.S. at 268–69.

110. *Mathews*, 424 U.S. at 348.

111. *Id.* at 334–35.

112. *Id.* at 335.

113. *Id.*

must balance “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”¹¹⁴

The *Mathews* test is essentially a cost/benefit analysis: “[a]t some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased insurance that the action is just, may be outweighed by the cost.”¹¹⁵ Through implementation of this analysis, the public assistance recipient can be protected from erroneous or arbitrary governmental decisions.¹¹⁶

The Court has explicitly defined the type of notice required for due process as “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”¹¹⁷ This definition of notice can be combined with the *Mathews* test, and it invites the question of how to define minimum safeguards. What type of notice will inform the recipient of the action against him or her, while achieving an optimum balance between the individual’s interest, the risk of erroneous deprivation, and the government’s interest?

In the public welfare context, notice must “detail the reasons for the proposed termination” so that a recipient can determine whether it “rests on incorrect or misleading factual premises or on [a] misapplication of rule or policies to the facts of [the] particular case.”¹¹⁸ When the reasons for a change in benefits rest on calculations that are critical to the determination, a written notice must include: (1) an explanation of the formula by which the amount was calculated;¹¹⁹ (2) an identification of the underlying facts that form the basis of the calculation;¹²⁰ and (3) a breakdown of sums attributed to each factor in the equation.¹²¹ Without these requirements, claimants would be unable to check the factual or mathematical accuracy of the intended action.¹²²

114. *Id.*

115. *Id.* at 348.

116. *Willis v. Lascaris*, 499 F. Supp. 749, 756 (N.D.N.Y. 1980).

117. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

118. *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970).

119. *See Dilda v. Quern*, 612 F.2d 1055, 1057 (7th Cir. 1980).

120. *See Banks v. Trainor*, 525 F.2d 837, 839 (7th Cir. 1985).

121. *See id.*

122. *Ford v. Shalala*, 87 F. Supp. 2d 163, 178 (E.D.N.Y. 1999).

1. PRIVATE INTEREST AFFECTED BY THE OFFICIAL ACTION

When determining the private interest affected by the official action, consideration must be given to the “practicalities and peculiarities of the case.”¹²³ In the public assistance context, courts have specifically considered the special circumstances of welfare recipients. Welfare recipients are “persons on the very margin of subsistence.”¹²⁴ They have been described as being “[b]y hypothesis . . . destitute, without funds or assets.”¹²⁵ In the specific case of AABD, all recipients are required to be at or below the federal poverty level in order to qualify for state assistance.¹²⁶

Additionally, Congress has repeatedly recognized that the elderly are disadvantaged in dealing with legal notices and registration requirements.¹²⁷ The 1997 Social Security Supplemental Income Statistical Report described aged, blind and disabled recipients of aid as being “among the most vulnerable Americans who have little in the way of income or resources. For them, the Supplemental Security Income Program (SSI) is truly the program of last resort and is the safety net that protects them from complete impoverishment.”¹²⁸

Courts have further focused on the unique status of elderly persons as a group of people that justifiably relies on the government to properly fix its benefits.¹²⁹ Seniors “cannot be expected to seek professional services to review the checks and statements received each month,” and thus are dependent on government agencies for notification and enforcement of their legal rights.¹³⁰ They are “in a profoundly inferior position in relationship to a government bureauc-

123. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

124. *Mathews v. Eldridge*, 424 U.S. 319, 340 (1976). This can be contrasted with disability benefits, which were the focus of the *Mathews* court. Disability benefits are not based on need and are often supplemented by many other sources. *Id.* In *Mathews*, the Court specifically found that the potential deprivation was likely to be less than the deprivation caused by a withdrawal or reduction of food stamps, the focus of the *Goldberg* court. *Id.* at 341.

125. *Kelly v. Wyman*, 294 F. Supp. 893, 899 (S.D.N.Y. 1968). Food stamps alone are often a recipient’s entire food budget and are “a source of sustenance rather than a nonessential.” Terhune, *supra* note 33, at 449.

126. See *Governor Announces*, *supra* note 52.

127. *Gray Panthers v. Schweiker*, 652 F.2d 146, 169 (D.C. Cir. 1980). For example, Congress amended the Medicare Act to create automatic inclusion of eligible elderly because of a failure to enroll due to “inattention or inability to manage their affairs.” *Id.* (citing S. REP. NO. 1230, 92d Cong., 2d Sess. 38 (1972)).

128. *Ford v. Shalala*, 87 F. Supp. 2d 163, 177 (E.D.N.Y. 1999).

129. *Ellender v. Schweiker*, 575 F. Supp. 590, 604 (S.D.N.Y. 1983).

130. *Id.*

racy.”¹³¹ In a due process analysis, explicit consideration must be given to their unique disabilities and low economic status.¹³²

The state of Illinois has recognized the special needs of seniors and disabled persons through its recent multimillion dollar expansion of the AABD program.¹³³ The Illinois legislature’s three-step extension of coverage has culminated in an income threshold measuring one hundred percent of the federal poverty level.¹³⁴ In support of the program’s expansion, former Governor George Ryan stated that “[m]any low-income families find it extremely difficult to pay basic expenses, such as housing, food and utilities, and cover the cost of medical care and medicine.”¹³⁵ Representative Mark Beaubien, a sponsor of the legislation, emphasized that “[n]o one should ever have to choose between buying medicine they need, or being able to buy groceries or pay their rent.”¹³⁶

The weight of the private interests at stake for AABD recipients is readily apparent, and upon the discontinuance or denial of benefits, the situation greatly worsens. A recipient, lacking independent resources, becomes immediately desperate.¹³⁷ A need to concentrate upon daily subsistence in turn “adversely affects his ability to seek redress from the welfare bureaucracy.”¹³⁸ Under these circumstances “there is bound to ensue a sharp increase in the amount and degree of physical and mental illness affecting such recipients, accompanied by anguish precipitated and even pushed to the breaking point.”¹³⁹ Further, a recipient has an incentive not to contest a decision that deprives him or her of benefits: the fear of incurring the wrath of the governmental agency that provides his or her financial aid.¹⁴⁰

131. *Willis v. Lascaris*, 499 F. Supp. 749, 756 (N.D.N.Y. 1980).

132. *Gray Panthers*, 652 F.2d at 167.

133. *Governor Announces*, *supra* note 52.

134. *Id.* Previously, the 2000 AABD income threshold had measured forty percent of the federal poverty level. *Id.*

135. *Id.*

136. *Legislation Helps Seniors with Prescription Drug Costs*, ILL. HOUSE REPUBLICANS BREAKING NEWS, Feb. 17, 2000, at <http://housegop.state.il.us/news/display.php3?NewsID=141> (last visited Feb. 19, 2003).

137. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). With regard to food stamps, “[t]here can be no doubt that even the slightest change in a household’s food stamp allotment threatens the well-being and the dignity of its members.” *Willis v. Lascaris*, 499 F. Supp. 749, 756 (N.D.N.Y. 1980).

138. *Goldberg*, 397 U.S. at 264.

139. *Ellender v. Schweiker*, 575 F. Supp. 590, 595 (S.D.N.Y. 1983) (citations omitted).

140. *Blik v. Palmer*, 916 F. Supp. 1475, 1490 (N.D. Iowa 1996).

Although AABD grants may involve only a few dollars, their effect on elderly recipients should not be underestimated. It is the impact of their deprivation which must be considered in a due process analysis. The relatively small amounts involved in AABD grants are misleading,¹⁴¹ as “[f]or the very poor people potentially eligible for AABD, every dollar counts.”¹⁴² For example, the deprivation of Medicare awards of less than \$100 was found to constitute a “substantial loss” to elderly recipients who normally have disproportionately lower incomes and higher medical expenses than the general population.¹⁴³ In the specific context of AABD, most applicants receive less than \$650 in monthly income from all sources.¹⁴⁴

2. THE RISK OF ERRONEOUS DEPRIVATION AND PROBABLE VALUE OF ADDITIONAL SAFEGUARDS

The risk of erroneous deprivation through a miscalculation of benefits is substantial.¹⁴⁵ Errors are well known to occur in any administration of a large welfare program.¹⁴⁶ Courts have often required detailed advance notice of termination or reduction of food stamp benefits “because the calculation of food stamp benefits under the income method requires an individualized determination of income, expenses and deductions for each recipient.”¹⁴⁷

Social service agencies deal with thousands of these decisions under a complex regulatory scheme.¹⁴⁸ Caseworkers are human, and under these circumstances they can often make mistakes.¹⁴⁹ Careless and arbitrary action may occur “when the decision maker can retreat behind a screen of paper and anonymity.”¹⁵⁰ When errors are made, few people challenge adverse decisions due to disadvantages including confusion, ignorance, and disabilities.¹⁵¹

141. See *Gray Panthers v. Schweiker*, 652 F.2d 146, 166 (D.C. Cir. 1980) (referring to Medicare awards).

142. ATTORNEY DESK REFERENCE MANUAL, *supra* note 51.

143. *Gray Panthers*, 652 F.2d at 166.

144. See ATTORNEY DESK REFERENCE MANUAL, *supra* note 51.

145. *Bliek*, 916 F. Supp. at 1489.

146. *Atkins v. Parker*, 472 U.S. 115, 147 n.22 (1985) (Brennan, J., dissenting).

147. *Banks v. Trainor*, 525 F.2d 837, 842 (7th Cir. 1975).

148. See *Willis v. Lascaris*, 499 F. Supp. 749, 760 (N.D.N.Y. 1980).

149. *Id.*

150. *Gray Panthers v. Schweiker*, 652 F.2d 146, 162 (D.C. Cir. 1980).

151. *Id.* at 167.

Another factor to consider in this area is the potential length of the wrongful deprivation.¹⁵² The *Mathews* Court found that a one-year appeals period may create a significant hardship on welfare recipients.¹⁵³ Although the length of the appeals process varies,¹⁵⁴ it may become longer in a multistep appeals process. For example, the average time for appeals for New York Supplemental Social Security Income in 1998 was 850 days for a complete review of a hearing decision.¹⁵⁵

3. THE GOVERNMENT'S INTEREST

Once plaintiffs have demonstrated that governmental procedures create an unreasonable risk of erroneous deprivation, the government bears the burden of showing that the implementation of additional safeguards is not in the public interest.¹⁵⁶ The governmental interest in simplifying the notice of the discontinuance or reduction of public assistance arises from an effort to conserve scarce administrative and fiscal resources.¹⁵⁷ Providing recipients with a detailed notice could be both costly and time consuming.¹⁵⁸ However, administrative convenience is not a determinative factor,¹⁵⁹ as the administrative burden is "not overriding in the welfare context,"¹⁶⁰ and "[f]inancial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision."¹⁶¹

More informative notices of reduction or termination often pose no real hardship to the governmental agency.¹⁶² Rather, if more de-

152. *Mathews v. Eldridge*, 424 U.S. 319, 341 (1976).

153. *Id.*

154. In Wisconsin, the appeals process can take up to sixty-eight days, or longer. Gilman, *supra* note 35, at 608 (addressing the length of the appeals process under the Wisconsin Temporary Assistance for Needy Families program).

155. *Ford v. Shalala*, 87 F. Supp. 2d 163, 178 (E.D.N.Y. 1999).

156. *Id.* at 182.

157. *Bliet v. Paler*, 916 F. Supp. 1475, 1490 (N.D. Iowa 1996).

158. *Schroeder v. Hegstrom*, 590 F. Supp. 121, 127 (D. Or. 1984).

159. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

160. *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970).

161. *Mathews*, 424 U.S. at 348. However, a public policy consideration arises when "the cost of protecting those whom the preliminary administrative process has identified as likely to be found undeserving may in the end come out of the pockets of the deserving." *Id.*

162. *Willis v. Lascaris*, 499 F. Supp. 749, 759 (N.D.N.Y. 1980); *see also* *Schroeder v. Hegstrom*, 590 F. Supp. 121, 128 (D. Or. 1984) ("The burden to defendants of providing a more detailed notice does not appear to be a heavy one.").

tails were given, other expenses could be avoided.¹⁶³ One court observed that “[i]f plaintiffs [had been] given an adequate notice in the first instance, it is quite possible that defendant could have handled questions or objections from food stamp recipients in a more orderly fashion.”¹⁶⁴ Additional costs in dealing with complaints could be reduced.¹⁶⁵

Many complaints could likely be avoided altogether if recipients were given a detailed basis for the change in benefits. With only ten days in which to contest a change in benefits while preserving continuation pending appeal, recipients’ only logical recourse is to request consideration in all cases, as they are already living on poverty’s edge.¹⁶⁶ However, this strategy often produces a situation in which a recipient’s appeal is unsuccessful, and he or she is exposed to recoupment of overpayment through reduction of future benefits.¹⁶⁷

With more information, complications within hearings could be decreased as recipients would no longer be forced to marshal all of the evidence at their disposal in order to contradict a cryptic governmental notice.¹⁶⁸ Without specific notice, recipients cannot effectively refute the government’s case, as they are “ill-prepared to prosecute the appeal because [the claimant] has no information.”¹⁶⁹ Because they have no concrete facts concerning the details of their case, they are forced to respond to all possible arguments against the government’s position at the risk of failing to mention the critical reasoning behind the decision.¹⁷⁰

If increased costs are inevitable, the government can find ways to minimize them.¹⁷¹ Drain on governmental resources can be reduced through the development of effective procedures and skillful use of facilities and personnel.¹⁷² An additional factor in the analysis is the existence of a system, such as that of AABD, which currently

163. *See Willis*, 499 F. Supp. at 759.

164. *Id.*

165. *Id.* In *Ford v. Shalala*, the New York SSI administration estimated that \$100,000 could be saved for every one percent decrease in notice-related inquiries. 87 F. Supp. 2d. 163, 185 (E.D.N.Y. 1999).

166. *Ford*, 87 F. Supp. 2d at 181.

167. *Id.*

168. *See Gray Panthers v. Schweiker*, 652 F.2d 146, 157 (D.C. Cir. 1980).

169. *Ford*, 87 F. Supp. 2d at 181.

170. *Gray Panthers*, 652 F.2d at 168–69.

171. *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970).

172. *Id.*

prepares the calculations at issue.¹⁷³ When the monthly figures are already being entered into computerized programs, it becomes a matter of simply transferring the information onto the notice.¹⁷⁴ This step is presently being done with Illinois public assistance recipients of earned income.¹⁷⁵ Thus, the system is in place, but must still be implemented in the context of AABD.

Further, as former Governor Ryan stated, “[m]edical coverage is essential for many people to continue living in their own homes.”¹⁷⁶ If AABD benefits are incorrectly discontinued, and elderly or disabled recipients are unaware of the faulty reasoning behind the discontinuance, they may be forced into nursing homes or other assisted care facilities simply because of an easily correctable administrative error. As a result, the state would be paying much more for daily care of senior citizens.

In weighing the competing interests, courts have often determined that the recipient’s interest in the uninterrupted receipt of public benefits, combined with the State’s interest in avoidance of erroneous termination, clearly outweighs an increase in the State’s fiscal and administrative burdens.¹⁷⁷ In this type of situation, “the stakes are simply too high for the welfare recipient, and the possibility of honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him.”¹⁷⁸

C. The AABD Is Not in Compliance with Due Process Requirements

In a public assistance notification context, due process has been found to require “timely and adequate notice detailing the reasons for a proposed termination.”¹⁷⁹ An immutable jurisprudential principle is that “evidence used to prove the Government’s case must be disclosed to the individual so that he has an opportunity to show that it is un-

173. See *Ford*, 87 F. Supp. 2d at 184.

174. *Id.*

175. See generally John O’Connor, Public Assistance Just a Few Clicks Away, ST. J. REG. ONLINE (Springfield, Ill.), at <http://www.sj-r.com/sectins/news/stories/13820.asp> (last visited Feb. 2, 2004).

176. *Governor Announces*, *supra* note 52.

177. *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970).

178. *Id.*

179. *Id.* at 267–68.

true.”¹⁸⁰ A problem related to notification of a reduction or denial of public assistance arises when a letter contains “too little information to allow a recipient to determine if a calculation error has been made.”¹⁸¹ A deficiency in the amount of government-provided detail results in a situation in which recipients could “have been well informed about their right of appeal, but . . . [were without] enough information to know whether or not to exercise that right.”¹⁸² In this scenario, “constitutionally mandated notice which is inadequate under the circumstances may be as fatal to due process as no notice at all.”¹⁸³

The notifications sent by the Illinois Department of Human Services contain no calculations and therefore do not give a recipient the opportunity to ascertain whether a miscalculation could have occurred.¹⁸⁴ The standard notices use routine messages to convey the reasoning for the deduction, such as “[y]our income has increased,” “[y]ou are now receiving earned/unearned income,” and “[y]ou are now receiving a contribution.”¹⁸⁵ Other messages address increased contributions, decreased unit needs, and recoupment based on the receipt of duplicate benefits or overpayments.¹⁸⁶

Stock phrases such as these are insufficient to apprise recipients of the basis for changes in aid. Their use in federal notices was expressly condemned in the 1999 case of *Ford v. Shalala*.¹⁸⁷ This New York class action was brought against the Secretary of the U.S. Department of Health and Human Services, alleging that inadequacies in written notices in the Supplemental Security Income Program violated due process protections.¹⁸⁸ SSI provides benefits to aged, blind, or

180. *Id.* at 270.

181. *Foggs v. Block*, 722 F.2d 933, 935 (1st Cir. 1983).

182. *Id.* at 939.

183. *Greenfield v. Villager Indus., Inc.*, 483 F.2d 824, 834 (3d Cir. 1973).

184. The Illinois Department of Public Aid mandates that notices include “a clear statement of the action to be taken; a clear statement of the reason for the action; a specific policy reference which supports such action; and a complete statement of the client’s right to appeal.” *GUIDEBOOK*, *supra* note 58.

185. ILL. DEP’T OF HUMAN SERVS., *AUTHORIZATION OF ASSISTANCE ACTION* (FORM 552), MR 03.8. These messages may become as complex as “Discontinue QMB or SLIB benefits—No longer a Medicare Part A beneficiary.” *Id.*

186. *See id.*

187. *Ford v. Shalala*, 87 F. Supp. 2d 163, 178–79 (E.D.N.Y. 1999).

188. *Id.* at 174–75. Specifically, the class action consisted of plaintiffs who had not received notices that include:

(a) an explanation of how the SSI application date and period of retroactive eligibility were determined; and/or (b) identification of the specific types and values of resources which render them ineligible

disabled claimants who are financially eligible for the program.¹⁸⁹ SSI uses a complicated process to determine continued eligibility, taking into account a large number of financial factors.¹⁹⁰ The amount of a claimant's resources is subject to frequent change, affecting payment level on a regular basis.¹⁹¹ Because the SSI program is comprised of state funds matched by federal funds, it is governed by federal statutes and regulations.¹⁹² SSI notices must be written in simple and clear language.¹⁹³ They must state specific reasons for determinations in order to provide adequate notice.¹⁹⁴

In 1997, 1.5 million applicants were evaluated for SSI benefits.¹⁹⁵ Through the application process, a claims representative enters financial data into the computer, forming the basis for an eligibility determination by a software person interpreting the data.¹⁹⁶ However, applicants are not provided with any tabulations of this data in SSI notices.¹⁹⁷ Rather, the notices give routine explanations without the benefit of the financial information supporting the decision.¹⁹⁸

In its analysis, the court focused on reports by the Social Security Administration's Office of the Inspector General (OIG) which recommended that itemized worksheets be included with all notices.¹⁹⁹ The

for SSI payments; and/or (c) a description of the SSI benefit rate, including an explanation of the living arrangement classification; and/or (d) SSI budget computations, showing the SSI payment rate, the amounts and types of gross income and/or resources, the deductions and disregards from gross income and/or resources, and the income and benefit months; and/or (e) citation to specific laws and/or regulations upon which the SSI determination is based; and/or regulations upon which the SSI determination is based; and/or (f) the right to review and obtain free copies of SSA records on the SSI claimant, as well as specific policy materials, including legal authorities, used to support the SSI determination.

Id.

189. *Id.* at 165.

190. *Id.*

191. *Id.* at 166.

192. *See id.* at 165.

193. *Id.* at 166.

194. *Id.*

195. *Id.* at 168.

196. *Id.*

197. *Id.* Approximately twenty million continuing or initial SSI eligibility notices are mailed each year (an average of three yearly notices to each claimant). *Id.* at 170. Ninety-five percent of these notices are generated by computer. *Id.*

198. *Id.* at 170. For example, a notice may state "a benefit has been reduced because of a change in resources owned or deemed available to a claimant" but will not identify the categories or amounts of attributed resources. *Id.*

199. *Id.* at 171 (citing a September 1992 OIG report entitled *Clarity of Supplemental Security Income Notices*).

OIG specifically mentioned the difficulties generated by insufficient payment information: “Several respondents commented that they could not understand how their payments were figured. Typical of these comments, ‘I need further information about how the computer calculates the dollar amounts to be received.’”²⁰⁰

The court also addressed the U.S. General Accounting Office’s (GAO) testimony before the Subcommittee on Social Security of the Ways and Means Committee in the House of Representatives. The GAO’s director stated: “GAO selected and read over 500 letters to get a sense of how easy or difficult they were to understand. GAO staff with an accounting background and years of Social Security program knowledge had difficulty determining or verifying specific points contained in the letter.”²⁰¹ The GAO found that the purpose of the notice was not clearly stated, no information on dollar amounts was supplied, apparent conflicts existed in the notice, and complex analyses were required to reconstruct adjustments.²⁰²

SSI recipients have a property interest in continued benefits; thus, the *Mathews* analysis is required.²⁰³ In weighing the private interests at stake, the court declared that “[t]he nature of the deprivations here at issue quite obviously equal, if not exceed, the kind of ‘grievous loss’ which the Supreme Court has in the past found to outweigh the governmental interest in summary adjudication.”²⁰⁴ SSI claimants are already below the poverty line and face the challenges of illness, blindness, or advanced age.²⁰⁵ Enigmatic notifications led to “confusion coupled with fear and trepidation” on the part of their elderly recipients.²⁰⁶ The court found that:

The notices create “tremendous emotional upheaval” because they jeopardize “the only source of income” for persons “who are extremely frail [and] are surviving at a level of income that is below the poverty level.” In many instances, the intended government action “usually also means hunger, very often homelessness . . . [t]hese are earth-shattering calamities.”²⁰⁷

200. *Id.* (citing the 1992 OIG report entitled *Examples of Revised Supplemental Security Income Notices*).

201. *Id.* at 172.

202. *Id.*

203. *Id.* at 175.

204. *Id.* at 176 (citing *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970)).

205. *Id.* at 177.

206. *Id.* (quoting the testimony of Eugene Doyle, a social worker who reviewed over 1000 notices for 200 claimants).

207. *Id.*

Testimony from the plaintiffs themselves also highlighted the private interest at stake.²⁰⁸ After receiving a notice, one woman was reluctant to contact the defendant because of fear that her checks would be delayed and she would be unable to pay her rent, or that the checks would be stopped altogether.²⁰⁹ As a result, she was kept emotionally off-balance as she was unable to reliably predict her next check.²¹⁰ Another plaintiff contacted the Department to determine the meaning of the notice only to be left “very upset” and “humiliated” to the point where she requested that the agency drop her application.²¹¹ Since that time, she has had difficulty meeting her everyday needs.²¹² The court found that the risk of error in this situation was significant.²¹³

These statistics coupled with the evidence of claimants’ vulnerability show that the substantive deficiencies of the notices create an extraordinarily high risk of error. Nor can there be any doubt that their extraordinarily high risk of an erroneous deprivation would be substantially reduced by revisions to the text of the notices to remedy the omissions set forth above.²¹⁴

The *Shalala* court’s final conclusion was that the SSI notices violated the Due Process Clause.²¹⁵ The court ordered that the notices be modified in accordance with the opinion, which recommended a proposed budget worksheet including a short summary of the calculations resulting in a change or termination in benefits.²¹⁶

In another case, Melissa Pflueger was a plaintiff in a class action suit who received a notification that her eligibility for welfare programs would be terminated.²¹⁷ The notice told her the reasons for the termination, namely that “[she] failed to furnish necessary information,” gave her the federal and state law citations, and explained her rights to a hearing and the possibility of a continuance of aid pending the hearing.²¹⁸ She contended that the notice failed to indicate the information that the agency had relied upon in taking the action or to

208. *Id.*

209. *Id.* (quoting testimony of plaintiff Arleen Kanea).

210. *Id.*

211. *Id.* (quoting testimony of plaintiff Julie Umerle).

212. *Id.*

213. *Id.* at 179.

214. *Id.* at 181.

215. *Id.* at 186.

216. *See id.* at 172, 187.

217. *Buckhanon v. Percy*, 533 F. Supp. 822, 827 (D. Wis. 1982).

218. *Id.*

furnish the calculations that supported it.²¹⁹ Specifically, she argued that a copy of the worksheet that formed the basis for the defendant's decisions should have been included.²²⁰

The court intimated that the notice in question had failed to comport with due process requirements.²²¹ Based on the information that the agency had given, "it would be impossible for a recipient . . . to determine the accuracy of the agency's decision."²²² The notice did not indicate the amount of gross income, the month for which it had been calculated, or the determination of the equity value of the recipient's automobile.²²³ A definition of terms with a referral to a case-worker for more detailed information was held insufficient to meet due process standards.²²⁴ Without the specific calculations used to determine the amount of aid, the recipient would be unable to either determine the basis of the agency's decision or make an informed decision to contest it.²²⁵

Detailed information, such as specific calculations, "is needed to enable claimants to understand what the agency has decided, so that they may assess the correctness of the agency's decision, make an informed decision as to whether to appeal, and be prepared for the issues to be addressed at the hearing."²²⁶ If insufficient detail is given in the original notice, "[s]ubsequent due process, available in the administrative review phase of the appeal, comes too late."²²⁷ In other words, "[i]nadequate notice renders the existence of an appeal process meaningless."²²⁸

The alternative of a "bare bones" notice creates a dilemma for both the recipient and the state agency.²²⁹ The recipient cannot determine whether he or she has a good-faith basis for contesting the change in his or her benefits.²³⁰ The agency cannot exercise its statutory duties if the recipient cannot specify his or her appeal grounds.²³¹

219. *Id.* at 830.

220. *Id.* at 832.

221. *Id.* at 838.

222. *Id.* at 833.

223. *Id.* at 833, 835.

224. *Id.* at 834.

225. *Id.* at 836.

226. *Ortiz v. Eichler*, 616 F. Supp. 1046, 1061-62 (D. Del. 1985).

227. *Grijalva v. Shalala*, 946 F. Supp. 747, 759 (D. Ariz. 1996).

228. *Grijalva v. Shalala*, 152 F.3d 1115, 1122 (9th Cir. 1998).

229. *See Atkins v. Parker*, 472 U.S. 115, 134 (1985) (Brennan, J., dissenting).

230. *Id.* ("[A]n aggrieved food stamp recipient cannot possibly contend in good faith, let alone demonstrate, that his request for a hearing is based on a claim

IV. Resolution and Recommendations

The implications of due process considerations in notice of termination or reduction in public assistance, specifically in the Illinois Aid to the Aged, Blind or Disabled program, particularly affects three groups: (1) recipients and potential recipients of AABD; (2) state agencies that administer AABD; and (3) counsel for both parties.

Recipients and potential recipients of AABD should make an attempt to inform themselves of their rights. They may face several obstacles, including the complex regulations that govern the welfare system and physical and mental disadvantages that are endemic to the elderly population.²³²

Recipients may also lobby for suggested changes to statutes governing these welfare programs at the state legislature level. Proposals in this area could include safeguards for additional protection of the elderly, such as a provision that calculations be included with all written notices of a denial or change in benefits.

State agencies must keep in mind that an ideal notice of a reduction or termination in aid should give the amount of change and state with specificity the reasons for it.²³³ The notice should also include a statement of income and deductions, highlighting the amounts for income and deductions that were used in the individual's situation.²³⁴ Under this method, a recipient should be able to easily identify the specific figures that changed from the previous statement. It should give an explanation for the computation of the reduction and the name of a free legal services organization.²³⁵

Courts have considered pretermination safeguards in addition to the form of the notice itself. These include established eligibility audit

that his benefits have been 'improperly computed' if the only notice he receives tells him nothing at all about the computation or the new amount of the benefits.").

231. *Id.*

232. See discussion *supra* Part II.A.

233. *Willis v. Lascaris*, 499 F. Supp. 749, 760 (N.D.N.Y. 1980).

234. *Id.*

235. *Id.* Although the names of free legal services should be given, state agencies must be aware of the extremely limited assistance available. *Ford v. Shalala*, 87 F. Supp. 2d 163, 174 (E.D.N.Y. 1999). Federally funded organizations, such as the Legal Services Corporation, have had their funding drastically cut. *Id.* Retained counsel is unlikely to take on an SSI case as they will not be compensated through any portion of the award. *Id.* Evidence of this conclusion is an ABA survey which found that twenty percent or less of the poor's legal needs are being met. *Id.*

procedures, letter communications with a detailed questionnaire, occasional telephone contact with recipients, a recipient's right to review his or her file, and a continuation of benefits for a short period of time after a finding of ineligibility.²³⁶ State agencies must be aware that these actions, along with adequate notification forms, help to ensure due process.

As a matter of policy, agencies should also consider the possibility of sending a proper notice, complete with a calculation sheet, when a recipient's benefits are increased. When the DHS recoups an overpayment amount, money is retroactively taken from the recipient. A later reduction to a payment is likely to lower that payment below what is marginally adequate.²³⁷ The amount that was previously overpaid is unlikely to have been banked in anticipation of a later reduction.²³⁸ The loss of benefits on a current check could force the recipient to temporarily exist at a subpoverty level.²³⁹

Attorneys must realize that by requiring states to adhere to due process protections, they may help clients retain their benefits and avoid terminations.²⁴⁰ Advocates can take several steps to ensure that due process requirements are met. First, they should find out the details of their state policies concerning changes in benefits.²⁴¹ If the state is not in compliance with federal law, a notification to the agency may convince it to change its policies.²⁴² Encouraging a more comprehensive notice of changes will aid the attorney in helping a client ensure advantageous use of the program.²⁴³ Second, attorneys may

236. *Bliek v. Paler*, 916 F. Supp. 1475, 1487 n.7 (D. Iowa 1996).

237. *Id.* at 1488 n.10.

238. *Id.* As one seventy-five-year-old woman testified in regard to recoupment of a social security overpayment: "I was extremely frightened and upset when I received [the notice]. . . . I could not manage financially if this check was reduced." *Ellender v. Schweiker*, 575 F. Supp. 590, 594 (S.D.N.Y. 1983). She further stated that she understood the notice to mean that "my only choice was to either repay immediately, which is impossible since I do not have the money, or to authorize withholding the money from my Social Security check." *Id.*

239. *See Bliek*, 916 F. Supp. at 1489.

240. SCHLOSBERG, *supra* note 75.

241. *Id.*

242. *Id.*

243. *See ATTORNEY DESK REFERENCE MANUAL*, *supra* note 51. If an attorney is aware of the specific reason for a change in benefits, he or she may be able to assist the client in establishing the highest possible amount of allowable needs through mechanisms such as presenting the client as a separate household. *Id.* The attorney may also be able to spot unused allowances that could potentially be claimed. *Id.*

encourage clients to exercise their rights to appeal.²⁴⁴ Essential to this process is their full knowledge of clients' rights to continued payment during the appeals process. Third, as a final resort, advocates should consider litigation.²⁴⁵ If a state has failed to comply with due process, and refuses to do so, the only means of preventing irreparable harm may be to sue the agency.²⁴⁶ A class action suit against the state agency may be more effective than a proposed statutory amendment, as a court order would take precedence over budgetary concerns.²⁴⁷

V. Conclusion

In the often-quoted words of Justice Brennan:

From its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. . . . Public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.' The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it²⁴⁸

Readers of this article must conduct a balancing test of their own. Are the advantages of a more detailed notification procedure worth the additional cost that necessarily accompanies it? "The absence of the basic necessities of human life for millions of Americans not only renders moot many of their rights as citizens but is an insufferable blot on the conscience of a nation laying claim to the ideal of liberty and justice for all."²⁴⁹ Additionally, the importance of notice and opportunity in the protection of our societal safeguards holds its own value.²⁵⁰ After an analysis of all applicable considerations, the probable value of an increase of information given to recipients of public aid outweighs the administrative cost.

244. SCHLOSBERG, *supra* note 75.

245. *Id.*

246. *Id.*

247. *See, e.g.*, *Gray Panthers v. Schweiker*, 652 F.2d 146 (D.C. Cir. 1980); *Willis v. Lascaris*, 499 F. Supp. 749 (N.D.N.Y. 1980).

248. *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970).

249. Barbara Dority, *The Right to a Decent Life*, HUMANIST, May-June 1993, at 28.

250. *See Morrissey v. Brewer*, 408 U.S. 471, 505 (1972) (Douglas, J., dissenting).