# Introduction to Due Process

# Learning Objectives for this Module

## Learn how statutory entitlements create due process rights.

## Learn how statutory entitlements can be changed to limit due process rights.

## Learn how the special status of plaintiffs in Goldberg drove the results in the case.

## Learn why the Goldberg court required a hearing before benefits were removed and the impact of that ruling on the agency.

# Reading Assignment

## Goldberg v. Kelly, 397 U.S. 254 (1970)

# Issues to be addressed

## Goldberg v. Kelly, 397 U.S. 254 (1970)

### Legal questions

#### Is a pre-action hearing required?

#### What due process is required for the hearing, if it is required?

### The statutory entitlement system

#### The welfare statute/regs establishes a set of objective criteria for qualifying for welfare.

#### These could include family income, whether there are minor children, is the family a married couple with both partners caring for the children.

#### If you meet the criteria, you qualify for welfare.

#### You continue to get welfare until you are removed from the rolls for cause, i.e., a finding that you no longer meet the criteria.

### The admistrative cost problem

#### If there is too much due process, it will be expensive to remove people from the program who are no longer qualified.

#### The cost of due process reduces the money for benefits.

#### Unqualified people who stay, reduce the number of qualified new people who can be served.

### Facts of the Case

#### This was a New York case over the administration of the federal AFDC program.

#### What was the economic status of plaintiffs?

##### How does this complicate their effectively asserting their legal rights?

##### Why had the Court recently created the right of appointed counsel for indigent criminal defendants?

##### Why do you think this was key demand by plaintiffs?

#### The termination process

##### The state used an informal process involving the case worker who oversaw the claimant’s case to decide if claimant no longer met the criteria.

###### Many of these criteria were soft, i.et. they depended on testimony and observation and were subject to questions of credibility.

###### Why might the case worker be biased?

##### The state offered a full due process hearing (minus appointed counsel) after termination.

###### What might limit the plaintiffs ability to take advantage of this hearing?

###### Few did, thus it was a very low cost system.

### The Due Process Claim

#### Why Does Plaintiff Want a Pre-termination Hearing?

##### How would you argue that there was real bias in the process being challenged?

##### Why couldn't plaintiff file a written response to the termination letter and contest the termination through the written process?

##### What could she do at a hearing that she could not do in writing?

##### Why would you argue that a post-termination hearing was not enough due process?

##### Why didn't the state want to give everyone a pre-termination hearing?

#### As the authors of the text indicate, the Court effectively ordered a classic APA hearing:

##### 1) timely and adequate notice

##### 2) oral presentation of arguments

##### 3) oral presentation of evidence

##### 4) confronting adverse witnesses

##### 5) cross-examination of adverse witnesses

##### 6) disclosure to the claimant of opposing evidence

##### 7) the right to retain an attorney (no appointed counsel)

##### 8) a determination on the record of the hearing

##### 9) record of reasons and evidence relied on; and

##### 10) an impartial decision maker

### The Impact of the Goldberg Decision

#### What does granting these hearings do to the cost (delay + personnel time) of removing someone from welfare?

#### What does it do to the balance of benefits costs to administration costs?

#### What does this do to the global cost of the benefits system?

#### What is the incentive for the welfare officers under the Goldberg ruling?

#### What expectation does it create for welfare recipients?

#### What long term problem did this contribute to?

### The Subsequent History of Goldberg

#### Never overruled

#### Superseded by Matthews

#### Ultimately limited to its specific facts

#### Unfortunately, many scholars did not notice this and have argued that all deprivations that affect individuals should have pre-deprivation process.

## Fixing Welfare - The 1996 Act

### Pushed by Newt Gingrich, Republican House leader

### Signed by Bill Clinton

### Replaced AFDC with TANF - Temporary assistance for Needy Families

#### What does the name change tell you about the change in philosophy?

#### Benefits are 5 years over a lifetime.

#### Supplemental Nutrition Assistance Program (WIC) is separate, so you can still get food. (This is the only general welfare program.)

### How does this affect future Goldberg actions?

#### What is limit on the expectation of benefits?

#### When the time runs out, is there a constitutional right to a hearing?

# Evaluation Questions

## What makes a benefit an entitlement?

## What is a matrix regulation?

## What was the fight in *Goldberg* over the timing of the hearing, i.e., what was plaintiff's argument for a pre-termination versus post-termination hearing?

## What was the informal process for terminating benefits that the plaintiffs wanted to change?

### Why was it subject to serious bias problems?

### What did plaintiff argue could help cure this inherent bias?

### What sort of proceeding did plaintiffs want the court to look to when it analyzed their constitutional claims?

## What are the procedural rights established in *Goldberg v. Kelly*?

### How they differ from the rights given indigent criminal defendants?

### How the rights are specifically tailored to the special problems posed in providing due process to an indigent welfare population?

## In general, how does right to counsel differ in agency and criminal cases?

## What was the impact on the state welfare system of creating the *Goldberg* rights?

## How did the Welfare Reform Act of 1996 eliminate the right to hearing on the termination of welfare benefits?