

CHARLES DICKENS MEETS FRANZ KAFKA: THE MALADMINISTRATION OF NEW YORK CITY'S PUBLIC ASSISTANCE PROGRAMS

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INTRODUCTION

Recipients of public assistance [hereinafter PA]¹ confront a world strik-

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Note: Although this Article follows the REVIEW OF LAW AND SOCIAL CHANGE's policy of using feminine pronouns for the third person singular when the pronoun is used generically, in fact, there are many men who receive public assistance.

1. In New York, "public assistance" includes Aid to Families with Dependent Children [hereinafter AFDC] and Aid to Dependent Children-Unemployed Parent [hereinafter ADC-U], which are both administered by the state and local governments but financed with local, state, and federal funds, and a general assistance program called Home Relief [hereinafter HR], which is funded jointly by the city and state.

AFDC, as the name implies, provides benefits to needy children in families with an absent parent. See 45 C.F.R. §§ 233.10(b)(2)(ii)(a)(2), 233.90 (1989). ADC-U provides benefits to families where both parents live with the dependent child(ren), and where the principal wage earner is temporarily unemployed or working less than one hundred hours per month and has a

ingly Dickensian in nature. They must endure both strict standards of eligibility and inadequate benefit levels. Nationwide, the Aid to Families with Dependent Children [hereinafter AFDC] standard of need, which is set by the states and which determines financial eligibility,² on average decreased by 38% in real dollar terms from 1970 to 1987.³ In 1987, the average need stan-

recent history of work. See 45 C.F.R. § 233.100 (1989). HR provides cash assistance to all other individuals and families who are not eligible for the federal Supplemental Security Income program [hereinafter SSI] and who meet the AFDC standard of need but do not meet AFDC/ADC-U requirements for work history or family configuration. See HUMAN RESOURCES ADMINISTRATION, OFFICE OF POLICY AND ECONOMIC RESEARCH, DEPENDENCY: ECONOMIC AND SOCIAL DATA FOR NEW YORK CITY 112 (1987).

The Department of Health and Human Services [hereinafter HHS] administers public assistance at the federal level. In New York State, the Department of Social Services [hereinafter DSS] is responsible for administering public assistance programs. The local agency responsible for public assistance administration in New York City is the Human Resources Administration [hereinafter HRA].

2. Generally, an individual or family must have an income at or below the standard of need in order to be eligible for public assistance. Unearned income will reduce the PA grant dollar for dollar. There are exceptions to this general formula. For example, if a household member receives SSI, she is not included in the family budget, which means both that the grant will be based on family size excluding the SSI recipient and that her SSI payments will not be counted as income. See 42 U.S.C. § 602(a)(24) (Supp. V 1987); 45 C.F.R. § 233.20(a)(3)(vi)(A), 233.20(a)(3)(x) (1989).

The impact of a parent's earned income is more complex. Under present law, there is a flat \$90 per month work expense disregard (that is, the first \$90 per month of income is not counted in reducing the grant). See Family Support Act of 1988, Pub. L. No. 100-485, § 402, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 2397 (to be codified at 42 U.S.C. § 602(a)(8)(A)(ii)). An AFDC recipient may also disregard actual child care expenses, up to \$175 per month, per child, or, for each child under age two, up to \$200 per month. See Family Support Act § 402, 102 Stat. 2397 (to be codified at 42 U.S.C. § 602(a)(8)(A)(iii)). In addition, there is a flat \$30 per month earned income disregard for the first 12 months of work, and another one-third disregard for the first four months. 42 U.S.C. § 602(a)(8)(A)(iv), (B)(ii) (Supp. V 1987). Any earned income beyond the above-noted disregards reduces the grant dollar for dollar.

A recipient's gross income (that is, without considering any income disregards) cannot, however, exceed 185% of the standard of need. See 42 U.S.C. § 602(a)(18) (Supp. V 1987); 45 C.F.R. § 233.20(a)(3)(xiii) (1989). Applying this rule to 1987 figures, when the standard of need was \$5,964, a family of three in New York with a gross income over \$11,033 (about 19% above the poverty line, see *infra* note 4) would be ineligible for public assistance.

Finally, a family on public assistance cannot have resources in excess of \$1,000. 42 U.S.C. § 602(a)(7)(B) (Supp. V 1987); 45 C.F.R. § 233.20(a)(3)(i)(B) (1989). Again, there are exceptions. For example, the value of a car, up to \$1,500, is not considered to be a resource for public assistance purposes. 45 C.F.R. § 233.20(a)(3)(i)(B)(2) (1989).

Aside from these financial requirements, the most significant restrictions on eligibility are work programs. Due to recent legislation, the specific work requirements are currently in flux as both the state and federal governments promulgate regulations to implement the new law. See Family Support Act §§ 201-204, 102 Stat. 2343, 2356-81 (to be codified at 42 U.S.C. §§ 602(a)(19), 603(k)-(l), 681-687). Basically, with some exceptions, every adult and every parent without children under three years of age is required to participate in some kind of work program. See Family Support Act § 201(a), 102 Stat. 2357 (to be codified at 42 U.S.C. § 602(a)(19)(C)). The type of programs in which participation may be required can include, *inter alia*, job search programs, on-the-job training, and community work programs. See Family Support Act § 201(b), 102 Stat. 2362-63 (to be codified at 42 U.S.C. § 682(d)(1)(A)).

3. VanDeVeer, *Adequacy of Current AFDC Need and Payment Standards*, 21 CLEARINGHOUSE REV. 141, 141 (1987). This calculation is for a family of four.

dard equalled only 62% of the poverty line.⁴ Payment levels similarly declined 38% on average in real dollar terms from 1970 to 1987.⁵ New York was no exception. In real dollar terms, the New York need standard and payment level each decreased 39.6% from 1970 to 1987,⁶ at which point they equalled only 64.1% of the poverty line.⁷ Even when AFDC benefits are combined with food stamps,⁸ in 1987 only one state, Alaska, provided payments that exceeded the poverty line.⁹ In 1987, New York's combined food stamp/AFDC payments for a family of three represented only 82.1% of the poverty line.¹⁰ In short, people on public assistance live in a world of desperate poverty where continuing aid is essential for the barest subsistence.

This story, however, describes only part of the world in which PA recipients must live. People on PA face an enormous¹¹ and byzantine bureaucracy¹² administered according to a mind-boggling array of rules.¹³ Equally impor-

4. *Id.* at 142. This calculation is for a family of three. The poverty line is set by the federal government's Office of Management and Budget. For 1987, the poverty line for a family of three was \$9,300. See 52 Fed. Reg. 5340 (1987).

5. VanDeVeer, *supra* note 3, at 142. This calculation is for a family of four.

6. *Id.* at 143, 145. This calculation is for a family of four. In New York the payment level and the standard of need are the same. N.Y. SOC. SERV. LAW § 131-a(2)(a), (3)(a) (McKinney 1988).

7. VanDeVeer, *supra* note 3, at 144, 146. This calculation is for a family of three.

8. The food stamp program, authorized by the Food Stamp Act of 1977, 7 U.S.C. §§ 2011-2030 (1988), is federally funded but administered by the states. Under the program, eligible households are issued coupons with which they can purchase food from retail stores. See 7 U.S.C. § 2013(a) (1988).

9. VanDeVeer, *supra* note 3, at 142. This calculation is for a family of three.

10. *Id.* at 148.

11. As of January 1990, New York City's HRA employed 32,000 persons. Barbanel, *Inside the Bureau of Pain and Suffering*, N.Y. Times, Jan. 14, 1990, § 4, at 5, col. 1.

12. From the perspective of someone on public assistance, the PA bureaucracy begins with a "pre-screening interviewer" who initiates the application process. If found eligible, the recipient is assigned to a "caseworker," who is responsible for insuring continued eligibility and for deciding whether to terminate a recipient's benefits. At a single income maintenance center, at least five layers of bureaucracy sit above the caseworker, to which the recipient may need to turn if she is treated unfairly by her caseworker. In addition to this, "service representatives" are supposed to help resolve any complaints a recipient may have. If a recipient wants to challenge an adverse decision, she may request a fair hearing before an administrative law judge of the New York State Department of Social Services. To prepare for the hearing, the recipient will have to make an appointment with the "Liaison and Adjustment" section of her income maintenance center to see her case file. Finally, if a recipient wins a fair hearing, but the income maintenance center does not comply with the decision, she can seek help from the DSS "compliance officer." See Brooklyn Legal Services Corp. B, *How to Get Public Assistance: A Handbook for Public Assistance Applicants and Recipients* 3, 17-18, 31, 34-35 (1989) (unpublished manuscript) (on file at N.Y.U. REVIEW OF LAW AND SOCIAL CHANGE) [hereinafter *How to Get Public Assistance*].

13. In New York, the applicable law includes:

the Social Security Act; the Social Services Law; Titles 42, 7, and 45 of the Code of Federal Regulations; Titles 18, 10, and 14 of the New York Code of Rules and Regulations; New York State Department of Social Services Administrative Directives, Informational Letters, Food Stamp Source Book, Medical Assistance Reference Guide, Public Assistance Source Book, and HEAP [Home Energy Assistance Program] Manual; New York State Department [of] Health Memoranda; as well as the POMS [Program Operational Manual System] Manual and the MMIS [Medicaid Management

tant, they must comply with a series of administrative requirements or suffer a loss of benefits. In this Kafkaesque world, recipients' benefits may be terminated even when they are completely eligible — even when they may desperately need those benefits to survive.

This Article examines the intersection of these Dickensian and Kafkaesque worlds by addressing the phenomenon known as “churning.”¹⁴ Churning occurs in PA programs when a recipient's benefits are terminated (in PA lexicon, the person's case is “closed”) for reasons that are wholly administrative, that is, for reasons unrelated to the recipient's actual need for public assistance. The recipient's benefits may some time thereafter be reinstated (the case is “reopened”), but in the meantime the recipient must survive without public assistance. Given that people on PA are by definition living at a bare level of subsistence, the temporary cessation of benefits can precipitate a financial crisis: they may fall behind in rent, be unable to pay utility bills, or run out of money for food.¹⁵

Section I of this Article examines statistical data on the administrative closing and reopening of PA cases in New York City and finds that churning has increased dramatically in recent years, leading to the frequent denial of benefits to people who are “eligible” for PA in any ordinary sense of the term.¹⁶ Section II illustrates the devastating effects of churning on the lives of

Information System] Provider Manuals. These laws and regulations change with fair frequency. Superimposed on all of this are decisions of both the federal and state courts which determine questions of constitutional law and statutory interpretation. In addition, there are 58 social services districts throughout the State and the administrative realities of those districts vary enormously.

NEW YORK STATE BAR ASSOCIATION, REPORT OF THE TASK FORCE ON ADMINISTRATIVE ADJUDICATION 171 (1988) [hereinafter ADMINISTRATIVE ADJUDICATION].

14. The New York City HRA coined this term in 1973. See HUMAN RESOURCES ADMINISTRATION, OFFICE OF POLICY AND ECONOMIC RESEARCH, THIRTY-DAY ADMINISTRATIVE CLOSINGS: HOW OFTEN AND TO WHOM? 1 n.1 (1987) [hereinafter ADMINISTRATIVE CLOSINGS] (citing HUMAN RESOURCES ADMINISTRATION, OFFICE OF POLICY RESEARCH, SOME FINDINGS ON SHORT-TERM CASE DYNAMICS (1973)).

15. Actually, administrative case closings are only one-half of the problem of churning. A related problem occurs when an applicant for welfare is rejected for failure to comply with administrative requirements, only to reapply subsequently and be accepted. See, e.g., T. CASEY & M. MANNIX, QUALITY CONTROL AND THE “CHURNING” CRISIS, PART ONE 27-31 (1986) [hereinafter THE CHURNING CRISIS, PART ONE], reprinted in *Quality Control and Fiscal Sanctions in the Food Stamp Program: Joint Hearing Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agriculture and the Subcomm. on Nutrition and Investigations of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 100th Cong., 1st Sess. 282, 315-19 (1987).

While the data presented in this Article do not address this second problem, the same underlying issues are raised in both cases, and similar proposals for reform may be applicable.

16. While this Article focuses on the administration of New York City's public assistance programs, churning is a nationwide phenomenon. One study found that in 1984 procedural denials for AFDC cases (which include both application rejections and case closings) accounted for about half of all denials nationwide, an increase of about 300% from 1972. See THE CHURNING CRISIS, PART ONE, *supra* note 15, at 4. Individual studies of particular states and regions around the United States similarly found a high incidence of procedural denials, which were often denials to eligible recipients. See T. CASEY & M. MANNIX, QUALITY CONTROL AND THE “CHURNING” CRISIS, PART TWO (1986) [hereinafter THE CHURNING CRISIS, PART

the poor by presenting the results of surveys performed by the East Harlem Interfaith Welfare Committee [hereinafter EHIWC].¹⁷ Section III goes on to explain in detail the causes of churning, first examining PA's "quality control" system and the way it encourages administrative closings, and then examining the results of EHIWC's research, which illustrate some of the most common reasons for administrative closings. Finally, Section IV proposes changes in the administration of the PA programs to reduce the frequency of churning and describes some of the reforms that already have been implemented.

I.

THE INCREASING FREQUENCY OF CHURNING: AN ANALYSIS OF THE DATA ON ADMINISTRATIVE CLOSING AND REOPENING OF PUBLIC ASSISTANCE CASES IN NEW YORK CITY

The New York City Human Resources Administration [hereinafter HRA] has published data on the pattern of administrative case closings and reopenings over a twelve-year period, from 1975 through 1986, which are presented in Tables 1 and 2 and in Figure A.¹⁸ To understand what these statistics mean, it is first necessary to understand something about the administration of the PA programs.

When a person applies for PA and is found eligible, her case is "opened" and, barring bureaucratic foul-ups, she begins receiving benefits. Thereafter, if her life circumstances change in any way that affects eligibility (e.g., she takes on a boarder or finds a part-time job) her benefits may be reduced or termi-

Two], reprinted in *Quality Control and Fiscal Sanctions in the Food Stamp Program: Joint Hearing Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agriculture and the Subcomm. on Nutrition and Investigations of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 100th Cong., 1st Sess. 282, 334 (1987).

17. The East Harlem Interfaith Welfare Committee [hereinafter EHIWC] was founded in 1974 to work for systemic change both in legislation related to public assistance programs and in the administration of these programs. EHIWC is a coalition of religious voluntary agencies which provide non-perishable food supplies to families with food emergencies and which advocate on their behalf.

18. The data are derived from ADMINISTRATIVE CLOSINGS, *supra* note 14, at 16 (table 1), and from HUMAN RESOURCES ADMINISTRATION, OFFICE OF POLICY AND PROGRAM DEVELOPMENT, DEPENDENCY: ECONOMIC AND SOCIAL DATA FOR NEW YORK CITY 44-45 (table 14) (1988) [hereinafter DEPENDENCY].

Table 1 of ADMINISTRATIVE CLOSINGS presents data for the average monthly caseload and the average monthly administrative closings for the period from 1975 through 1984. HRA has updated Table 1 to continue through 1987, although the data for 1985 through 1987 were derived from different sources, and comparison between these and earlier years should be made cautiously. See Letter from Arthur E. Blank, HRA Office of Management, Budget and Policy, to Anna Lou Dehavenon (Nov. 22, 1989) (on file at N.Y.U. REVIEW OF LAW AND SOCIAL CHANGE) [hereinafter Blank Letter].

DEPENDENCY presents data for the annual number of case closings, case openings, and case reopenings from 1975 through 1986, and for the first five months of 1987. Because DEPENDENCY's data for 1987 are incomplete, this Article only examines the period from 1975 through 1986. It is worth noting, however, that from 1986 to 1987, the number of administrative closings increased 6.2% to a total of 203,100 annually. See Blank Letter, *supra*.

nated as a result. In addition to meeting these *substantive* requirements for continued eligibility, the PA recipient must also comply with a variety of *procedural* requirements to insure the uninterrupted flow of benefits. For example, periodically a PA recipient must attend a "face-to-face," that is, an appointment with her PA caseworker where the recipient is expected to document her continued eligibility for benefits. Failure to comply with such a procedural requirement can lead to the termination of benefits *even if the recipient's actual need for public assistance has not changed*. Data on the termination of benefits for failure to comply with such procedural requirements, known as administrative closings,¹⁹ are presented in Table 1, both in terms of the total number of administrative closings and as a percentage of all case closings.²⁰

The data on case closings indicate a dramatic increase both in the number of case closings per year and in the number of administrative closings. While the average monthly caseload increased by only 17.0%, from 330,377 in 1975 to 386,654 in 1986, the number of case closings more than doubled, from 116,071 in 1975 to 307,573 in 1986, and the number of administrative closings increased at a similar rate, from 72,660 in 1975 to 191,280 in 1986.²¹ Equally important, administrative closings consistently accounted for an enormous percentage of all case closings: an average of 73.6% for the twelve-year period. In short, from 1975 through 1986 the termination of benefits was due to administrative reasons in three out of four instances, and during this period administrative closings increased at a rate that far exceeded the increase in the PA caseload.

While in and of themselves cause for concern, if only from a standpoint of bureaucratic efficiency, the large number of and the dramatic increase in administrative closings do not necessarily mean that otherwise eligible recipients lose their benefits. No data are available that show directly how many of the recipients who face administrative closings are in fact still eligible for PA.

19. DSS defines "administrative closings" as case closings not directly attributable to a change in income, family composition, or financial need. See NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ADMINISTRATIVE CLOSINGS OF NEW YORK CITY PUBLIC ASSISTANCE CASES 8 (1984) [hereinafter DSS STUDY].

20. The administrative closing data contained in Table 1 were computed by multiplying by twelve the "average monthly" administrative closings reported in ADMINISTRATIVE CLOSINGS, *supra* note 14. This conforms the data to the annual data for all closings reported in DEPENDENCY, *supra* note 18.

The reader should recognize that the data presented represent the number of *instances* of case closings, not necessarily the number of individual *cases* closed, because some recipients' cases may have been closed more than once per year. There are no available data on the number of cases closed, as opposed to instances of case closings, per year.

21. Based on the data in Table 1, accounting for the 17.0% increase in the program size, the increase in administrative closings from 1975 to 1986 was

$$191,280 - (72,660 \times 1.17) = 106,268$$

and the increase in all case closings was

$$307,573 - (116,071 \times 1.17) = 171,770.$$

Thus, the increase in administrative closings accounted for 61.9% of the increase in all case closings during this period.

TABLE 1
ADMINISTRATIVE CASE CLOSINGS

<u>Year</u>	<u>Avg. Monthly Caseload</u>	<u>Annual Closings</u>	<u>Annual Admin. Closings</u>	<u>As A Percent of All Closings</u>
1975	330,377	116,071	72,660	62.6%
1976	357,357	162,086	117,828	72.7%
1977	360,625	211,091	169,716	80.4%
1978	347,900	196,841	157,212	79.9%
1979	342,359	211,869	158,748	74.9%
1980	342,789	212,439	166,008	78.1%
1981	342,610	219,807	171,612	78.1%
1982	346,636	223,316	172,824	77.4%
1983	370,974	235,210	180,996	77.0%
1984	387,901	247,466	181,320	73.3%
1985	395,567	288,771	196,920	68.2%
1986	386,654	307,573	191,280	62.2%
Total/Avg.	359,312	2,632,540	1,937,124	73.6%
Percent Change over 12 Years	17.0%	165.0%	163.2%	-0.6%

However, it is possible to approach this question indirectly by examining the PA cases that are opened, the data for which are presented in Table 2.²² When a PA case is opened it can either be a new case or a reopening of an already existing case.²³ If recipients' benefits are terminated for administrative reasons, but they are still eligible, they can reapply for benefits and have their cases reopened. Therefore, if most people who face administrative closings are eligible, and therefore are able to have their benefits reinstated, we would expect to find a close correlation between the increase in the number of administrative closings and an increase in the number of case reopenings. In other

22. As with Table 1, the information in Table 2 is based on data published by HRA. See DEPENDENCY, *supra* note 18, at 44-45 (table 14). Also, as with the data on case closings, the data in Table 2 represent the *instances* of openings or reopenings and not the number of individual cases opened or reopened. See *supra* note 20.

23. A "new case" is one with no prior history of public assistance, in the same assistance category, in New York City. DEPENDENCY, *supra* note 18, at 45 n.2. (As noted previously, see *supra* note 1, public assistance can take the form of AFDC, ADC-U, or HR.) A "reopening," on the other hand, involves a case which had previously received public assistance, in the same category, in New York City. DEPENDENCY, *supra* note 18, at 45 n.3.

TABLE 2
CASE REOPENINGS

<u>Year</u>	<u>Avg. Monthly Caseload</u>	<u>Annual Openings</u>	<u>Annual Reopenings</u>	<u>As A Percent of All Openings</u>
1975	330,377	148,107	64,800	43.8%
1976	357,357	172,731	90,937	52.6%
1977	360,625	198,926	129,240	65.0%
1978	347,900	186,693	121,806	65.2%
1979	342,359	202,796	132,571	65.4%
1980	342,789	217,682	142,087	65.3%
1981	342,610	222,054	144,351	65.0%
1982	346,636	238,887	149,429	62.6%
1983	370,974	255,966	161,651	63.2%
1984	387,901	263,166	162,454	61.7%
1985	395,567	288,407	177,607	61.6%
1986	386,654	309,577	181,590	58.7%
Total/Avg.	359,312	2,704,992	1,658,523	61.3%
Percent Increase over 12 Years	17.0%	109.0%	180.2%	34.0%

words, a correlation between the change in administrative closings and the change in case reopenings will demonstrate the existence of churning.

In fact, as Table 2 indicates, there was a dramatic increase in the number of case reopenings from 1975 through 1986, from 64,800 to 181,590. As with administrative closings, the increase in case reopenings far outpaced the modest increase in HRA's average monthly caseload. More significantly, the number of case reopenings as a percentage of all case openings increased substantially, from 43.8% in 1975 to 58.7% in 1986.

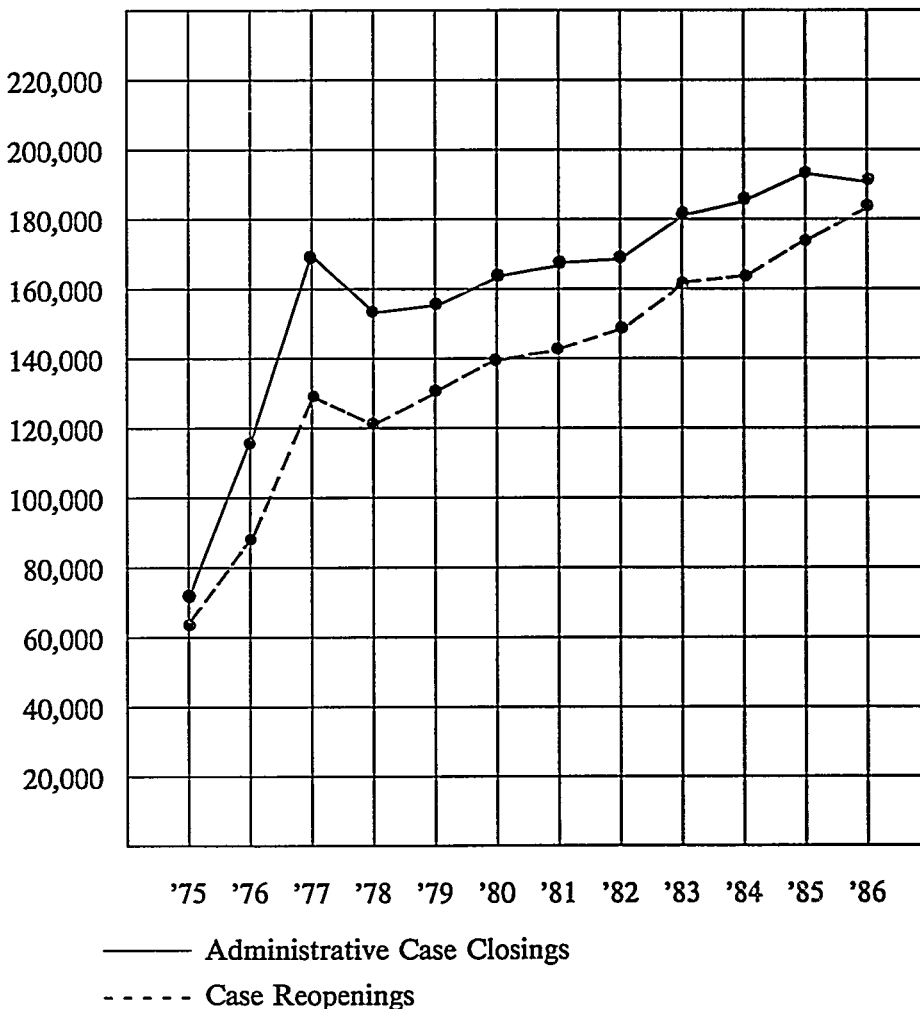
The significance of the data becomes most clear when one turns to the relationship between administrative closings and case reopenings. From 1975 to 1986, the percentage increases in administrative closings and case reopenings were 163.2% and 180.2% respectively. Even more telling, on a year-to-year basis, the change in case reopenings closely tracked the change in administrative closings, as indicated in Figure A. This high correlation strongly suggests that a large proportion of the people whose PA cases are terminated for administrative reasons meet the financial need requirements for public assistance.

For example, discounting for the modest increase in program size, from

1975 to 1986 there was an increase of 105,774 in the annual number of case reopenings, an increase of 65,502 in the annual number of non-administrative case closings, and an increase of 106,268 in the number of administrative closings. Assuming that administrative and non-administrative closings are equally likely to be reopened,²⁴ for every increase of one hundred administrative closings, there was a corresponding increase of about sixty-two case reopenings.²⁵ This suggests that roughly three-fifths of the recipients whose

FIGURE A

Public Assistance Administrative Case Closings and Case Reopenings, 1975-1986



24. Of course, this Article contends that administratively closed cases are more likely to be reopened than other cases that are closed, since they more often involve eligible recipients. Assuming otherwise, as is done here, however, only softens the conclusion, drawn in the text, that the majority of case reopenings are due to administrative closings.

25. The percentage of eligible recipients whose cases were closed for administrative rea-

cases are closed for administrative reasons are eligible for public assistance.²⁶

It is worth pausing to consider what the data mean in human terms. In 1986, for instance, over 15,940 case closings occurred for administrative reasons in New York City in an average month. Assuming that three-fifths of these recipients were completely eligible for PA in terms of their economic need, every month over 9,564 households, representing approximately 18,290 people,²⁷ already living well below the poverty level²⁸ lost their welfare benefits despite their continued need for assistance.

II.

THE IMPACT OF CHURNING ON THE LIVES OF THE POOR

It is not difficult to imagine what happens to people who fall through the public assistance safety net. As one study observed, an "erroneous denial, reduction, or termination of benefits causes untold anxiety, deprivation, and misery to those people in our society who can least afford to bear it."²⁹ Research by the East Harlem Interfaith Welfare Committee graphically illustrates the devastating impact that administrative closings have on the lives of the poor.³⁰

sons may in fact be higher because this estimate does not include eligible recipients whose cases were not reopened because they gave up on the system. *Cf. infra* note 42. This may be particularly true of recipients who become or are already homeless. *See id.*

26. This estimate is supported by the conclusions of other studies. *See* DSS STUDY, *supra* note 19, at 22 (finding that 70.7% of administratively closed cases were reopened within six months, 58.4% within two months, and 38.9% within one month after closing); Casey & Mannix, *Quality Control in Public Assistance: Victimizing the Poor Through One-sided Accountability*, 23 CLEARINGHOUSE REV. 1381, 1385 (1989) [hereinafter *Victimizing the Poor*] (nationally "two thirds or more of procedural denials . . . were denials to eligible families"); T. CASEY, *THE IN-HUMAN RESOURCES ADMINISTRATION'S CHURNING CAMPAIGN* at i (1983) (estimating that in New York City 75% of those with closed cases were still eligible).

27. The figure of 18,290 is derived in two steps. First, of the 15,940 administrative closings in an average month in 1986, 8,668 were HR cases, while 7,272 were AFDC cases. *See* Blank Letter, *supra* note 18. Second, it is assumed that each HR case involves only one person (this may be an underestimate), while on average three people are included in each AFDC case. *See* THE CHURNING CRISIS, PART ONE, *supra* note 15, at 23. Therefore, the total number of individuals affected by administrative closings was

$$(7,272 \times 3) + 8,668 = 30,484.$$

Sixty percent of this number produces the figure of 18,290.

28. *See supra* notes 6-10 and accompanying text.

29. ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 177.

30. Between 1979 and 1989 EHIWC has documented the incidence and causes of food emergencies among families in New York City. From 1979 through 1983, EHIWC's research focused on families living in East Harlem, but in 1984 EHIWC's research expanded to include areas of Brooklyn and the Bronx. When households that ran out of food (or were in imminent danger of doing so) sought assistance from one of EHIWC's voluntary agencies, they were asked to complete a two-page survey which sought information on the families' conditions and on the circumstances that led to their food emergencies. Participation in the survey was anonymous and entirely voluntary. A decision not to complete the questionnaire had no bearing on a family's ability to obtain emergency food services from EHIWC's volunteer agencies.

As an addition to the survey of food emergency households, from 1986 to 1987 EHIWC surveyed families in New York City's Emergency Assistance Units [hereinafter EAUs] in Brooklyn, Manhattan, and the Bronx. EAUs are all-night offices where homeless families

Families in the EHIWC study typically reported being highly vulnerable to the adverse consequences of a loss of income. Sixty-four percent of the food emergency households in the EHIWC survey included children under eighteen years of age.³¹ Household members reported suffering from an unusually high incidence of medical problems,³² and 20% of the food emergency households surveyed reported a pregnancy.³³ Twenty-nine percent of the food emergency families reported not having their own apartments,³⁴ and, among this subgroup of homeless families, only 38% reported having a regular source of income.³⁵

Administrative closings were a common fact of life for these families.

whose income maintenance centers are unable to place them during the day, or who become homeless after the income maintenance centers are closed, wait for short-term assignments to public shelters and welfare hotels.

In 1989, EHIWC published a report which combined its survey of families facing food emergencies with its EAU survey, while significantly revising some of the information sought in both studies. Because each of these surveys provides somewhat different insights into the impact of churning, this Article discusses the results of all three. See A. DEHAVENON, *THE TYRANNY OF INDIFFERENCE AND THE RE-INSTITUTIONALIZATION OF HUNGER, HOMELESSNESS AND POOR HEALTH: A STUDY OF THE CAUSES AND CONDITIONS OF THE FOOD EMERGENCIES IN 1,905 HOUSEHOLDS WITH CHILDREN IN MANHATTAN, BROOKLYN AND THE BRONX IN 1987* (1988) [hereinafter *FOOD EMERGENCY STUDY*]; A. DEHAVENON, *TOWARD A POLICY FOR THE AMELIORATION AND PREVENTION OF FAMILY HOMELESSNESS AND DISSOLUTION: NEW YORK CITY'S AFTER-HOURS EMERGENCY ASSISTANCE UNITS IN 1986-87* (1987) [hereinafter *EAU STUDY*]; A. DEHAVENON, *THE TYRANNY OF INDIFFERENCE: A STUDY OF HUNGER, HOMELESSNESS, POOR HEALTH AND FAMILY DISMEMBERMENT IN 818 NEW YORK CITY HOUSEHOLDS WITH CHILDREN IN 1988-89* (1989) [hereinafter *THE TYRANNY OF INDIFFERENCE*].

31. *FOOD EMERGENCY STUDY*, *supra* note 30, at 4, 12 (table 1). Likewise, 64% of the population surveyed were children. *Id.* at 4, 13 (table 2); *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 82 (table 45).

32. For example, 29% of the food emergency households reported one or more persons suffering from asthma, 26% suffering from anemia, 20% suffering from emotional problems or mental illness, 16% suffering from hypertension, 7% suffering from a physical disability, 6% suffering from diabetes, and 6% suffering from malnourishment. *FOOD EMERGENCY STUDY*, *supra* note 30, at 5-6, 19 (table 9); see also *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 51 (table 25).

Likewise, for families at the EAUs, 18% reported members suffering from emotional problems or mental illness, 13% suffering from hypertension, and 7% suffering from diabetes. *Id.* at 53 (table 28).

Overall, 76% of the food emergency households and 80% of the families at the EAUs included members suffering from one or more chronic medical problems. *Id.* at 52 (table 27).

These medical problems were often far more prevalent among families surveyed than in the nation as a whole. See, e.g., *id.* at 51 (table 26); *FOOD EMERGENCY STUDY*, *supra* note 30, at 6, 20 (tables 10 and 10A).

33. *FOOD EMERGENCY STUDY*, *supra* note 30, at 6, 19 (table 9). Likewise, 49% of the EAU households reported a pregnancy. *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 53 (table 28).

34. *FOOD EMERGENCY STUDY*, *supra* note 30, at 5, 15 (table 4).

35. *Id.* at 5, 16 (table 5). Of all food emergency households surveyed, approximately 53% said they were on public assistance (including food stamps). Twenty-six percent reported that their public assistance and food stamp cases had been closed. Another 8% were applying for public assistance as new applicants, and another 5% had no income. Only 8% of the survey population reported income other than public assistance. *Id.* at 17 (table 7). Similarly, of the adults in the EAU survey, 97% were unemployed. *THE TYRANNY OF INDIFFERENCE*, *supra*

Approximately 83% of the food emergency families reported experiencing an administrative closing at least once in the preceding twelve months, and 38% experienced more than one administrative closing during that period.³⁶

The families surveyed often lost their sole means of support as a result. Among those families for whom the administrative closing precipitated a food emergency, over 96% reported losing their welfare benefits, 69% also lost their food stamps, and 37% also lost their Medicaid benefits.³⁷

Families whose cases were closed typically sought to have their benefits reinstated. In the 1987 survey of food emergency families, 87% tried to contact their income maintenance center or the Department of Social Services [hereinafter DSS] to reopen their cases, but they usually had to endure a substantial interruption of benefits nonetheless.³⁸ Many recipients tried to work out the problem at the income maintenance center, but 5% said they received an incomplete, ambiguous, or hostile response; another 36% were told to obtain further documents to verify their eligibility or were given an appointment to reapply; and another 21% were told that their cases would be reopened after some delay.³⁹

If a recipient cannot straighten out the problem at the income maintenance center level, she may request a fair hearing before a DSS administrative law judge within sixty days of the notice of closing.⁴⁰ Only 29% of the food emergency families in the EHIWC study reported seeking a fair hearing on their administrative case closings.⁴¹ As the New York State Bar Association has observed, “[i]t takes a fair amount of confidence and fortitude for unsophisticated people to come forward to dispute the local agency decision. Countless thousands lose desperately needed governmental benefits to which

note 30, at 17 (table 2). And in the combined survey of EAU and food emergency families, only 56% and 46%, respectively, reported receiving public assistance. *Id.* at 20 (table 5).

36. FOOD EMERGENCY STUDY, *supra* note 30, at 9, 44 (table 24). The reported characteristics of households that had experienced an administrative closing were similar to those of the survey population as a whole. Sixty-four percent of the persons in the food emergency households whose cases had been administratively closed were children under 18 years of age. *Id.* at 44 (table 23). Twenty-seven percent of the administratively closed households reported not having their own apartments. *Id.* at 45 (table 25). Finally, the prevalence of medical problems among families whose cases were closed for administrative reasons was somewhat higher than in the survey population as a whole. *See id.* at 46 (table 26).

37. *Id.* at 9, 46 (table 27). Another 3% lost only their food stamps. *Id.* at 46 (table 27).

38. *Id.* at 51 (table 29).

39. *Id.* These findings were confirmed by the 1988-1989 survey, which found that among food emergency families only 13% had not sought to have their cases reopened. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 25 (table 9).

40. New York City's local public assistance agency, HRA, loses the vast majority of the fair hearings that are held. *See* ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 176 (HRA “was affirmed in only 11% of the cases in 1986”). *Cf.* Brodtkin & Lipsky, *Quality Control in AFDC as an Administrative Strategy*, 57 SOC. SERV. REV. 1, 25 (1983) (fair hearing data in Boston showed that the rate of reversal in cases involving procedural denials was 80% in 1980).

41. FOOD EMERGENCY STUDY, *supra* note 30, at 47-50 (table 28), 52. In the 1988-1989 survey, this figure dropped to 13%. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 25 (table 9).

they are entitled because they do not contest the local decision."⁴²

Moreover, only if a recipient requests the fair hearing within ten days of the notice of closing will her benefits continue pending the hearing and decision (called "aid continuing"); otherwise, she will suffer a substantial interruption in benefits. If the recipient does not receive aid continuing, she is likely to have her case reopened more quickly simply by reapplying.⁴³ In the EHIWC survey, only 16% of the food emergency families whose cases were administratively closed reported receiving aid continuing.⁴⁴

As a consequence, the interruption of benefits due to administrative closings was often quite lengthy. As shown in Table 3,⁴⁵ for those food emergency households whose PA cases were closed, 85% reported losing their benefits for over two weeks, 53% lost their benefits for over a month, and 16% lost their benefits for over three months.⁴⁶

The lengthy interruption in benefits often meant that already desperate families were pushed to their wits' end. Of those households on PA, 48% reported experiencing food emergencies⁴⁷ because their cases had been closed

42. ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 177. The Bar Association went on to note that "[s]ome local agencies, principally in New York City, appear to have made a cynical, cruel choice: decisions are allowed to be made wrongfully to deny, reduce or terminate benefits, knowing [sic] that many decisions will not be challenged and, therefore, money will be saved." *Id.* at 178.

A study of case closings in Michigan and Illinois found that among recipients in those states whose cases had been closed and yet were still eligible after several months, approximately 25 to 50% did not even intend to reapply, either because they mistakenly thought they were ineligible or because they found the welfare system too burdensome to cope with. See W. HOLSHOUSER, L. FOSBURG, J. MACMILLAN, & S. MENNEMEYER, *THE EFFECTS OF MONTHLY REPORTING ON AFDC RECIPIENTS IN MICHIGAN AND ILLINOIS 85-86* (1985).

The survey of EAU families suggests that homeless families are much more likely to give up on the system when their cases are closed. Forty-five percent of the EAU families with closed cases had done nothing to reopen them, and no family in this group had sought a fair hearing. *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 25 (table 9).

43. A recipient may want to request the fair hearing anyway in order to obtain retroactive benefits. The New York State Department of Social Services 1984 study of HRA found that of cases that were reopened, only 49% received full retroactive benefits. See *DSS STUDY*, *supra* note 19, at 25 (table VII). Cf. *MICHIGAN DEPARTMENT OF SOCIAL SERVICES, THE IMPACT OF MONTHLY REPORTING IN MICHIGAN IV-14* (1983) (for those cases closed for failure to comply with monthly reporting requirements, 58.2% were reopened with full benefits but delays in payment, and 21.5% were reopened with an average loss of almost two payments).

44. *FOOD EMERGENCY STUDY*, *supra* note 30, at 47-50 (table 28), 52.

45. The data in Table 3 are based on *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 26 (table 10).

46. These findings are supported by the earlier EHIWC survey of food emergency families. See *FOOD EMERGENCY STUDY*, *supra* note 30, at 53 (table 30). The EAU survey found that of those families whose public assistance cases were closed for administrative reasons, nearly three-fourths reported receiving no benefits, including food stamps, for more than a month. *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 26 (table 10); see also *EAU STUDY*, *supra* note 30, at 40 (table 12). DSS found similar delays in the payment of benefits due to administrative closings. See *DSS STUDY*, *supra* note 19, at 29-31.

47. For the purposes of the survey, a "food emergency" exists when the voluntary agency determines that a household is in imminent danger of running out of food or has already run out of food, and the agency then provides the household with a temporary nonperishable food supply to be eaten at home. *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at xv.

TABLE 3
 THE LENGTH OF BENEFIT INTERRUPTION DUE TO
 ADMINISTRATIVE CLOSINGS

*Proportion of Beneficiaries
 Whose Cases Were Closed*

<u>Period of Interruption</u>	<u>Food Stamps</u>	<u>Public Assistance (AFDC/HR)</u>
0 to 7 days	4%	5%
8 to 15 days	8%	10%
16 to 30 days	30%	32%
31 to 89 days	38%	37%
Over 90 days	17%	16%

for administrative reasons.⁴⁸ For all families interacting with the PA system,⁴⁹ 66% reported suffering food emergencies lasting over a week, and 24% suffered food emergencies of a month's duration or longer.⁵⁰ Families whose PA cases were administratively closed reported food emergencies that lasted on average for *thirty days*.⁵¹

As a result, many families had to beg, borrow, or steal just to survive. The vast majority of the families enduring food emergencies tried to borrow for food, most often from friends, relatives, and neighbors, and less frequently from landlords, local grocers, and loan sharks. Their efforts met with varied success.⁵² Nearly one-third of the families reported having to beg for food, and 9% resorted to stealing.⁵³ Forty-four percent of the households reported going to soup kitchens or other food pantries for assistance in the week immediately preceding.⁵⁴

48. FOOD EMERGENCY STUDY, *supra* note 30, at 5, 18 (table 8). Twenty-one percent of those on public assistance said their cases had been closed due to a caseworker or computer error. *Id.* at 21 (table 11).

49. This includes families who were applying for PA, families on PA, and families whose PA cases were closed.

50. FOOD EMERGENCY STUDY, *supra* note 30, at 6, 26 (table 12).

51. *Id.* at 7, 27 (table 13). Forty-two percent of the contact persons for the households interacting with the PA system reported not eating solid food for two days or longer prior to coming for help. *Id.* at 7, 28 (table 14). In the EAU Study, 69% of the mothers and 83% of the fathers reported weight losses of 10 pounds or more during the previous month. EAU STUDY, *supra* note 30, at 57 (table 24); see also THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 59-60 (figures 8 & 9).

52. FOOD EMERGENCY STUDY, *supra* note 30, at 8, 34 (table 18). In comparison to prior years, in 1987 the families surveyed found it harder to borrow from friends, relatives, and neighbors. *Id.* at 34-35.

53. *Id.* at 8, 35 (table 19).

54. *Id.* at 8, 36 (table 20). Families who are in immediate need of assistance may be entitled to expedited food stamps and a small emergency cash grant, called an immediate needs

Another study performed by EHIWC⁵⁵ also illustrates what happens when families, often already on the verge of homelessness, lose their benefits. Of those who had lost their apartments,⁵⁶ 36% recently had lost their public assistance due to administrative closings.⁵⁷ Similarly, of those who had lost a "double-up"⁵⁸ within the prior month,⁵⁹ 36% had had their benefits terminated for administrative reasons.⁶⁰

III.

THE CAUSES OF CHURNING

A. *The Impact of "Quality Control"*

The havoc churning wreaks on the lives of the poor is not merely the product of unintentional bureaucratic error. Rather, it is the direct and logical result of a system of federal accounting rules known as Quality Control [hereinafter QC],⁶¹ which encourages the states administering PA programs to impose extreme verification requirements on recipients to insure their continued eligibility. In the words of Casey and Mannix, the leading experts on QC, the federal policy builds into the PA system a "trigger-happy to deny" mentality.⁶²

Under the federal QC policy,⁶³ since 1973 state agencies administering the AFDC program have been threatened with fiscal sanctions for the errone-

grant. See N.Y. COMP. CODES R. & REGS. tit. 18, §§ 382.1, 387.8(a), (b) (1988). However, the food emergency survey found that only 13% of the households eligible for expedited food stamps reported receiving them, and immediate needs grants went to only 6% of the eligible households. FOOD EMERGENCY STUDY, *supra* note 30, at 8, 33 (table 17).

55. See EAU STUDY, *supra* note 30.

56. By definition, all of the families in the EAU Study were homeless. About one-third of the families had never had their own apartments. EAU STUDY, *supra* note 30, at 31 (table 7).

57. *Id.* The more recent EAU survey similarly found that 24% of the families that had lost their apartments did so simultaneously with an administrative closing of their public assistance cases. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 27 (table 11).

58. A family lives in a "double-up" when it stays in the home of another family for temporary shelter. Eighty percent of the families in the EAU Study had previously lived in a double-up. EAU STUDY, *supra* note 30, at 35 (table 9).

59. Almost half of those families who had lived in double-ups had lost a double-up within the prior month. *Id.*

60. *Id.*; see also THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 27 (table 11) (16% of EAU families who had lost a double-up did so simultaneously with an administrative case closing).

61. As early as 1979, staff for the Department of Health, Education, and Welfare, which, prior to HHS, administered public assistance at the federal level, recognized that QC might cause an increase in the number of procedural denials to eligibles. See DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, REGION VI, OFFICE OF SERVICE DELIVERY ASSESSMENT, SERVICE DELIVERY ASSESSMENT OF AFDC NEGATIVE CASE ACTIONS 1, 21 (1979).

62. THE CHURNING CRISIS, PART ONE, *supra* note 15, at 1.

63. The statutory provisions for QC in the AFDC program can be found at 42 U.S.C. § 603(i), (j) (1982 & Supp. V 1987). These provisions are implemented by regulations promulgated by HHS. See 45 C.F.R. §§ 205.40-205.44 (1989). The detailed HHS QC requirements are found in DEPARTMENT OF HEALTH AND HUMAN SERVICES, FAMILY SUPPORT ADMINISTRATION, AFDC QUALITY CONTROL MANUAL (1988) and DEPARTMENT OF HEALTH AND HUMAN SERVICES, FAMILY SUPPORT ADMINISTRATION, QUALITY CONTROL OF NEGATIVE

ous overpayment of benefits and the erroneous payment of benefits to ineligible recipients.⁶⁴ But while such "payment errors" are subject to sanction, no sanctions are imposed for the erroneous denial or underpayment of benefits.⁶⁵ Consequently, QC builds into the administration of PA systems a bias in favor of avoiding erroneous payments. When in doubt, a state agency has nothing to lose, and everything to gain, from denying benefits.

Sanctions for payment errors are imposed at a uniform threshold. Specifically, if payment errors comprise more than 3% of a state's total fiscal year AFDC payments, the state will be denied federal matching funds for the excess.⁶⁶ Most states fail to meet this exacting standard. Since 1981 every state but one has failed to meet the standard in at least one year,⁶⁷ and in 1986 only five states met the standard.⁶⁸ Consequently, over \$1 billion worth of QC penalties are outstanding, and additional sanctions are accruing at a rate of about \$220 to \$320 million each year.⁶⁹

As mentioned above, QC imposes sanctions only for payment error and not for denial error. Equally important, the QC definition of payment error is broad, and the means used for detecting payment errors are broadly inclusive. "Payment errors" are defined to include all overpayments and payments to ineligible even if they were correct based on the facts known at the time of the agency's decision, and even if the beneficiaries complied with all verification requirements.⁷⁰ Moreover, the QC review of sample payments (upon which the payment error rate is based) includes an exhaustive field investigation of each case reviewed.⁷¹ This means, of course, that a state risks a "payment

CASE ACTIONS IN THE AFDC, ADULT, AND MEDICAID PROGRAMS (1987) [hereinafter NEGATIVE QUALITY CONTROL MANUAL].

64. Fiscal sanctions in AFDC were originally imposed by regulation, *see* 38 Fed. Reg. 8743 (1973), but were later required by statute. *See* 42 U.S.C. § 603 (i), (j) (1982 & Supp. V 1987).

Fiscal sanctions were imposed for the food stamps and medicaid programs in 1980. *See* 7 U.S.C. § 2025 (1988) (food stamps); 42 U.S.C. § 1396b(u) (1982 & Supp. V 1987) (medicaid). The QC policies for these programs are similar to that for AFDC, although recently there have been modest reforms in the food stamps QC policy. *See* Hunger Prevention Act of 1988, Pub. L. No. 100-435, § 604, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1645, 1675-77 (codified at 7 U.S.C. § 2025(c), (d) (1988)).

65. There is a review of denial error under QC policy, however. *See infra* note 71.

66. 42 U.S.C. § 603(i) (1982).

67. NATIONAL ACADEMY OF SCIENCES, PANEL ON QUALITY CONTROL OF FAMILY ASSISTANCE PROGRAMS, COMMITTEE ON NATIONAL STATISTICS, COMMISSION ON BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, RETHINKING QUALITY CONTROL: A NEW SYSTEM FOR THE FOOD STAMP PROGRAM 18 (D.P. Affholter & F.D. Kramer eds. 1987) [hereinafter NAS FOOD STAMP STUDY].

68. Department of Health and Human Services, Family Support Administration, AFDC Information Memorandum FSA-IM-88-6 (May 9, 1988).

69. *Victimizing the Poor*, *supra* note 26, at 1382. Currently, there is a congressionally imposed moratorium on the collection of sanctions. 42 U.S.C.A. § 603(m) (West Supp. 1989).

70. *Victimizing the Poor*, *supra* note 26, at 1383.

71. *Id.* By contrast, the definition of denial error is narrow. So long as a denial is authorized by state policy, including verification requirement policy, the denial is "correct" even if the beneficiary/applicant were eligible in the ordinary sense of the term. Also, in contrast to payment error review, denial error review includes no field investigation and is based solely on the

error" (and possible sanctions) unless it imposes extreme verification requirements on the payment of benefits.

The influence of QC on state policy in administering public assistance has been pervasive: "At the top, the (over)payment error rate is 'the' measure of state performance and at the field level, compliance with agency procedures to avoid overpayments is 'the' measure of line worker performance."⁷² States now devote up to one-fifth or more of their administrative funds to efforts to reduce payment errors and have spent billions of dollars on such efforts over the last decade.⁷³

More significantly, preoccupation with the payment error rate has fostered verification extremism. QC has led to more frequent redeterminations of eligibility and to requirements for fresh corroboration of all facts relevant to an eligibility determination.⁷⁴ Moreover, as a result of QC many states require more frequent periodic reporting between redeterminations, sometimes as often as once per month.⁷⁵ Plainly, the more often a recipient must verify her eligibility, and the more documents she must produce, the more likely it is either that she will fail to satisfy a procedural requirement or that the PA bureaucracy will erroneously terminate her benefits. This verification extremism is in large part responsible for the rampant procedural denials in the AFDC program.⁷⁶

B. Common Reasons for Administrative Closings in New York City

New York City provides a telling, if somewhat severe, example of the type of verification extremism that is fostered by the QC policy. The EHIWC

case record. *Id.*; see also NEGATIVE QUALITY CONTROL MANUAL, *supra* note 63, at 2 ("Unlike the review of cases currently in receipt of assistance which involves a reexamination of all factors of eligibility and payment, including a field investigation, the negative case action eligibility review is conducted only in relation to the reason(s) given for terminating or denying assistance and, where possible, limited to a review of the agency's records.").

Thus, the National Academy of Sciences found that due to the absence of field investigation, denial error rates "may substantially understate" actual error rates. NATIONAL ACADEMY OF SCIENCES, PANEL ON QUALITY CONTROL OF FAMILY ASSISTANCE PROGRAMS, COMMITTEE ON NATIONAL STATISTICS, COMMISSION ON BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, FROM QUALITY CONTROL TO QUALITY IMPROVEMENT IN AFDC AND MEDICAID 216 (F.D. Kramer ed. 1988) [hereinafter NAS AFDC STUDY]. Likewise, a General Accounting Office study of QC in the food stamp program found that denial errors were underestimated even in terms of QC's own narrow definition. See *id.* at 125 (citing GENERAL ACCOUNTING OFFICE, FOOD STAMP PROGRAM: EVALUATION OF IMPROPER DENIAL TERMINATION RATES (1987)).

72. *Victimizing the Poor*, *supra* note 26, at 1383-84.

73. AMERICAN PUBLIC WELFARE ASSOCIATION, BRIEFING BOOK ON QUALITY CONTROL AND FISCAL SANCTIONS IN THE AFDC, MEDICAID, AND FOOD STAMP PROGRAMS § III (pages unnumbered) (1986).

74. THE CHURNING CRISIS, PART ONE, *supra* note 15, at 10.

75. *Id.* at 11.

76. A useful comparison can be made between the SSI program, for which there is no QC fiscal sanctions policy, and the AFDC program. One study found that for the 1981-1984 period, procedural rejections in the AFDC program were 15 times more likely than in SSI. *Id.* at 33.

surveys indicate the kind of procedural obstacles that are commonly responsible for administrative closings.⁷⁷

Thirty-three percent of the food emergency families in the EHIWC study cited the requirement for periodic recertification of eligibility as the reason why their welfare cases were administratively closed.⁷⁸ HRA notifies each recipient by mail every few months that she must attend a "face-to-face" meeting with her caseworker where the recipient is required to produce a wide array of documents verifying that she is still eligible for benefits.⁷⁹ If a face-to-face appointment is missed, the income maintenance center sends the recipient an "intent to close" notice. The recipient then has ten days to contact the center and schedule a new appointment; otherwise, the case is closed, and a closing notice is sent to the recipient. Recipients typically said they missed their face-to-face appointments because they had not received their appointment letters in the mail and/or were not able to reschedule the appointment.⁸⁰ Recipients also said their cases were closed when they were unable to produce the required documentation, which often may be difficult to obtain.⁸¹ For example, a recipient may have trouble obtaining proof of her current rent if her landlord refuses to provide receipts or a letter confirming the monthly rent.⁸²

Another 15% of the food emergency families in the EHIWC survey had their cases closed for failure to return a questionnaire.⁸³ In between face-to-

77. The EHIWC surveys are described *supra* at note 30.

78. FOOD EMERGENCY STUDY, *supra* note 30, at 9, 47 (table 28).

In the 1988-1989 EHIWC survey, 43% of the food emergency families and 28% of the EAU families cited failure to comply with face-to-face recertification as the reason why their cases were closed. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

DSS found that face-to-face recertification was the reason for case closings in 29.4% of the cases studied. DSS STUDY, *supra* note 19, at 19 (table III).

79. The documents required may include, *inter alia*: birth certificates and social security numbers for every member of the household; marriage certificates or divorce or separation papers, where applicable; confirmation (usually by letter) of attendance in a drug or alcohol treatment program, where applicable; proof of current address; proof of rental and utility costs; proof that the children on the budget, if any, live in the household (e.g., clinic cards or doctors' letters for children under six, report cards or school letters for children over six); proof of any income (e.g., pay stubs); proof of child care expenses, where applicable; proof of past maintenance (e.g., letter from former employer); and proof of the whereabouts of any absent parent or spouse. See *How to Get Public Assistance*, *supra* note 12, at 4-9, 53.

80. FOOD EMERGENCY STUDY, *supra* note 30, at 47 (table 28).

81. See *id.* at 50 (table 28).

In the 1988-1989 EHIWC study 7% of the food emergency families and 9% of the EAU families reported missing documentation as a reason for their case closings. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

82. Moreover, the income maintenance center's investigation during recertification may erroneously lead to a finding that a recipient is ineligible. For example, if a recipient accepts a certified letter addressed to an absent spouse, the income maintenance center will assume the addressee lives with the recipient. See *How to Get Public Assistance*, *supra* note 12, at 8.

83. FOOD EMERGENCY STUDY, *supra* note 30, at 10, 49 (table 28).

In the 1988-1989 EHIWC study, 16% of the food emergency families and 4% of the EAU families gave failure to return a questionnaire as the reason for their case closings. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

DSS similarly found that mail recertification was the cause of 21% of the administrative closings studied. DSS STUDY, *supra* note 19, at 19 (table III).

face appointments for recertification of eligibility, a recipient is periodically sent a questionnaire which she is required to fill out and return to HRA. This questionnaire is designed to insure that the recipient is continuously eligible for PA and may be sent out as often as once per month. Prior to October 1988,⁸⁴ if a recipient failed to return a questionnaire within ten days, a second questionnaire was sent to the recipient with an "intent to close" notice. If that form were not returned within ten days thereafter, the PA case would be closed. Typically, recipients in the EHIWC survey said their cases were closed for failure to return a questionnaire because either they never received the questionnaire or they sent in the form but the income maintenance center had no record of receiving it.⁸⁵

Another 13% of the food emergency families in the EHIWC survey had their cases closed for a reason called "whereabouts unknown."⁸⁶ Prior to November 1988,⁸⁷ a recipient's case would be closed if mail sent to her was returned indicating that she had moved and left no forwarding address. Recipients in the EHIWC survey reported that their cases were closed for this reason, for example, when they had recently moved, when they had difficulty receiving their mail (e.g., a broken mail box), or when they lacked a fixed address.⁸⁸

The foregoing describes the strictly procedural reasons that most commonly are responsible for terminating public assistance benefits in the EHIWC surveys. Two additional reasons, however, also reflect the consequences of verification extremism in the PA system. First, 15% of the food emergency families' cases were closed for failure to comply with a work program require-

84. In October 1988, HRA policy regarding the administrative closing of PA cases for failure to return questionnaires was reformed. *See infra* note 103 and accompanying text.

85. FOOD EMERGENCY STUDY, *supra* note 30, at 49 (table 28).

The states' use of so-called mail recertification greatly increased in the 1970s in response to federal QC policies. It presents a particularly egregious example of the type of verification extremism that QC has fostered. *See THE CHURNING CRISIS, PART ONE, supra* note 15, at 11. For example, a Michigan study found that 93.7% of those cases closed for failure to comply with mail recertification were in fact eligible for welfare at the time of closing. MICHIGAN DEPARTMENT OF SOCIAL SERVICES, *supra* note 43, at IV-10; *see also* THE CHURNING CRISIS, PART TWO, *supra* note 16, at 15-16 (surveys among several states found that from 27 to 84.5% of cases closed for failure to comply with monthly reporting were subsequently reopened).

86. FOOD EMERGENCY STUDY, *supra* note 30, at 10, 49 (table 28).

In the 1988-1989 EHIWC survey, 11% of the food emergency families and 26% of the EAU families reported "whereabouts unknown" as the reason for their case closings. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

DSS found that "whereabouts unknown" was the cause of 17% of the administrative closings studied. DSS STUDY, *supra* note 19, at 19 (table III).

87. HRA policy regarding closings for "whereabouts unknown" was modified in November 1988. *See infra* note 104 and accompanying text.

88. *See* FOOD EMERGENCY STUDY, *supra* note 30, at 49 (table 28). DSS found that over 68% of the cases closed for "whereabouts unknown" reopened within the next few months and that families often were actually residing at the addresses which they had reported to their income maintenance centers. *See* DSS STUDY, *supra* note 19, at 20, 23 (table V).

ment.⁸⁹ While in some circumstances this may reflect a failure to comply with a substantive requirement for eligibility, often it was the result of a failure to comply with a procedural requirement associated with the work program. For example, a recipient may be required to attend a medical examination to prove that she is exempt from the work program, go to job interviews, verify that she is looking for work, or verify that she is in a qualified training program.⁹⁰ Recipients in the EHIWC survey lost their benefits for failure to comply with work program requirements, for example, when they did not receive a notice of an appointment or were unable to reschedule an interview related to the work program requirements.⁹¹

Second, 16% of the food emergency families in the EHIWC survey listed an error on the part of HRA as the only reason their cases were closed.⁹² Again, these closings reflect the consequences of QC. As the PA agency imposes greater verification requirements on recipients, it becomes increasingly likely that the agency will erroneously close cases for failure to comply.

IV.

TAKING THE KAFKA OUT OF PUBLIC ASSISTANCE: PROPOSALS FOR REFORM

A. *Eliminating Quality Control's Pro-Denial Bias*

Not surprisingly, the federal QC policy led to demands for reform. In 1985, Congress directed the National Academy of Sciences [hereinafter NAS] to study QC in AFDC, food stamps, and Medicaid. NAS subsequently issued reports calling for a major overhaul in QC policy.⁹³ In response, legislation

89. FOOD EMERGENCY STUDY, *supra* note 30, at 10, 49 (table 28); *see supra* note 2 for work program requirements.

In the 1988-1989 EHIWC survey, 10% of the food emergency families and 4% of the EAU families reported failure to comply with work program requirements as the reason for their case closings. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

Failure to comply with work program requirements was the cause of 22.1% of the administrative closings in the DSS study. DSS STUDY, *supra* note 19, at 19 (table III).

A recipient who fails to comply with a work program requirement is sanctioned by a loss of benefits lasting anywhere from one to six months. *See id.* at 11; N.Y. COMP. CODES R. & REGS. tit. 18, §§ 385.14(e), 388.11, 392.10(e) (1988).

90. *See* How to Get Public Assistance, *supra* note 12, at 57-58.

91. FOOD EMERGENCY STUDY, *supra* note 30, at 49 (table 28).

92. *Id.* at 10, 48 (table 28).

In the 1988-1989 EHIWC survey, 12% of the food emergency families and 19% of the EAU families reported HRA error as the sole reason for their case closings. THE TYRANNY OF INDIFFERENCE, *supra* note 30, at 24 (table 8).

Moreover, a number of the food emergency families who gave other reasons for their case closings also attributed the closings to HRA error. In all, 43% of the food emergency families in the EHIWC survey said their case closings were caused by HRA error. FOOD EMERGENCY STUDY, *supra* note 30, at 51; *see also* DSS STUDY, *supra* note 19, at 33 (25% of administrative closings were due to HRA error); ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 176 (HRA, which is affirmed in only 11% of the fair hearings held, is "simply not following governing law in a substantial percentage of the cases").

93. *See* NAS AFDC STUDY, *supra* note 71; NAS FOOD STAMP STUDY, *supra* note 67.

was proposed to reform substantially QC policy for the AFDC program,⁹⁴ and modest reforms were made in the food stamp QC policy.⁹⁵

Clearly, the first step toward reforming QC is to impose fiscal sanctions for the erroneous denial or underpayment of benefits and not just for payment errors.⁹⁶ In addition, "payment error" and "denial error" should be redefined, so that an error will be subject to sanction only if it is erroneous based on what the PA agency knew at the time of its action or if the agency failed to follow federally approved verification procedures.⁹⁷ These reforms would go a long way toward making QC policy more even-handed and placing limits on the verification extremism that QC has fostered.⁹⁸

The adverse consequences of QC could also be reduced by modifying the sanctions formula. The present 3% threshold obviously bears little relation to the level of payment accuracy that is realistically possible.⁹⁹ One approach would be to define the tolerance threshold using actual state performance and penalize only those states that fall well below the norm. For example, the proposed AFDC QC reforms would set the threshold at the national error rate in the preceding year minus 1%.¹⁰⁰ This would mean that states would no

94. See S. 2522, 100th Cong., 2d Sess. (1988).

95. See Hunger Prevention Act of 1988, Pub. L. No. 100-435, § 604, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1645, 1675-77 (codified at 7 U.S.C. § 2025(c), (d) (1988)).

96. The NAS studies support this reform. See NAS FOOD STAMP STUDY, *supra* note 67, at 15-16; NAS AFDC STUDY, *supra* note 71, at 15. The proposed legislation reforming QC policy for AFDC would impose fiscal sanctions for underpayments and would ultimately impose sanctions for erroneous denials as well. See S. 2522, 100th Cong., 2d Sess. §§ 1(a) (proposed codification at 42 U.S.C. § 603(i)(2)(A)(i), (ii)), 2(a) (proposed codification at 42 U.S.C. § 603(i)(2)(A)(i), (ii)), 4(c) (proposed codification at 42 U.S.C. § 603(i)(5)(C)). The reformed QC policy for food stamps includes underpayments in the sanctions policy and requires HHS to consider the feasibility of including improper denials as well. See Hunger Prevention Act § 604, 102 Stat. 1676, 1677 (codified at 7 U.S.C. § 2025(c)(2)(A), (C), 2025(d)(1) (1988)).

97. Based on NAS recommendations, the proposed reforms for AFDC QC policy include this proposal. See S. 2522, 100th Cong., 2d Sess. § 1(a) (proposed codification at 42 U.S.C. § 603(i)(2)(C)(i)); see also NAS FOOD STAMP STUDY, *supra* note 67, at 154-55; NAS AFDC STUDY, *supra* note 71, at 221-22. The proposed QC policy reforms for AFDC would also require comparable review procedures for denials and payments, specifically requiring field investigation in denial review. See S. 2522, 100th Cong., 2d Sess. §§ 1(a), 4(a)(3) (proposed codification at 42 U.S.C. § 603(i)(1)(B)).

98. However, these reforms are limited insofar as a denial would still be considered "correct" if based on a failure to comply with a procedural requirement, even if it resulted in a denial of benefits to someone who was "eligible" in the ordinary sense of the word. The proposed reforms for QC policy in the AFDC program would address this problem by requiring states to measure the number of "correct" procedural denials to eligible recipients. See S. 2522, 100th Cong., 2d Sess. § 4(a)(3)(D) (proposed codification at 42 U.S.C. § 603(i)(1)(B)(ii)). This would be a welcome first step toward providing incentives for reducing the number of "correct" procedural denials to eligibles.

The NAS studies also suggest broadening QC beyond payment accuracy to include other measures of program effectiveness. See NAS FOOD STAMP STUDY, *supra* note 67, at 14; NAS AFDC STUDY, *supra* note 71, at 14.

99. See *supra* notes 66-69 and accompanying text.

100. See S. 2522, 100th Cong., 2d Sess. § 1(a) (proposed codification at 42 U.S.C. § 603(i)(2)(B)). An alternative approach, used in the reformed Food Stamp QC policy, sets the

longer be forced to take futile and harmful measures to meet an impossible level of payment accuracy.

B. Reducing Verification Extremism in Public Assistance Administration

Reforming federal QC policy will help reduce the pressure on states that has fostered verification extremism and led to the dramatic increase in churning, but by itself will not eliminate the morass of procedural requirements already in place. To reduce churning in PA it is necessary to roll back the bureaucratic nightmare that has cut off benefits for so many needy recipients.

Some steps have already been taken in this direction. Recognizing that non-compliance with procedural requirements is often a result of a communication failure (e.g., a recipient who does not receive her mail), in February 1988, HRA began including a reminder of imminent face-to-face recertification appointments on the receipts recipients get with their monthly benefits.¹⁰¹ This should reduce the number of closings due to missed appointments because recipients are now alerted to watch their mail for the appointment letter and to contact their caseworker if it does not arrive.¹⁰² In late 1988, HRA took another significant step in reforming PA administration when it announced that it would no longer close cases for failure to return an eligibility questionnaire.¹⁰³ Finally, in November 1988, HRA said it would no longer close a PA case for "whereabouts unknown" simply because mail sent to a recipient is returned unless the recipient also fails to attend a recertification appointment.¹⁰⁴ HRA estimates that these reforms have reduced the number of administrative case closings by over 3,000 per month.¹⁰⁵

More reforms are needed, however, to insure that needy families are not

tolerance level at the lowest ever weighted state average error rate, plus 1%. See Hunger Prevention Act § 604, 102 Stat. 1677 (codified at 7 U.S.C. § 2025(c)(6) (1988)).

The proposed QC reforms for AFDC would also use other devices to minimize the impact of fiscal sanctions. For example, the bill would allow states in certain circumstances to adjust their tolerance level upward or to reduce or waive some of their sanctions. See S. 2522, 100th Cong., 2d Sess. § 1(a) (proposed codification at 42 U.S.C. § 603(i)(2)(B)(i)-(v), 603(i)(2)(D), (E), 603(i)(3)). The proposed reforms would also reward especially good performance, although the value of this change is doubtful since only low payment error rates, and not low denial error rates, would be rewarded. *Id.* § 3 (proposed codification at 42 U.S.C. § 603(i)(7)(A)).

101. See Letter from Catherine van Straalen, HRA, Executive Assistant to Deputy Commissioner for Income Maintenance Programs, to Anna Lou Dehavenon (Mar. 8, 1990) (on file at N.Y.U. REVIEW OF LAW AND SOCIAL CHANGE) [hereinafter van Straalen Letter]. Recipients receive their benefits through a network of cash machines known as the Electronic Payment File Transfer system [hereinafter EPFT]. When they receive their benefits they also get a computerized receipt.

102. In a meeting with EHIWC on February 23, 1989, Bert Blaustein, HRA's Deputy Director of Income Maintenance, reported that "no shows" for face-to-face recertification appointments fell from 25% to 17% since reminders were included with the EPFT receipts.

103. See Blank Letter, *supra* note 18.

104. See van Straalen Letter, *supra* note 101.

105. See Letter from Catherine van Straalen, HRA, Executive Assistant to Deputy Commissioner for Income Maintenance Programs, to Anna Lou Dehavenon (Apr. 10, 1990).

cut off from PA. First, HRA should take further measures to correct the communication failures that often lead to administrative closings. As the EHIWC survey revealed, a number of people on PA have difficulty meeting the demands of the PA system because, for example, they suffer from chronic medical problems or lack a fixed address.¹⁰⁶ HRA should flag the cases for these recipients at their point of entry into the PA system and provide that they receive appointment notices and requests for information by hand as well as through the EPFT system.¹⁰⁷ Similarly, to reduce the adverse impact of miscommunication, the time and date of recipients' recertification and work program appointments should be included with the reminders they now receive with their benefits, and all missed appointments should be automatically rescheduled once. Finally, because it does not relate to eligibility and merely reflects communication problems, "whereabouts unknown" should not be a basis for closing cases unless the recipients fail to claim their benefits.

HRA should also take measures to minimize the interruption in benefits for those recipients whose cases are improperly closed. If a recipient fails to comply with a procedural requirement, rather than closing the case HRA should simply suspend the payment of benefits, after appropriate notice. Then, if the recipient contacted the income maintenance center and complied with the requirement within sixty days of suspension, the recipient's case would be reactivated and she would receive full retroactive benefits for the interim period without having to go through the fair hearing process. In addition, by suspending rather than closing cases for noncompliance the recipient would be able to reactivate her case without supplying fresh documentation of her eligibility.¹⁰⁸

Finally, to minimize the number of agency errors that are responsible for administrative closings and to allow recipients who challenge agency decisions to obtain relief more quickly, DSS should reform the fair hearing process. As noted earlier, HRA often erroneously terminates benefits and, consequently, the fair hearing process is clogged with cases that the agency usually loses.¹⁰⁹ As the New York State Bar Association has observed, the "same errors occur repeatedly" because "local agencies, having reached an erroneous legal con-

106. See *supra* notes 32-34, 36, 80, 85, 88 and accompanying text. The 1988-1989 EHIWC survey found that homeless families and families living in double-ups were much more likely to experience administrative closings than families with their own apartments. *THE TYRANNY OF INDIFFERENCE*, *supra* note 30, at 23 (table 7).

107. Hand delivery of notices could be carried out by Crisis Intervention Services, a branch of HRA separate from the income maintenance centers that finds temporary shelter for homeless families and helps them move into permanent housing.

For all recipients, the use of the EPFT system should be expanded to give notice of appointments related to the work program and to make other requests for information, in addition to giving notice of recertification appointments.

108. In addition, during recertification, or when a closed case is reopened, a recipient should not have to resupply documentation of an unchanging nature (e.g., birth certificates, social security numbers).

109. See *supra* notes 40-42, 92 and accompanying text.

clusion, apply the same erroneous rule to dozens of similar cases.”¹¹⁰ “Instead of properly handling client/benefit issues at the caseworker level, a vast amount of cases are ‘bounced upstairs’ to a fair hearing as a means of resolving the problem.”¹¹¹

A number of reforms are possible. First, DSS should impose financial penalties on local agencies that fail to achieve a minimum rate of affirmance in fair hearings. Second, where a fair hearing determination concludes that a local agency has made an erroneous determination in a particular case, DSS should direct the agency to apply the correct rule in all similar cases. Finally, without delaying the hearing process or denying recipients interim benefits, DSS should require local agencies to hold pre-hearing conferences so that disputes can be resolved without going through the process of a formal hearing. This will force the agency to reconsider its decision and, where appropriate, avoid the lengthy delays attendant to the hearing process. Withdrawal at the pre-hearing conference level should be available only to the agency to insure that recipients are not pressured into withdrawing their fair hearing requests.¹¹²

CONCLUSION

A profound indifference to the plight of the poor may explain their ever-worsening condition over the past several years. Churning, however, is difficult to explain as a product of indifference alone. Rather, it is the direct and logical consequence of a governmental policy that places a high premium on preventing the erroneous issuance of benefits, but often seems to care much less if eligible recipients are denied the assistance they desperately need to survive. Unless our society is one consumed by hostility toward the poor, it must put a stop to this perverse policy and secure for poor people the benefits to which they are entitled.

110. ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 176, 180.

111. *Id.* at 175.

112. These reforms are all taken from the New York State Bar Association's report. See ADMINISTRATIVE ADJUDICATION, *supra* note 13, at 179-80 & 181-82.