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# **Fair Hearing Advocacy in 2016: Due Process, Clients' Rights, and Best Practices**

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**Thursday, September 15, 2016**

**Albany Marriott**

***CLE Course Materials and NotePad<sup>®</sup>***

*Complete course materials distributed in electronic format online in advance of the program.*

**Sponsored by the**

**New York State Bar Association and The Committee on Legal Aid**

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New York State Bar Association**

# Lawyer Assistance Program 800.255.0569



## Q. What is LAP?

- A.** The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

## Q. What services does LAP provide?

- A.** Services are **free** and include:
- Early identification of impairment
  - Intervention and motivation to seek help
  - Assessment, evaluation and development of an appropriate treatment plan
  - Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
  - Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
  - Information and consultation for those (family, firm, and judges) concerned about an attorney
  - Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

## Q. Are LAP services confidential?

- A.** Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

### Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

## Q. How do I access LAP services?

- A.** LAP services are accessed voluntarily by calling 800.255.0569 or connecting to our website [www.nysba.org/lap](http://www.nysba.org/lap)

## Q. What can I expect when I contact LAP?

- A.** You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

## Q. Can I expect resolution of my problem?

- A.** The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

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## Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?  
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

**CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT**

The sooner the better!

**Patricia Spataro, LAP Director**

**1.800.255.0569**

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# New York State Bar Association

## FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the  
program for your MCLE credit.**

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Practices Thursday, September 15, 2016 | New York State Bar Association's  
Committee on Legal Aid, Albany Marriott, Albany, NY**

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

**Speaking Credit:** In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.



# NEW YORK STATE BAR ASSOCIATION

## Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments \_\_\_\_\_

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
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Additional comments (CONTENT)

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Additional comments (ABILITY)

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3. Please rate the program materials and include any additional comments.

☐ Excellent   ☐ Good   ☐ Fair   ☐ Poor

Additional comments

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4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded   ☐ Yes – Shortened   ☐ No – Fine as is

Additional comments

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5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
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Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

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6. How did you learn about this program?

☐ Ad in legal publication   ☐ NYSBA web site   ☐ Brochure or Postcard  
☐ Social Media (Facebook / Google)   ☐ Email   ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered

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NEWYORK STATE BAR ASSOCIATION

One Elk Street, Albany, NY 12207

Phone: 518-463-3200 | Secure Fax: 518.463.5993



## Partnership Conference Fair Hearing Presentation Outline

September 15th 2016, 3:00 PM - 4:15 PM, 1.5 MCLE Transitional Credits - Skills

### I. Pre-Hearing Procedures

- *Goldberg v. Kelly*
- Notices
- Aid to Continue / Time Frame to Request
  - How to Request a Hearing
- Right to a Conference / Conciliation
  - Mandatory Dispute Resolutions (for NYC)

### II. Preparing Your Hearing

- Case records
- Getting Evidence Packets
  - What to look for
- Client Prep: Testimony / Witnesses
- Pre-Hearing advocacy
- Resolution processes (NYC)
- Adjournments

### III. The Hearing

- Role of ALJ
- City Reps
- Burden of Proof
- Format of Hearings
- Presentation of Case
  - Intro of documents
  - Testimony
  - Opening / Closing Statements

### IV. Post Hearing

- Defaults
- Time Frame for Receiving the Decision
- Re-openings
- Corrected Decisions
- Article 78s



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# **Fair Hearing Advocacy in 2016: Due Process, Clients' Rights, and Best Practices**

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This workshop will take advocates through the A-Z of Fair Hearing advocacy, focusing on client's rights. We will cover procedure and best practices for pre-hearing issues, including conciliation and advocacy leading up the hearing; day-of-hearing issues including substantive rights and how to best prepare to challenge the LDSS; and post-hearing issues, including requests to re-open and Article 78 basics.

## **Part 1**



**FAIR HEARING ADVOCACY IN NEW YORK**

**New York State Bar Association Partnership Conference**

**September 15, 2016**

***Presented by:***

**Douglass Ruff, Director of Litigation, Nassau Suffolk Law Services  
Committee, Inc.**

**Sienna Fontaine, Deputy Legal Director, Make the Road New York**

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## **I. DUE PROCESS AND PRE-HEARING RIGHTS**

- A. Goldberg v. Kelly**, 397 U.S. 254, 25 L.Ed.2d 287, 90 S. Ct. 1011 (1970). “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 it; pre-termination evidentiary hearings are indispensable to that end.” **HOLDING:** The Due Process clause of the Fourteenth Amendment to the United States Constitution applies to the termination of public assistance benefits. That is because there is a statutory entitlement to the benefits for those who are eligible and as such a recipient has a property right to those benefits which cannot be taken away without due process of law.

### **B. What rights do appellants have?**

New York State has codified the rights and responsibilities of fair hearing appellants in 18 N.Y.C.R.R. § 358.

1. Be heard at a meaningful time and in a meaningful manner in a Fair Hearing. 18 N.Y.C.R.R. §§ 358-2.12, 3.2, 3.4(j), 5.2.<sup>1</sup>
2. Receive timely and adequate notice detailing the reasons for a proposed termination and an effective opportunity to defend. 18 N.Y.C.R.R. §§ 358-2.23, 2.2, 3.3, 3.6.
3. State his/her position orally. 18 N.Y.C.R.R. Sections 358- 3.4(g), 3.4(h).
4. Confront and cross-examine adverse witnesses. 18 N.Y.C.R.R. §§ 358- 3.4(b),(c),(g),( 3.7).
5. Be represented by counsel. 18 N.Y.C.R.R. §§ 358-3.4(e), 3.9, 5.7(b).
6. Have an impartial decision maker. 18 N.Y.C.R.R. § 358-5.6(a)
7. Have the decision-maker’s conclusion rest solely on the legal rules and evidence adduced at the hearing. 18 N.Y.C.R.R. § 358-6.1(a).
8. Have the decision indicate the reasons for the determination and the evidence relied upon. 18 N.Y.C.R.R. Sections 358-5.6(b)(7), 6.1(a).

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<sup>1</sup> Title 18 of the New York Code of Rules and Regulations, Section 358 provides the procedures and rights of appellants in the fair hearing process.

### **C. Right to a Hearing**

An applicant or recipient has the right to challenge certain determinations of the local department of social services (LDSS) agency or the agency's failure to act within reasonable promptness or within the time periods required by law. The right to request a fair hearing cannot be limited or interfered with in any way. See 18 N.Y.C.R.R. § 358-3.1.

- 1. An applicant or recipient of assistance, benefits or services has a right to a fair hearing under the following circumstances:**
  - a. Denial of an application for public assistance, Medicaid, SNAP or services.
  - b. Given incorrect or incomplete information that resulted in the withdrawal of the application.
  - c. The Agency failed to determine eligibility with reasonable promptness or within the time periods required by law.
  - d. The Agency failed to issue or adjust the cash grant.
  - e. The Agency failed to authorize medical care or services
  - f. Public assistance, Medicaid, SNAP or services have been discontinued, suspended or reduced or increased.
  - g. The method or manner or form of payment of the public assistance grant has been changed, a restricted payment is being made or continued or a Medicaid authorization is being restricted.
  - h. An objection to the payee selected for a restricted payment.
  - i. The inadequacy of the public assistance grant, Medicaid, HEAP, SNAP or services.
  - j. Non-exemption from work program requirements.
  - k. Overpayment of public assistance or SNAP benefits.
  - l. Amount being charged for a service has increased and the increase is not based on a change in the fee or family share schedule.
  - m. Calculation of hours of participation in work experience.
  - n. Denial of exemption from Medicaid utilization threshold.
  - o. A relative or friend of a deceased person has the right to a fair hearing to challenge the denial of reimbursement for paid burial arrangements.
- 2. An applicant or recipient of assistance does not have a right to a fair hearing under the following circumstances:**
  - a. Complaining about the amount of child support that is being passed through.
  - b. Complaining about the amount of any lien taken by the local Agency.

- c. The Agency has demanded restitution, in accordance with the provisions of Social Services Law Sections 104 or 106-b, of public assistance paid, other than by a reduction of the public assistance grant.
- d. A challenge to an automatic grant adjustment to a class of recipients pursuant to State or Federal law, unless it involves an incorrect calculation of the grant.

#### **D. Notices**

1. **Applicants must receive adequate notice of a denial of benefits** (18 N.Y.C.R.R. § 358-2.2).
  - a. **Adequate notice** - The LDSS must state the action the LDSS proposes to take, the effective date of the action, the specific reasons for the action, the laws and regulations that are the basis for the action, the right to request a conference and fair hearing and the procedures for doing so, rights at the fair hearing and the availability of free legal services.
2. **Recipients must receive timely and adequate notice when the LDSS intends to discontinue, reduce, or change the manner of payment of benefits.** (18 N.Y.C.R.R. § 358-2.23).
  - a. **Timely notice** - means that the notice must be mailed at last 10 days before the effective date. This will give the recipient an opportunity to request a fair hearing and have aid continue unchanged pending the results of the hearing. See sample Notice of Intent, attached as Appendix A.
3. **Availability of Policy Materials** - A new paragraph has been added to the Client Notice System (CNS) to advise applicants, recipients and representatives of the availability of policy materials for programs supervised by the New York State Office of Temporary and Disability Assistance to conform to the requirement in 18 N.Y.C.R.R. § 300.5(b) which requires that “upon request, specific policy materials shall be made available for an applicant, recipient or his representative to determine whether a fair hearing should be requested or to prepare for a fair hearing.” See GIS 16 TA/DC001 and OAH Transmittal 16-01, attached as Appendix B.

#### **E. Fair Hearings Challenging Employment Requirements**

1. **Applicants** must be issued **adequate notice** of the denial of public assistance which informs the applicant that (s)he has willfully refused or failed to comply without good cause with employment requirements. See *Dost v. Wing*, 16 A.D.3d 497 (2d Dept. 2005); see also GIS 05 TA/DC032, attached as Appendix C.

2. **Recipients** must be issued **adequate and timely** notice that benefits will be discontinued because (s)he has willfully and without good cause failed to comply with employment requirements. However, prior to sending an adequate and timely notice to the recipient, the LDSS must issue a Conciliation Notice (detailed below).
3. For both applicants and recipients the notice must provide the following:
  - a. The specific instances of refusal or failure to comply without good cause with the employment requirements and the specific section of the regulations that was violated.
  - b. The right to apply for temporary assistance and for Safety Net recipients the right to reapply at least 45 days before the end of the sanction period to ensure restoration of benefits immediately following the applicable sanction period.
  - c. The duration of the sanction - the time in which (s)he will be ineligible for assistance or the reduced amount of assistance the remaining household members will receive.
  - d. The right to a fair hearing.
4. **Conciliation Notice** - (outside of New York City) - Prior to the issuance of a notice of intent to impose an employment sanction against a recipient who is alleged to have willfully and without good cause failed to comply with employment activities, the LDSS must issue a Conciliation Notice. The notice must advise the recipient of the alleged violation and provide an opportunity to explain what (s)he did comply or that the failure was not willful or that there was a good cause reason for the failure. 18 N.Y.C.R.R. § 385.11. See Sample Conciliation Notice, attached as Appendix D.
5. **Re-Engagement Notice** - In New York City - If HRA believes that a recipient has willfully and without good cause failed to comply with work activity requirements, it must issue a Notice of Re-engagement. This notice advises the recipient that (s)he can avoid a sanction by agreeing to comply with work activity requirements even if the failure to comply was willful and without good cause. The recipient may also avoid the sanction by showing that the infraction did not occur or that it was not willful or there was good cause. New York Social Services Law (SSL) § 341-a.
6. **SNAP benefits** – LDSS' are required to offer all SNAP recipients who fail or refuse to comply with an assigned work activity an opportunity to avoid a SNAP sanction by demonstrating compliance. The districts have the option to either instruct the individual to contact the district for information on the action that must be taken to demonstrate compliance and avoid a SNAP employment or training sanction, or to directly refer the individual to a SNAP E&T activity to demonstrate compliance through the conciliation notice. See 14 ADM-06. See also sample SNAP Conciliation Notice, attached as Appendix E.

#### **F. Temporary Housing Assistance (THA) - 15 ADM-06T**

1. **Applicants** - Adequate notice is required for applicants of THA. Timely notice is not required because an individual who is in immediate need and conditionally eligible for THA prior to a completed eligibility determination is considered an applicant. Any THA issued to the household pending a full eligibility determination is considered a pre-investigative grant. A pre-investigation grant is a grant of assistance to meet an immediate need for a specific essential item when an immediate need is determined to exist, but financial eligibility has not been fully established by the completed verification and documentation process. Until the final determination of ongoing eligibility is made and while the application for recurring assistance is still under investigation, individuals in receipt of a pre-investigation grant are considered THA applicants.
2. **Recipients** - Whenever an instance of non-compliance is established, appropriate timely and adequate notice, including conference and fair hearing rights must be provided to the individual or family. This is true even when it is a first instance of non-compliance with the Independent Living Plan and the individual or family member has immediately complied. Because the next instance will be for a durational period, the individual or family has the right to challenge the SSD's decision finding an initial instance of non-compliance. The notice must include the language: "If you do not challenge this decision, and if you are sanctioned again during your shelter stay, you will lose your THA for 30 days or more."
3. Appropriate timely and adequate notice of a THA reduction or discontinuance must be provided. In addition, when the individual or family must pay a portion of their income to the THA provider, the notice must specifically state what amount the individual or family must pay, when they must pay and where they must pay. This notice must be a manual notice until CNS can accommodate this information. For this purpose, it is not sufficient to say in the notice that the individual or family will receive \$XX of temporary assistance and what the SSD will pay toward the individual's or family's shelter cost. The individual or family may not know the actual cost of their THA. Since failure to pay the appropriate amount of income for the cost of the THA will result in ineligibility for THA, it is vital that the individual or family know exactly how much they must pay, when and where to pay and, if necessary, the method of payment (for example, cash, check, money order).

#### **G. How to Request a Fair Hearing**

1. Call:           518-474-8781 or toll free 800-342-3334

2. Fax: 518-473-6735
3. Write: New York State Office of Temporary and Disability Assistance  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, New York 12201
4. Online: <http://www.otda.state.ny.us/oah/forms.asp>
5. In person: In New York City, at 14 Boerum Place, 1<sup>st</sup> floor, Brooklyn, NY

#### **H. What Should be Included in the Hearing Request**

1. Make sure to include every issue you intend to raise at the fair hearing - the ALJ will only address the issues identified in the hearing request.
2. When appropriate, request an interpreter.
3. Note any scheduling conflicts.
4. If an appellant is homebound due to a disability, a **home hearing** can be requested and scheduled. Verification of the appellant's disability and inability to travel will need to be submitted with the hearing request.
5. In emergency situations, an **expedited or priority hearing** can be scheduled. You may need to provide verification of the emergency. Eg. 72-hour notice of eviction.

#### **I. When to Request a Fair Hearing**

1. A fair hearing should be requested immediately, if the recipient or applicant disagrees with the local districts determination.
2. A fair hearing must be requested within 60 days of the date of the notice for most public assistance and Medicaid issues based on a notice and 90 days for SNAP issues based on a notice. See 18 N.Y.C.R.R. § 358-3.5(b)(1); 18 N.Y.C.R.R. § 358-3.5(b)(2); Social Services Law § 22(4)(b).
3. A fair hearing must be requested within 10 days of the date of a notice requiring participation in work activities based on an applicant or recipient's medical condition. 18 N.Y.C.R.R. § 385.2(d)(7).
4. The statute of limitations for requesting a fair hearing is tolled if the predicate notice is defective in any manner, even if the defect is a minor one. See In re Bryant, 161 A.D.2d 1186 (4<sup>th</sup> Dept., 1990); See May 1, 1991 Russell Hanks Memo, attached as Appendix F.
5. If there is no notice of denial of a notice of intent, then the time to request a fair hearing does not begin to run.

## **J. Aid to Continue**

1. A recipient whose benefits will be reduced or discontinued can have their benefits continue unchanged through the date of the fair hearing decision provided that (s)he requests a fair hearing prior to the effective date of the hearing. Usually, this is 10 days from the date of the notice. This is known as **Aid to Continue**.
2. If the deadline to request a fair hearing or the last day to obtain an aid to continue directive falls on a weekend or a holiday, the recipient/applicant has until the next business day to request a timely fair hearing or obtain Aid to Continue.
3. If the recipient receives Aid to Continue, but loses the hearing, then the benefits improperly received pending the hearing are considered an overpayment and may be recovered in the form of a recoupment, in which the recipient's future grants are reduced by an amount until the overpayment is repaid. 18 N.Y.C.R.R. § 358-3.6(d).

## **K. Pre-Hearing Notices**

1. **Acknowledgment of Fair Hearing Request** - The appellant and his/her representative, if listed in the request, should receive a letter a few weeks after the hearing request that confirms the request was received, lists the issues to be addressed and states whether the appellant will receive Aid to Continue. See attached Sample Acknowledgment of Fair Hearing Request, attached at Appendix G.
  - a. The Office of Administrative Hearings recently began including an insert with mailed communications with appellants. The insert offers assistance in English and ten other languages including Spanish, Russian, Chinese, Arabic, Haitian-Creole, Vietnamese, Korean, Italian, Yiddish and French and provides a telephone number Limited English Proficiency (LEP) individuals may use to contact OAH for interpreter services to assist in responding to questions or concerns. That number is 1-800-342-3334. See attached Sample Acknowledgment of Fair Hearing Request Insert, Appendix G. See also OAH Procedures Transmittal 16-05, attached as Appendix H.
  - b. OAH has recently begun including a summary page with the Decision After Fair Hearing which serves to advise the appellant if they won or lost. See Appendix H.
  - c. Advocates should check the issues listed carefully and contact the Office of Administrative Hearings if any issues are missing or listed incorrectly. ALJs will only hear issues that are listed on the fair hearing request.
  - d. The ALJ may allow appellants to amend an issue at the hearing, if the local Agency representative does not object.

2. **Notice of Fair Hearing Scheduling Notice** - At least 10 days before the hearing, the appellant should receive a letter scheduling the fair hearing. The notice will advise the appellant of the time, date and location of the hearing. See Sample Notice of Fair Hearing Scheduling Notice, attached at Appendix I.
3. **Mandatory Dispute Resolution (MDR)** - In New York City, the appellant may also receive a notice asking him/her to go to a Mandatory Dispute Resolution (MDR) appointment at the Center so that the City can try to resolve certain issues before the fair hearing. An appellant's benefits will not be changed or discontinued if the appellant does not attend the MDR, despite some of the mandatory language in the MDR notice. See *Khana v. Turner*, H No. CV-99-5629 (E.D.N.Y.) however, the appellant may attend the MDR and bring all information and documents supporting his/her position to try to resolve the issue before the hearing. Even if HRA indicates at the MDR that the issues will be resolved, the appellant should not withdraw the hearing request until (s)he has it in writing from HRA that all of the issues have been resolved to his/her satisfaction. See Sample Mandatory Dispute Resolution Appointment Notice, attached at Appendix J.
  - a. If HRA informs the appellant that the issues are resolved but fails to resolve them, then the appellant can contact OAH and advise them that (s)he did not attend the hearing based on the representation at the MDR that the matter was favorably resolved. OAH should restore the hearing under the original hearing number.
4. **Conciliation Notice (outside New York City)** - Prior to issuing a Notice of Intent to impose an employment sanction against a recipient who is alleged to have willfully and without good cause failed to comply with employment activity requirements, the LDSS is required to issue a Conciliation Notice. This notice advises the recipient of the alleged violation and provides an opportunity to explain that (s)he did comply or that the alleged violation was not willful or that there was good cause for the failure. 18 N.Y.C.R.R. § 385.11. Appendix D.
5. **Re-engagement Conciliation Notice (New York City only)** - When HRA believes a recipient has willfully and without good cause failed to comply with work activity requirements, it must issue a Notice of Re-engagement. This notice advises recipients that they can avoid a sanction by agreeing to comply with the work activity requirements even if the failure to comply was willful and without good cause. The recipient can also avoid the sanction by showing that the violation did not occur or that it was not willful or there was good cause. See Social Services Law § 341-a.
6. **SNAP benefits** - LDSS are required to offer all SNAP recipients who fail or refuse to comply with an assigned work activity an opportunity to avoid a SNAP sanction by



demonstrating compliance. The districts have the option to either instruct the individual to contact the district for information on the action that must be taken to demonstrate compliance and avoid a SNAP employment or training sanction, or to directly refer the individual to a SNAP E&T activity to demonstrate compliance through the conciliation notice. See 14 ADM-06; See SNAP Conciliation Notice, Appendix E.

## **II. PREPARING FOR YOUR HEARING**

### **A. Case Records**

1. An appellant or their designated advocate may examine their entire case record prior to the fair hearing. 18 N.Y.C.R.R. § 358-3.7(a)(1). To do so, the appellant must speak to their LDSS for access. In NYC, prior to a fair hearing, an appellant or their advocate may only access the case record to review for an issue unrelated to the Fair Hearing. Any document requested for the purposes of preparing for the hearing must be requested through the evidence packet request. See Policy Bulletin #10-64-OPE, attached as Appendix K.

### **B. Evidence Packets**

1. In order to prepare for a fair hearing, an appellant or their advocate has the right to request and receive an evidence packet, which contains all of the evidence the LDSS intends to present in order to support its action/determination. 18 N.Y.C.R.R. § 358-3.7(b)(1). The request to obtain the evidence can be made prior to or at the fair hearing. If requesting prior to the hearing, the request must be made at a reasonable time before the fair hearing in order to receive the documents. While reasonable is not defined in the regulation, in NYC under the prior settlement of Rivera v. Bane, Index No. 45305-92 (Sup. Ct. N.Y County Feb. 28, 2005) (Stipulation of Settlement Order), the LDSS was required to send the evidence packet within 5 business days if the request was made 7 business days prior to the hearing. In addition to the evidence packet, an appellant or their advocate has the right to request any additional specially identified documents from the appellant's file that may help to prepare for the hearing. 18 N.Y.C.R.R. § 3.7(b)(2) 18 N.Y.C.R.R. § 358-3.7(a)(1). See Sample Evidence Packet Request, attached as Appendix L.
2. **What to look for in the packet:**
  - a. The evidence packet should contain proof of all relevant notices that advised the appellant of the reduction, discontinuance, or other change in benefits; it should

also contain copies of any underlying notices of appointments that the LDSS claims the appellant missed; or any other documentation that would substantiate the LDSS' action against the appellant. If any of these key pieces are missing, the LDSS may not be able to meet its burden of proof at the hearing.

**3. Requesting the packet:**

- a. In NYC, the appellant can mail, fax, email or call in a request for the evidence packet to the HRA Division of Fair Hearings, located at 14 Boerum Place, Brooklyn, NY 11201.
  - Fax: (718) 722-5018
  - Phone: (718) 722-5012 (automated message)
  - Email: [cro@hra.nyc.gov](mailto:cro@hra.nyc.gov)
- b. Upstate or outside of NYC, contact the Fair Hearing Unit for the appropriate LDSS.

**4. FHEMS (Fair Hearing Evidence Management System in NYC only)**

- a. FHEMS is an electronic evidence management system, which pulls together the evidence packet for HRA fair hearings, drawing from various HRA/OTDA databases. It should also contain any specially identified documents requested by the advocate.
- b. The finalized evidence packet is then sent to representatives who are registered with HRA as FHEMS users.
- c. For regular advocates employed at Legal Services organization's with secure email servers representing appellants in fair hearings, HRA has created a system for them to register for and receive evidence packets directly to an electronic mailbox.
- d. The evidence packet is viewable by the Agency rep through FHEMS in all hearing rooms at 14 Boerum Place. However, the evidence packet is provided in paper to the ALJ and appellant, UNLESS the hearing is scheduled on an EEPS calendar.

**5. EEPS (Electronic Evidence Presentation System)**

- a. EEPS is a pilot program in which the evidence packet is electronically submitted to the ALJ and shown to the Appellant on separate computer monitors in the hearing room. Because this is still in the pilot stage, paper copies are still being provided as well.

**C. Pre-Hearing Advocacy**

1. Informal Advocacy with the LDSS: Advocates can engage in informal advocacy with the LDSS if it appears there was an error or other mistake which led to the Agency's action. This might involve emailing, calling, or faxing a letter to the LDSS Center

Director or other key personnel.

2. Agency Conference: Each appellant has a right to a conference with a supervisor (before the request for a Fair Hearing but after a Notice of Decision has been sent), to try and resolve the issues. See 18 N.Y.C.R.R. § 358-2.4. It is important to note that requesting a conference does not preserve Aid to Continue or automatically result in a fair hearing; a fair hearing must still be requested separately. After a fair hearing has been requested, an appellant still maintains a right for a conference to address the issues identified for the hearing. See also 18 N.Y.C.R.R. § 358-3.8.
3. Conciliation: Where the LDSS believes that a reduction in benefits is warranted due to an appellant's failure to comply with the work rules, there exists a non-mandatory opportunity for a conference process called conciliation. Conciliation appointments are held with a separate conciliation caseworker at the LDSS. Where the LDSS believes a work-related appointment has been missed, but before a Notice of Intent is sent advising the appellant of an imposing "sanction" reducing benefits, conciliation must be initiated. Conciliation is initiated when a letter is sent to the appellant informing them of an opportunity to meet with the LDSS to explain the reason for the failure to comply with the work requirements. Where a resolution is not reached at conciliation, or if an appellant misses the conciliation appointment, a Notice of Intent to reduce benefits will then be sent. A recipient of Public Assistance as well can affirmatively request a conciliation to address any problems with their participation in the work requirements. See SSL § 341(1)(a).
4. Reapplying
  - a. It is frequently the case that once an appellant's case has been closed, the fastest way to obtain benefits again is to reapply. An appellant can pursue a new application even while a fair hearing is pending. 18 N.Y.C.R.R. § 385.12(a)(2)(iii)(b).
5. Fair Hearing Resolutions, Office of Legal Affairs (NYC only)
  - a. In NYC, the Human Resources Administration (HRA), in an attempt to resolve issues prior to the scheduled fair hearing where it's clear that a resolution should be made, has created direct access to staff at the Office of Legal Affairs to assist in resolving hearing issues. Advocates may send a request to for resolution to [advocateinquiry@hra.nyc.gov](mailto:advocateinquiry@hra.nyc.gov). See Advocate Inquiry Form, attached at Appendix M.
6. Preparation: Testimony, Documentation, Witnesses
  - a. Where the hearing is going forward, the appellant has a right to testify, submit documentation, and call any witnesses that may support their position. See 18 N.Y.C.R.R. § 358-3.4(g). In order to best prepare for the hearing, the appellant or the advocate should:
    - i. Identify the issues to be heard
    - ii. Develop a theory of the case: why the LDSS' decision was incorrect;
    - iii. Review the evidence the LDSS will submit;

- iv. Gather any documentation or other evidence, including potential witnesses, which will support the theory of the case.
  - b. Each appellant has the right to question and cross-examine the LDSS, the Agency representative who will present the case, and any of their witnesses.
  - c. Legal Research: Utilize all state and local laws, regulations, policy directives, etc., to support your legal theory of the case. See Sources of Law Cheat Sheet, attached at Appendix T.
7. Adjournments
- a. An appellant or their advocate has a right to an adjournment “upon a showing of good cause for requesting the delay.” 18 N.Y.C.R.R. § 358-5.3. Some reasons might include illness, lack of child care, work conflict, etc. The request can be made prior to the hearing date, or at the hearing itself.
  - b. To adjourn, the appellant should contact OTDA at 1-877-209-1134; send a request by fax, or make the request in person at the hearing office.
    - i. Advocates can contact the OTDA advocate line at (518) 408-3208 and speak to a Fair Hearing representative to make the request.
    - ii. In recent years, advocates have had an increasingly difficult time obtaining last minute adjournments via the advocate line.
  - c. Adjournments the day of the Fair Hearing: The appellant has up until the day of the hearing to adjourn the fair hearing, or can ask the ALJ at the hearing to adjourn if there is an emergency, the appellant’s representative cannot appear, more time is needed to get documentation to prove the case, etc.
8. Withdrawing the Hearing Request
- a. An appellant has the right to withdraw (cancel) their request for a hearing, or withdraw on one specific issue out of many, either prior to the hearing in writing or at the hearing. 18 N.Y.C.R.R. § 358-5.4.
  - b. The LDSS may also withdraw their pursuit of the action determined in the Notice of Intent. This means they agree not to take the action contemplated, and if so, all lost benefits will be restored.
    - i. Pre-Hearing Disposition (PHD) process (NYC only): HRA is working closely with OTDA whereby HRA will send to OTDA a list of cases where HRA agrees to withdraw the notice in question and OTDA issues a (one page) fully-favorable fair hearing decision; this is done only where the request has to do with a single issue. Where the appellant receives this decision, they will not have a hearing scheduled.
    - ii. In April 2014, as part of the Executive Budget, the State implemented a fair hearing “charge-back,” which penalizes New York City for high rates of fair hearing withdrawals.

### **III. THE FAIR HEARING**

#### **A. The Role of the Administrative Law Judge (ALJ)**

1. The fair hearing is conducted by an Administrative Law Judge (ALJ), also known as the hearing officer, who is employed by the New York State Office of Temporary and Disability Assistance (OTDA) and is required to be impartial. 18 N.Y.C.R.R. § 358-5.6.
2. The ALJ must insure a complete record by:
  - a. presiding over the hearing and regulate the conduct and course of the hearing.
  - b. making an opening statement explaining the nature of the proceeding, the issues to be heard and the manner in which the hearing will be conducted.
  - c. eliciting documents and testimony, including questioning the parties and witnesses, if necessary, particularly where the appellant demonstrates difficulty or inability to question a witness; however, the ALJ will not act as a party's representative.
  - d. requiring that an independent medical assessment be made part of the record when the fair hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision, when necessary.
  - e. adjourning the hearing when in the judgment of the ALJ it would be prejudicial to the due process rights of the parties to go forward with the hearing.
  - f. reviewing and evaluating the evidence, rule on the admissibility of evidence, determine the credibility of witnesses, make findings of fact relevant to the issues of the hearing which will be binding on the Commissioner unless such person has read a complete transcript of the hearing or has listened to the electronic recording of the fair hearing.
  - g. issuing subpoenas and /or requiring the attendance of witnesses and the production of books and records, where necessary to develop a complete evidentiary record.
  - h. preparing an official report containing the substance of what transpired at the fair hearing and including a recommended decision to the Commissioner or Commissioner's designee.

#### **B. Grounds for Removing an ALJ**

1. A party to a hearing may make a request to an ALJ that the ALJ remove himself or herself from presiding at the hearing. The grounds for removing an ALJ include:
  - a. The ALJ has previously dealt with the substance of the matter which is the subject of the hearing except in the capacity as an ALJ.

- b. The ALJ has any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer.
  - c. The ALJ displayed bias or partiality to any party to the hearing.
- 2. The ALJ may independently determine to remove himself or herself from presiding at a hearing or the request for removal can be made by a party to the hearing. The request must be made in good faith and be made at the hearing in writing or orally on the record. The request should describe in detail the grounds for removal.
- 3. The ALJ must determine on the record whether to remove himself or herself. If the ALJ determines not to remove himself or herself, the ALJ must advise the party that the hearing will continue but the request for removal will automatically be reviewed by the general counsel of OTDA or the general counsel's designee. Such a review will include a review of the written documents submitted by the parties and the transcript of the hearing. The general counsel or designee must issue a written determination of whether the ALJ should be removed from presiding at the hearing within 15 business days of the close of the hearing. That determination will be made part of the record. 18 N.Y.C.R.R. § 358-5.6.

**C. Role of the LDSS Representative**

- 1. A representative of the LDSS must appear at the hearing along with the case record and a written summary of the case.
- 2. The LDSS representative must provide complete copies of its documentary evidence to the ALJ at the hearing and also to the appellant or the appellant's representative, if they were not provided prior to the hearing. The documents must be provided without charge.
- 3. The LDSS representative also must:
  - a. have reviewed the case record
  - b. be prepared to present evidence to support the Agency's action including:
    - i. the case number;
    - ii. the applicable category or categories or type of assistance involved;
    - iii. the names, addresses, relationships and ages of the persons involved;
    - iv. the determination regarding which the hearing request was made;
    - v. a brief description of the facts, evidence and reasons supporting the determination, including the specific provisions of law, regulations and approved local policies which support the action;

- vi. the relevant budgets;
  - vii. a copy of the notice involved in the determination.
  - viii. have the authority to make binding decisions at the hearing on behalf of the LDSS, including the authority to withdraw the action or otherwise settle the case.
4. No later than five calendar days before the hearing date, the LDSS may make application to the Office of Administrative Hearings to appear at the hearing on papers only. OAH may approve the request in its discretion where the rights of the appellant can be protected and the personal appearance of the Agency is neither feasible nor necessary.

**D. Burden of Proof** (18 N.Y.C.R.R. § 358-5.9)

1. The LDSS has the initial burden of proof if it is seeking to change the appellant's benefits such as discontinuing, reducing or restricting benefits. As a threshold issue, the LDSS must demonstrate that it provided proper timely and adequate notice of its intended action.
2. The appellant has the burden of proof if (s)he wants to change his or her benefits such as a challenge to a denial of an application or the adequacy of his/her benefits. The appellant will have to demonstrate eligibility.
3. The fair hearing decision must be supported by substantial evidence.
4. Technical rules of evidence need not be applied. However, irrelevant or unduly repetitious evidence and/or cross examination may be excluded at the discretion of the ALJ.
5. Privileges recognized by law will be given effect.

**E. Defective Notices**

1. The adequacy of a notice that the appellant received is a threshold issue at every fair hearing. See May 1, 1991 Russell Hanks Memo (Appendix F) and December 11, 1996 Russell Hanks Memo, attached as Appendix N.
2. See attached list of fair hearing decisions in which Agency determinations were reversed due to defective notices, attached as Appendix O. The Office of Temporary and Disability Assistance has maintained a fair hearing bank of all decisions issued since November 2010 at <http://otda.ny.gov/hearings/search/>. For earlier decisions, try the Online Resource Center's Fair Hearing Decision Archive at <http://onlineresources.wnyc.net>. You will have to register to gain access.

## **F. Format of the Fair Hearing**

1. The fair hearing is recorded through OTDA's telephone system. It is important that the appellant and his/her representative speak clearly and loudly. It also is important to avoid cross talking on the record. Remember that you want a clear record in the event that you need to file an appeal.
2. The Administrative Law Judge makes an introductory statement identifying the issues and explaining the procedure that is to be followed. If the ALJ does not list all the issues to be addressed at the hearing or misstates an issue, now is the time to speak up and clarify the issues. See sample ALJ introductory statement, attached as Appendix P.
3. Typically, the LDSS representative presents the Agency's position first - through the introduction of documents and/or witnesses. Strict rules of evidence are not followed. For example, hearsay is admissible.
4. The appellant and his/her representative are provided an opportunity to examine the LDSS representative and any witnesses that they present. Do not ask questions that you do not know the answer to. It is best to ask leading questions, based on information that is already contained in the case record. Avoid getting into arguments with the LDSS representative. Remember, this is a fact finding hearing and you are there to develop the record and illicit facts. Save your argument for your closing.
5. After questioning the LDSS representative and their witnesses, the appellant presents his/her case through the introduction of documents, witnesses and his/her own testimony. If the appellant is represented, it is important for the representative to remember that the appellant should be testifying - not the representative. It is important to review the appellant's testimony prior to the hearing. Avoid leading questions. If documents are going to be submitted to support the appellant's position, make sure that you have copies for the ALJ and the LDSS representative. Make certain that the document is properly identified and marked into evidence by the ALJ.
6. The LDSS representative and the ALJ will have an opportunity to question the appellant. It is important to discuss with your client the possible questions that they may be asked prior to the hearing.
7. When all the questions are finished and all the evidence submitted, the appellant and his/her representative have an opportunity to make a closing statement (orally or in writing), summarizing why the LDSS determination was incorrect. You should be specific with respect to the relief that you are requesting from the Commissioner.



## **IV. POST FAIR HEARING ISSUES**

### **A. Defaulted Hearings**

1. When an appellant does not show up for the scheduled fair hearing, it will be considered a default, and the action that the LDSS was contemplating will take effect. If the appellant still wants to pursue the hearing, they must contact OTDA / OAH and provide a good cause reason for failing to appear at the hearing. 18 N.Y.C.R.R. § 358-5.5. Aid to Continue will be reinstated if it was previously granted and if the appellant contacts OTDA / OAH within 60 days of the default. All requests to restore a hearing, with good cause, will be granted if the request is made within a year of the default date. Any requests to restore a hearing made after a year of the default date will not be granted.

### **B. Decision After Fair Hearing**

1. After the fair hearing, a decision will usually be made and sent to the appellant, any advocate, and the LDSS between 3-4 weeks later. State regulations require OTDA / OAH to issue and the LDSS to comply with a Decision After Fair Hearing (DAFH) within ninety (90) days of receipt of the request for the hearing. 18 N.Y.C.R.R. §358-6.4(a). In SNAP cases, the State and the City have sixty (60) days to comply with a decision. 18 N.Y.C.R.R. § 358-6.4(b). If the appellant has requested an adjournment, the time frame is extended accordingly.
2. If the appellant does not receive a DAFH within about two or three weeks of the fair hearing, s/he may call OTDA at (518) 474-8781 or toll-free at (877) 209-1134, to file a complaint about the delay.

### **C. Compliance and Non-Compliance with the Decision After Fair Hearing**

1. If the appellant prevails at the hearing, the LDSS must comply with fair hearing decisions in accordance with state regulations. "For all decisions...definitive and final administrative action must be taken promptly." 18 N.Y.C.R.R. §§ 358-4.4, 358-6.4. Although the law mandates that the LDSS implement the remedy outlined in the DAFH "promptly," it is not uncommon for compliance to be delayed.
2. When OTDA issues a DAFH, it sends copies to the appellant, the appellant's representative, and to the LDSS' main office. The main office then sends a copy of the decision to the appellant's welfare center within about two (2) business days. There is no need for the advocate to send an extra copy to the welfare center unless there is some special circumstance like an imminent eviction.<sup>2</sup>

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<sup>2</sup>In an emergency situation such as an imminent eviction, an advocate should fax a copy of the Decision After Fair Hearing to the appellant's LDSS with a cover letter explaining the emergency. Letters may be addressed to the Center Director. In addition, if prompt compliance is critical and not forthcoming, the advocate should fax a compliance complaint to OTDA at 518-473-6735 or call 518-474-5603, and follow up the letter with a call.

3. OTDA's regulations require the LDSS to comply with a Decision After Fair Hearing within ninety (90) days of the appellant's request for a fair hearing assuming that the appellant has not been responsible for any delays. OTDA and the LDSS have interpreted this ninety-day rule to mean that OTDA has sixty (60) days to issue a decision and the LDSS has thirty (30) days from receipt of the decision to comply. Accordingly, in non-emergency cases, the advocate may wish to wait thirty (30) days from the appellant's receipt of the decision before initiating a compliance complaint with OTDA, while advocating for compliance at the local level. Once thirty (30) days have passed, or sooner, if an emergency exists, advocates should contact OTDA<sup>3</sup> and step up advocacy at the welfare center and with the Regional Manager.
  - a. One method of lodging a complaint about the LDSS' non-compliance with the State is to mail back the non-compliance complaint form that OTDA encloses with the copy of the Decision After Fair Hearing to the address indicated on the form.
4. Compliance requests or complaints can also be made online, by phone, or by mail, and, in Albany and NYC, in person. See <http://otda.ny.gov/oah/FHComp.asp>.
5. In NYC, advocates have litigated the issue of HRA's non-compliance with Decisions After Fair Hearings. In Piron v. Wing, NYLJ, June 27, 1997 at 25 (Sup. Ct. NY County, Schlesinger, J.), HRA agreed that it must comply with a Decision After Fair Hearing within ninety (90) days of the request as OTDA's regulations mandate. Advocates may be able to force HRA to comply with a decision by eliciting the help of the Piron counsel.<sup>4</sup>
6. In NYC, HRA has set up the following mailboxes for advocates to use to get fair hearing compliance.
  - a. For CASH related FH Compliance, email: [CAFHCOMPL@hra.nyc.gov](mailto:CAFHCOMPL@hra.nyc.gov)
  - b. For SNAP only FH Decision, send your request for compliance to: [SNAPFHCOMPL@hra.nyc.gov](mailto:SNAPFHCOMPL@hra.nyc.gov)

#### **D. Meaningless Remands**

1. A common problem that advocates face is the so-called "meaningless remand." The term "meaningless remand" refers to a Decision After Fair Hearing that appears to reverse the LDSS' determination, but, instead of issuing a specific order to the LDSS to remedy the problem, the hearing officer or administrative law judge (ALJ) merely remands the matter back to the LDSS for an unspecified action "consistent with this decision." It is common when an ALJ issues a meaningless remand for the LDSS to make a second determination identical to the one that was the subject of the initial fair hearing requiring the appellant to begin an entirely new fair hearing process.

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<sup>3</sup>OTDA's Office of Administrative Hearings "will secure compliance by whatever means is deemed necessary and appropriate under the circumstances of the case." 18 N.Y.C.R.R. § 358-6.4(c).

<sup>4</sup>The National Center for Law and Economic Justice acted as counsel in Piron and may be reached at 212-633-6967.

2. This practice is contrary to OTDA's own regulations (18 N.Y.C.R.R. § 358-6.1(a)) and has also been criticized by The New York State Bar Association.<sup>5</sup> When advocates receive a meaningless remand, they may request that the fair hearing be reopened with the instruction to issue a specific directive to the LDSS.

**E. "Correct When Made"**

1. OTDA instructs ALJs that they have the option of noting that although reversing the LDSS' action, the LDSS' action was "correct when made." See April 3, 2001, Russell Hanks Memo, attached as Appendix Q. An ALJ may add this phrase to a reversal when the Decision After Fair Hearing was based on evidence not available to the LDSS at the time of the underlying determination. This practice should have no effect on the appellant's relief or the LDSS' obligation to comply with the ALJ's order.

**F. Requesting that a Favorable Decision After Fair Hearing Be Amended**

1. In rare situations, an advocate may want OTDA to amend the Applicable Law Section of a DAFH that is otherwise favorable and to apply the relevant law and regulation to the appellant's situation in the Discussion Section of the decision or to correct a material typographical error. In making such a request, an advocate should note the importance of a logical application of the relevant law for purposes of administrative stare decisis.
2. If the requested correction is more serious than for a typographical or spelling error, OTDA's regulations require notice to the LDSS, and the LDSS will have an opportunity to respond to a request of this kind. 18 N.Y.C.R.R. § 358-6.6(a)(3). Pending the outcome of OTDA's review, the original decision is binding and must be complied with by the LDSS. 18 N.Y.C.R.R. § 358-6.6(a)(4).

**G. When the Appellant Loses a Fair Hearing**

1. There are two basic strategies in responding to an unfavorable DAFH that an appellant or advocate believes to be incorrect. First, the appellant or advocate may contact OTDA in writing describing the error and request a reopening or correction of the decision. The second strategy, bringing an Article 78 proceeding, is the formal legal remedy for challenging an incorrect DAFH.
  - a. Before deciding whether a request to reopen or an appeal has merit, if time permits, the attorney or advocate should send for the hearing record and the audio recording of the fair hearing.
2. Requesting the Fair Hearing Record
  - a. The appellant has the right to examine the entire fair hearing record, including the recommendations of the ALJ who presided over the fair

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<sup>5</sup>See The New York State Bar Association, *Report of the Special Committee on Administrative Adjudication* (Oct. 21, 1999) at 57-58.

hearing. 18 N.Y.C.R.R. § 358-5.11. The appellant or the appellant's attorney may obtain a copy of the recording of the hearing, all documentary evidence submitted, and the hearing officer's recommendation, by sending a written request to OTDA. A release from the appellant should accompany the request for the fair hearing record. (Attached at Appendix R).

- b. The request for the recording of the hearing as well as all documents presented at the hearing, and the hearing officer's report and recommendations, can be accessed in the following ways:

- i. Requests for fair hearing records may be sent by electronic mail to: [AdminRecords@otda.ny.gov](mailto:AdminRecords@otda.ny.gov)
- ii. Requests for the record may be faxed to: 518-473-6735
- iii. Requests may be mailed to:

Transcript Unit Supervisor  
Office of Fair Hearings, Transcripts Unit  
New York State Office of Temporary and Disability Assistance  
P.O. Box 1930  
Albany NY 12201

- iv. Records can also be requested in person at two walk-in locations:

14 Boerum Place, 1<sup>st</sup> Floor, Brooklyn, NY  
99 Washington Ave., 12<sup>th</sup> Floor, Albany, NY

### 3. Requesting a Correction or Reopening

- a. Advocates may request a correction or reopening of a decision that contains an error of law or fact. 18 N.Y.C.R.R. § 358-6.6. (OTDA refers to such requests as "reconsideration" requests.)
- b. OTDA's practice is to waive the four-month statute of limitations while considering whether to grant a request to correct or reopen a particular hearing. A typical extension of the time to file an Article 78 proceeding would be thirty days from OTDA's decision to grant or deny the request to reopen. However, when making a request for correction or reopening, do not assume that OTDA will waive the statute of limitations for an Article 78 proceeding. Requests for the waiver should be included in every written request for reopening and a follow-up call made to confirm that OTDA has indeed agreed to an extension of the time to file an appeal. Once an extension is granted, it is advisable to send an additional confirming letter that identifies a new deadline.
- c. OTDA's regulations require notice to the LDSS, and the LDSS will have an opportunity to respond to a request to extend the SOL. See 18 N.Y.C.R.R. § 358-6.6(a)(3). In NYC, it is not uncommon for HRA to object (usually without success) to OTDA's decision to waive the statute of limitations.

- d. All requests for reopening or correction of a Decision after Fair Hearing, should be addressed to:

Mark Lahey  
Principal Administrative Law Judge  
NYS OTDA  
P.O. Box 1930  
Albany, NY 12201-1930

Requests should NOT be sent directly to any NYC Principal ALJ or Supervisor or ALJ. Requests will be logged in in Albany and then appropriately assigned for reconsideration after all up-front procedures have been completed.

- e. Requests may be sent by:

- i. Mail to the address above
- ii. Fax to: (518) 473-6735
- iii. E-mail to: [litigationmail.hearings@otda.ny.gov](mailto:litigationmail.hearings@otda.ny.gov)

#### **H. Article 78 Proceedings**

1. An advocate may appeal an unfavorable Decision After Fair Hearing, or compel compliance with a favorable one, by means of an Article 78 Proceeding. Article 78 is the section of the CPLR that allows court appeals of governmental actions.
2. Key points about the Article 78 proceeding:
  - a. Must exhaust administrative remedies prior to filing
    - i. Where there is an emergency, where it is needed to avoid irreparable injury, or where a hearing would be futile, an Article 78 may be brought without an underlying hearing decision.
  - b. The decision under review must be final
    - i. A determination is “final” where the “initial decision maker” has come to “a definitive position” that caused “an actual, concrete injury.” See Dozier v. New York City, 130 A.D.2d 128 (2d Dep’t 1987).
  - c. The Article 78 proceeding must be filed within four (4) months of the date of the unfavorable decision.
    - i. This may be tolled where an extension has been requested from OTDA.



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## **Fair Hearing Advocacy in 2016: Due Process, Clients' Rights, and Best Practices**

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### **Biographies**

## Douglas Ruff

Douglas Ruff is the Director of Litigation at Nassau/Suffolk Law Services and supervises the public assistance units in both counties. In his thirty plus years there, he has developed a special expertise in the area of public benefits and the rights of the homeless. He has handled over 50 reported Appellate Division decisions and represented hundreds of clients at administrative fair hearings. Thirty years ago, he started the Community Resource Room at Nassau Suffolk Law Services which provided legal support and backup to lay advocates in the community who provided assistance to individuals who had public assistance, Medicaid and food stamp problems. This was the predecessor of the organization's Legal Support Center for Advocates. At the time he also wrote a booklet A Guide to Fair Hearings - a 30 page booklet that explains from beginning to end the administrative process public assistance recipients/applicants can employ to challenge adverse determinations affecting their entitlements.

Doug has also conducted fair hearing trainings for the New York State Bar Association and the Nassau County Bar Association.

Doug has been awarded the New York State Bar Association's Denison Ray Civil Legal Services Award for extraordinary commitment to the poor and disadvantaged, the St. Vincent de Paul Honorary Vincentian Award and the S.U.N.Y. at Oswego Distinguished Alumni Award.

## Sienna Fontaine

Sienna Fontaine is the Deputy Legal Director at Make the Road New York (MRNY), a community based organization that aims to build immigrant and working class power through organizing, education and support services. Prior to joining MRNY, Sienna was the Director of Public Benefits at Legal Services NYC – Bronx (LSNYC-Bronx), where she practiced for 8 years, representing individuals and families in civil litigation and administrative hearings to secure access to and maintain public benefits. Sienna's litigation included Johnson v. Berlin, Index No. 400081/10 (Sup. Ct. N.Y. Co.), which resulted in expanding the time frames within which an appellant can request that a defaulted fair hearing be rescheduled. She began at LSNYC-Bronx as a Skadden Fellow, establishing the Bronx Medical-Legal Advocacy Project; a collaboration between LSNYC-Bronx and Montefiore Hospital to provide direct legal services at two ambulatory family medicine clinics. Sienna graduated from NYU School of Law in 2007, where she participated in the Medical-Legal Advocacy Clinic, the Family Defense Clinic, and was an editor on the *Review of Law and Social Change*. Sienna grew up in the Bay Area, California, and received her B.A. from U.C. Berkeley, where she studied Sociology and Spanish.



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[illegible]

[illegible]

[illegible]

[illegible]

NASSAU CO. SOCIAL SERVICES  
60 CHARLES LINDBERGH BLVD  
SUITE 160  
UNIONDALE, NY 11553

**NOTICE OF DECISION ON YOUR  
PUBLIC ASSISTANCE, SUPPLEMENTAL  
NUTRITION ASSISTANCE AND MEDICAL  
ASSISTANCE.**

SI USTED DESEA RECIBIR NOTIFICACIONES FUTURAS  
EN ESPANOL, POR FAVOR PONGASE EN CONTACTO  
CON SU TRABAJADOR(A).

<b>NOTICE NUMBER:</b> U286NX5664		<b>DATE:</b> June 16, 2015		<b>CASE NUMBER:</b> PA1	
<b>OFFICE</b> 028	<b>UNIT</b> 1231A	<b>WORKER</b> 1044A	<b>UNIT OR WORKER NAME</b> D. SMITH		<b>TELEPHONE NO.</b> 516-227-7680
<b>AGENCY TELEPHONE NUMBERS</b>			<b>CASE NAME / AND ADDRESS</b>		
<b>GENERAL TELEPHONE NO. FOR QUESTIONS OR HELP</b> <u>516-227-8519</u>			028/1231A/1044A		
<b>OR Agency Conference</b> <u>516-227-7607</u>					
<b>Fair Hearing information and assistance</b> <u>516-227-7998</u>					
<b>Record Access</b> <u>516-227-7607</u>					
<b>Child/Teen Health Plan</b> <u>516-227-8000</u>					
<p>IF YOU DO NOT AGREE WITH ANY DECISION EXPLAINED IN THIS NOTICE, YOU HAVE A RIGHT TO ASK US FOR A CONFERENCE AND/OR ASK THE STATE FOR A FAIR HEARING. READ THE CONFERENCE AND/OR FAIR HEARING SECTION TO SEE HOW TO ASK FOR A CONFERENCE AND/OR A FAIR HEARING.</p>					
<p><b><u>PUBLIC ASSISTANCE</u></b></p> <p>This is to tell you that your public assistance will be <b>DISCONTINUED</b>. You will no longer get public assistance beginning June 26, 2015.</p> <p>This is because we have determined that you willfully did not complete the following employment requirement(s):</p> <p>You did not COMPLY WITH VOC-ED AT PARTNERS IN CARE (TERMINATED FROM SCHOOL) on or by April 17, 2015. We told you about this requirement ahead of time.</p> <p>We have decided that you willfully and without a good reason failed or refused to comply with the requirement to COMPLY WITH VOC-ED AT PARTNERS IN CARE (TERMINATED FROM SCHOOL)</p> <p>You answered our conciliation letter and gave us a reason for not completing the employment requirement(s) noted above. We have decided that you did not have a good reason for not complying with the employment requirement(s) and that your actions were willful.</p> <p>The length of the sanction period provided below depends on whether or not your public assistance household includes a dependent child and the number of times you have been sanctioned in the past for failure to comply with employment requirements. We have determined that your public assistance household does not include a dependent child. We have also determined that this is the first time you have been sanctioned for noncompliance with employment requirements.</p> <p>Your public assistance sanction will continue for 90 days. It will also continue until you demonstrate that you are willing to comply with employment requirements. You may apply for a cash grant at any time, but you cannot get a cash grant before September 24, 2015. When you apply for the cash grant, you must demonstrate that you are willing to comply with employment requirements. You should contact the worker noted above when you are willing to comply with employment requirements.</p>					

The worker will explain what you need to do to comply with employment requirements. To prevent a delay in getting cash assistance again you should reapply by August 11, 2015.

If you disagree with any determination as described in this letter, you can request a review at a fair hearing. For additional information on how to ask for a fair hearing, please see the section of the letter titled "Conference and Fair Hearing Section".

This decision is based on Regulation(s) 18 NYCRR 385.12.

#### SUPPLEMENTAL NUTRITION ASSISTANCE

We have or will send you a separate notice about your SNAP benefits.

This decision is based on Regulation 18 NYCRR 387.20(a).

#### MEDICAL ASSISTANCE

If you are receiving Medical Assistance, we will continue Medical Assistance coverage unchanged for:

Name

Client I.D. #

These persons will continue to be entitled to full services under the Medical Assistance Program.

This decision is based on Regulation 18 NYCRR 360-2.6.

#### SERVICES AND OTHER INFORMATION

##### Your NYS Common Benefit Identification Card:

You should have a New York State Common Benefit Identification card. Even though you are no longer eligible for benefits, keep your card in a safe place. The same card will be used again if you become eligible for benefits in the future.

Social Services may provide information and education about family planning for up to 90 days from the effective date stated in this notice.

A loss of Public Assistance and Medical Assistance benefits will require a redetermination of your eligibility for social services within 30 days of such a decision. This does not necessarily mean that these services will be terminated. It means that your continuing eligibility for these services will have to be redetermined. For further information, please contact your services worker or call the general telephone number listed on page 1 of this notice.

HEAP: Although you may no longer be eligible for Public Assistance, SNAP benefits, or Medical Assistance, you still may be eligible for assistance with your heating costs by applying for the Home Energy Assistance Program (HEAP). Information on HEAP can be obtained by calling the general telephone number as listed on page 1 of this notice.

**CONFERENCE AND FAIR HEARING SECTION****DO YOU THINK WE ARE WRONG?**

If you think our decision was wrong, you can request a review of our decision. If we made a mistake, we will correct it. You can do both of the following:

1. Ask for a meeting (conference) with one of our supervisors; and
2. Ask for a State fair hearing with a State hearing officer.

**CONFERENCE (Informal meeting with us)**

If you think our decision was wrong or if you do not understand our decision, or need additional information about the reason for our decision, please call us to arrange a meeting. To do this, call the conference telephone number listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice. Sometimes this is the fastest way to solve any problems you may have. We encourage you to do this even when you have asked for a fair hearing.

If you only ask for a meeting with us, we will not keep your benefits the same while you appeal. Your benefits will stay the same only if you ask for a State fair hearing. (See Keeping your Benefits the Same)

**STATE FAIR HEARING****Deadline for Requesting a Fair Hearing**

If you want the State to review our decision about your public assistance, you must ask for a fair hearing by **August 15, 2015**. This is the deadline even if you asked for a meeting (conference) with us.

If you want the State to review our decision about your medical assistance, you must ask for a fair hearing by **August 15, 2015**. This is the deadline even if you asked for a meeting (conference) with us.

**Keeping your Benefits the Same**

We will not change your public assistance if you ask for a fair hearing about the action we are taking on your public assistance by **June 26, 2015**.

If you lose the hearing you will have to pay back any public assistance which you got, but should not have gotten, while you were waiting for the decision.

If you do not want your benefits to stay the same until the decision is issued, you must tell the State when you write or call for a fair hearing.

**How to Request a Fair Hearing**

You can ask for a fair hearing in writing, by fax or by telephone or electronically.

**WRITE:** Complete the "tear-off" Request for a Fair Hearing at the bottom of this page and send it to the address on the bottom of the next page.

**OR CALL:** (800) 342-3334.

When you call, please tell the worker the number of this notice which is **U286NX5664**.

**OR FAX:** Send a copy of this notice to fax number (518) 473-8735

**OR ONLINE:** Complete the online request form at:  
<http://www.otda.ny.gov/oah/forms.asp>

(Read the next page for more of your Rights)

**REQUEST FOR A FAIR HEARING**

I want a fair hearing. I do not agree with the agency's action. (You may explain why you disagree below, but you do not have to include a written explanation.)

Name : \_\_\_\_\_  
Address : \_\_\_\_\_  
Box, #11575

District No: 28  
Notice No. : U286NX5664  
Case Number: P  
Telephone : \_\_\_\_\_

~~/ / I do not want to "keep my benefits the same" until the Fair Hearing decision is issued.~~  
**ONLY USE THIS TEAR-OFF TO REQUEST A HEARING ABOUT THIS NOTICE.**



If you cannot reach the State electronically, by phone or fax, please write to request a fair hearing before the deadline for requesting a fair hearing.

**What to Expect at a Fair Hearing**

The State will send you a notice which tells you when and where the fair hearing will be held.

At the hearing, you will have a chance to explain why you think our decision is wrong. You can bring a lawyer, a relative or a friend or someone else to help you do this. If you cannot come yourself, you can send someone to represent you. If you are sending someone who is not a lawyer to the hearing instead of you, you must give this person a letter to show the hearing officer that you want this person to represent you at the hearing.

At the hearing, you and your lawyer or other representative will have a chance to explain why we are wrong and a chance to give the hearing officer written papers which explain why we are wrong.

To help you explain at the hearing why you think our decision is wrong, you should bring any witnesses who can help you. You should also bring any papers you have such as: Pay stubs, Leases, Receipts, Bills, Doctor's Statements.

At the hearing, you and your lawyer or other representative can ask questions of witnesses which we bring or which you bring to help your case.

**LEGAL ASSISTANCE**

If you think you need a lawyer to help you with this problem, you may be able to obtain a lawyer at no cost to you by contacting:

NASSAU/SUFFOLK LAW SERVICES, ONE HELEN KELLER WAY, 5TH FL., HEMPSTEAD, NY 11550  
Telephone: (516) 282-8100

For the names of other lawyers check your Yellow Pages under "LAWYERS".

**ACCESS TO YOUR FILE AND COPIES OF DOCUMENTS**

To help you get ready for the hearing, you have a right to look at your case file. If you call or write to us, we will provide you with free copies of the documents from your file which we will give to the hearing officer at the fair hearing. Also, if you call or write to us, we will provide you with free copies of other documents from your file which you think you may need to prepare for your fair hearing. To ask for documents or to find out how to look at your file, call us at the Record Access telephone number listed at the top of page 1 of this notice or write us at the address printed at the top of page 1 of this notice.

If you want copies of documents from your case file, you should ask for them ahead of time. They will be provided to you within a reasonable time before the date of the hearing. Documents will be mailed to you only if you specifically ask that they be mailed.

**INFORMATION**

If you want more information about your case, how to ask for a fair hearing, how to see your file, or how to get additional copies of documents, call us at the telephone numbers listed at the top of page 1 of this notice or write to us at the address printed at the top of page 1 of this notice.

Send this "Request for a Fair Hearing" to:

The Office of Administrative Hearings  
New York State Office of Temporary and Disability Assistance  
P.O. Box 1930  
Albany, New York 12201





**DATE:** January 5, 2016

**TO:** Subscribers

**SUGGESTED DISTRIBUTION:** Commissioners, TA Directors, SNAP Directors, MA Directors, Staff Development Coordinators, Financial Directors, Adult Services Directors, Employment Coordinators

**FROM:** Phyllis D. Morris, Deputy Commissioner  
Center for Employment and Economic Supports

**SUBJECT:** New Fair Hearing Notice Language – Availability of Policy Materials

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Supplemental Nutrition Assistance Program Bureau:  
(518) 473-1469

### **Background**

This is to advise you regarding the addition of a new paragraph to Client Notice System (CNS) issued notices concerning the availability of policy materials for programs supervised by the New York State Office of Temporary and Disability Assistance (OTDA). The new paragraph, provided immediately below, is entitled "AVAILABILITY OF POLICY MATERIALS" and is located in the "CONFERENCE AND FAIR HEARING SECTION" of notices including fair hearing rights directly above the "CONFERENCE" paragraph.

### **"AVAILABILITY OF POLICY MATERIALS"**

*The Office of Temporary and Disability Assistance (OTDA) policy issuances and manuals are posted on the OTDA website at [otda.ny.gov/legal](http://otda.ny.gov/legal). These issuances and manuals are available to you or your representative to determine whether a fair hearing should be requested or to prepare for a fair hearing. In addition, upon request to your local social services district, specific OTDA policy issuances and manuals will also be available to assist you or your representative."*

This paragraph has been added to remind social services districts of the current requirement set forth in Department regulations at 18 NYCRR 300.5(b) to make available program manuals and public issuances. Specifically, 18 NYCRR 300.5 (b) provides as follows:

*"(b) Upon, request, specific policy materials shall be made available for an applicant, recipient or his representative to determine whether a fair hearing should be requested or to prepare for a fair hearing."*



### **Program Implications**

As noted above, the new CNS language is based upon current state regulations and advises that OTDA policy issuances and manuals are posted on the OTDA website. It further provides that, "upon request to your local social services district, specific OTDA policy issuances and manuals will also be available..." While OTDA recognizes that all OTDA policy issuances and manuals are available on our website, districts are reminded that they must also make specific policy issuances and manuals available if requested by an applicant, recipient or their representative in order to determine whether a fair hearing should be requested or to prepare for a fair hearing. Districts may choose to satisfy this requirement in one or more of the following ways:

- 1) A district may advise the requestor that the fastest way to access the material is to log onto the OTDA website. However, if the requestor states that they want the district to make the materials available, the district may mail the issuance or manual using the United States Post Office or e-mail the material if requested to do so by the requestor;  
OR
- 2) A district may provide a time and place whereby the requestor may view the issuance or manual. This viewing may be by paper copy or at an electronic terminal. If electronic, the district should provide any necessary assistance needed to access the material.

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>		<b>Transmittal: 16-01</b>
<b>Distribution:</b>		<b>Date: March 1, 2016</b> <b>Page: 1 of 2</b>
Albany OAH Staff <input checked="" type="checkbox"/>	Rest of State Hearing Officers <input checked="" type="checkbox"/>	<b>Subject:</b> <b>Access to Policy Documents to Prepare for a Fair Hearing</b>  <b>18 NYCRR 300.5(b) and GIS 16 TA/DC001</b>
	Supervising Hearing Officers <input checked="" type="checkbox"/>	
NYC OAH Staff <input checked="" type="checkbox"/>	NYC Hearing Officers <input checked="" type="checkbox"/>	
	Supervising Hearing Officers <input checked="" type="checkbox"/>	
Rest of State Social Service Districts <input checked="" type="checkbox"/>		
NYC Agencies <input checked="" type="checkbox"/>		

18 NYCRR 300.5(b) provides that "upon request, specific policy materials shall be made available for an applicant, recipient or his representative to determine whether a fair hearing should be requested or to prepare for a fair hearing." Examples of policy materials include: Administrative Directives (ADM's), Informational Letters (INF's), Local Commissioners Memoranda (LCM's), General Information System Messages (GIS) and various source books and provider manuals. 18 NYCRR 300.5(b) is applicable to policy materials issued by the New York State Office of Temporary and Disability Assistance (OTDA), the New York State Department of Health, and the New York State Office of Children and Family Services. All OTDA policy documents and manuals are available on the OTDA website. It should also be noted that social services districts sometimes issue their own documents to implement State policy. Such policy materials must be made available, upon specific request, by the social service district to an applicant, recipient or their representative to determine whether a fair hearing should be requested or to prepare for a fair hearing.

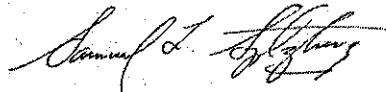
The regulation addressing access to specific policy materials should not be confused with the regulations governing an Appellant's right to examine their case record [18 NYCRR 358-3.7] and the Appellant's right to request copies of the documents the social services district will present at the hearing [18 NYCRR 358-4.2(c)]. This memo only discusses access to specific policy documents.

In GIS 16 TA/DC001, OTDA reminded social services districts about the current requirements in this regulation and added a new paragraph to CNS notices advising Appellants and their representatives about the availability of specific policy documents to prepare for a hearing upon request. A social services district may satisfy this requirement in one of several ways:

- A district may advise the requestor that the fastest way to access the material is to go to the OTDA website. However, if the requestor indicates that they want the district to make the materials available the district may mail the policy document or the manual either through US mail or e-mail it if requested by the requestor;
- A district may provide a time and place where the requestor may view the policy document or manual. The viewing may be by paper copy or at a computer terminal.

When this issue is raised at the hearing, the Hearing Officer has a responsibility to assess whether the social services district has complied with 18 NYCRR 300.5(b) and that requested

specific policy documents have been made available to the Appellant or their representative and take appropriate action if this has not occurred. There are no special requirements an Appellant, or representative, has to follow to make a request. A statement by the Appellant, or their representative, which is as specific as possible, requesting access to policy documents to prepare for a fair hearing is sufficient. If the district does not comply with the request, or the request is made at the time of the hearing, the Hearing Officer may do several things. The Hearing Officer may grant an adjournment so that the district may provide the Appellant, or their representative, with access to specific policy documents as outlined in GIS 16 TA/DC001. The Hearing Officer could also allow a brief recess for the Appellant to review the specific policy documents. When requests for specific policy documents are made by an Appellant's representative, the Hearing Officer should enquire whether the representative has available Internet access and, if so, advise the representative that all OTDA policy documents are available on the OTDA website. A brief adjournment may be granted to allow the representative an opportunity to review policy documents. As the circumstances of each case can vary, the Hearing Officer is to review this issue on a case-by-case basis.



Samuel L. Spitzberg, Director,  
Office of Administrative Hearings

**GENERAL INFORMATION SYSTEM**  
**DIVISION: Employment and Transitional Supports**

September 14, 2005

Page: 1

**TO:** Commissioners, Employment Coordinators, TA Directors, FS Directors, WMS  
Coordinators, BICS Coordinators

**FROM:** Russell Sykes, Deputy Commissioner, Division of Employment & Transitional  
Supports

**SUBJECT:** Non-Compliance With Employment Requirements

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** John James at (518) 473-3123 or by e-mail at  
[JohnH.James@otda.state.ny.us](mailto:JohnH.James@otda.state.ny.us)

The purpose of this notice is to advise districts that as a result of decisions issued by the New York State Appellate Divisions (Earl v. Turner, Dost v. Wing), districts are required to determine that a recipient of temporary assistance willfully and without good cause failed or refused to comply with employment requirements before imposing an employment pro-rata sanction.

Required Action

Districts must revise their conciliation and sanction procedures so that, in most cases, a sanction is only imposed for noncompliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include, but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements. Such a determination must be made on a case-by-case basis, and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instance of non-compliance.

As an example of the case-by-case analysis required, a recipient who appeared at the worksite after the scheduled time because of a transportation delay would generally not be considered to have willfully failed to comply in the first instance of tardiness, but should be advised of the reasonable steps that should be taken to get to the assignment on time. The recipient might be counseled to, for example, take an earlier bus or train or arrange for an alternate means of transportation to arrive at the worksite at the appointed time. Subsequent instances of tardiness or non-compliance would need to be evaluated to determine whether or not the recipient's non-compliance rose to the level of being willful and without good cause. On the other hand, a recipient who fails to report to an employment assignment and does not respond to the conciliation notice within the required time frame or otherwise provide documentation to establish good cause may be considered to have willfully and without good cause failed to comply with the assignment in the first instance.

The information used to make the determination of whether a recipient's failure to comply is willful and without good cause must be documented in the recipient's record. The willful standard does not apply for failure to comply with applicant assessment and applicant job search requirements which results in case denial. In addition, the willful standard does not apply in instances of non-compliance with food stamp

**GENERAL INFORMATION SYSTEM**  
**DIVISION: Employment and Transitional Supports**

**September 14, 2005**

Page: 2

work requirements, but districts still need to consider whether the food stamp work registrant had good cause for not complying with the food stamp work assignment.

The Office is revising the applicable employment-related notices to include the willful standard (the Conciliation Notice (LDSS-4230), the Notice of Intent to Change Public Assistance Grant and/or Food Stamp Benefits for Non-Compliance with Employment Related Requirements (Timely and Adequate and Notice of Effect on Medicaid Benefits (LDSS-4004), and the language on the Client Notices System and the Welfare-To-Work Caseload Management System). The WTWCMS generated conciliation notice has been revised and migrated for district use as of September 12, 2005.

Districts that are using local equivalent forms in lieu of the State forms noted above will need to revise the local form to be consistent with the language on the respective State form and submit the revised form to your WTW Technical Advisor for approval.

A separate policy directive will be released to provide additional guidance and further case examples on this matter.

MC

LDSS-4230 (Rev. 05/14)

Other

## CONCILIATION NOTIFICATION

NOTICE DATE: 5/8/2015		NAME AND ADDRESS OF AGENCY/CENTER OR DISTRICT OFFICE Nassau County Department of Social Services 60 Charles Lindbergh Blvd. Suite 160 Uniondale, NY 11553-3686  Commissioner John E. Imhof Ph.D.	
CASE NUMBER P	CIN NUMBER AC		
NAME OF NONCOMPLIANT INDIVIDUAL AND ADDRESS  CASS... ... ...			
OFFICE : UNIT :	WEP Active and Exempt NCDSS EAC Mediators	WORKER NAME	TELEPHONE NO. (516) 489-7733 Ext: 161

**NOTICE:** This notice may affect your household's public assistance and Supplemental Nutrition Assistance Program (SNAP, new name for the Food Stamp program) benefits. We believe you have willfully and without good cause refused or failed to comply with a work requirement. As a result, your public assistance and/or SNAP benefits for your household may be reduced or stopped.

We believe you have willfully and without good cause failed to comply with VOC-ED at Partners In Care (terminated from school) on Friday, April 17, 2015.

### How This Affects Your Public Assistance Benefits

To avoid having your household's public assistance benefits reduced or stopped, you must contact this agency at (516) 489-7733 Ext. 161 to speak to EAC Mediators by 5/18/2015 and provide a good cause reason (see examples provided below) to explain why you did not comply with your work activity assignment or that you are unable to participate due to a work exemption.

### How This Affects Your SNAP Benefits

To avoid a loss or reduction in your household's SNAP benefits, by 5/18/2015 you must either:

- Contact EAC Mediators at (516) 489-7733 Ext: 161 and provide a good cause reason (see examples below) to explain why you did not comply with your work activity assignment or document that you are exempt from SNAP work requirements. Even if you do not have a good reason for not complying with your work activity assignment or you do not document an exemption from SNAP work requirements, you may avoid a SNAP sanction by demonstrating compliance with an assigned SNAP work activity. Please see information below.

OR

- Demonstrate compliance with the assigned SNAP work requirement(s) as assigned by this agency as explained below:

You have until Monday, May 18, 2015 to contact this agency at (516) 489-7733 Ext. 161 to speak to EAC Mediators. The worker will explain what you need to do to demonstrate compliance with an assigned SNAP work activity.

**Note:** If you do nothing, your household's SNAP benefits will be reduced or stopped. If you contact the worker, but do not demonstrate compliance as assigned by this agency and do not otherwise document good cause for noncompliance or that you are exempt from SNAP work activities, your household's SNAP benefits will be reduced or stopped. **This is your only chance to comply with SNAP work activities to avoid losing benefits.** If you are claiming good cause or an exemption, you must contact the worker identified on page one of this notice by the date noted above.

### Additional Information



**Good Cause:** If you contact this agency by the date noted above, you will be given a chance to explain the reason(s) why you did not cooperate to determine if you had good cause. Good cause is an event or circumstance beyond your control that prevents you from complying with work requirements assigned by this agency. It is your responsibility to give us reason(s) why you did not cooperate and show us any proof which helps explain what happened. You should present any proof available to help show why you did not report or comply with work requirements by the date above. Some examples of good reasons for not complying with a work requirement include, but are not limited to:

- You or your child were sick on the day of the work activity;
- You had a household emergency;
- You did not have childcare for your child who is under the age of 13; or,
- You were unable to participate due to a domestic violence situation.

You may be required to provide proof to support any reason(s) you give for not reporting or complying with work requirements. Examples of suitable proof may include a letter from your doctor, letter from your child's school, letter from the court, or other similar documents explaining why you did not report or comply with work requirements on the date(s) assigned. The proof that you provide will be used to decide whether or not you should be excused for the day(s) you did not report or comply with work requirements.

**Exemptions:** If you contact this agency by the date noted above and claim you are exempt from work requirements, you must provide proof so we can decide whether or not you should be exempt from work requirements. Exemptions from participation in SNAP work activities may include, but are not limited to: being under 16 or 60 years of age or older or being physically or mentally unfit for employment. Proof of exemption could include a statement from your doctor or medical professional providing care or other papers that explain your situation. You may also be referred to our medical provider to participate in an evaluation to decide if you should be exempt from work requirements because of a physical or mental health condition.

We will review your explanation, along with any other information, and notify you of our decision.

**If you do nothing, that is, you do not contact this agency by the date mentioned above,** you will receive a Notice of Intent telling you that you are not eligible for public assistance and/or SNAP benefits, or that your public assistance and/or SNAP benefits will be reduced.

040 MELROSE JOB CENTER  
260 EAST 161ST ST 5TH FLR

BRONX, NY 10451-



Date: 08/07/2013

Case Number: [REDACTED]

Case Name: [REDACTED]

Expiration Date: 08/17/2013

Telephone: (212) 835-8300

Job Center: 040

Action Code: 430K

\*020102000000301\*

BRONX, NY 10454-2146



### Conciliation Notification

**Note:** As of August 29, 2012, any reference to the Food Stamp Program in this notice shall mean the Supplemental Nutrition Assistance Program (SNAP), and any reference to Food Stamps shall mean SNAP benefits.

This notice may affect your household's temporary assistance and SNAP benefits. We believe you have willfully and without good cause refused or failed to comply with a work requirement. You must contact the Job Center by the date mentioned below to explain why you did not comply with work requirements. Otherwise, the temporary assistance and/or SNAP benefits for your household may be reduced or discontinued.

We would like to discuss any problems you may have with work activity requirements and the reason(s) why on 07/31/2013 you:

failed to report to or cooperate with the Work Experience Program (WEP) Intake Section

If we cannot reach an agreement about your participation in a work activity, we will make a determination as to whether or not you did willfully and without good cause fail or refuse to report or cooperate.

The following appointment has been scheduled for you to attend an interview with a Conciliation Worker at the address below:

Appointment Date: 08/16/2013 Time: 1:00 PM Telephone: (212) 835-8300  
Location: FIA INTAKE  
Address: 109 East 16th St. 4th Flr  
City: New York State: NY Zip: 10003

If you cannot keep this appointment, you may come in any day prior to the expiration date above and ask to speak to a Conciliation Worker.

When you come in, you will have the opportunity to explain to a Conciliation Worker why you did not report or cooperate. The Conciliation Worker acts as a mediator and will try to resolve any problems. It is your responsibility to give the reason(s) why you did not report or cooperate and to provide any evidence that will help document what occurred. The Conciliation Worker may require you to provide documentation to support any reason(s) you give for not reporting or complying with work requirements. Examples of suitable documents may be a letter from your doctor, letter from your child's school, letter from the court, or other similar document explaining why you did not report or cooperate as assigned. You should bring in the document(s) to the meeting with the Conciliation Worker. The Conciliation Worker will use this documentation to determine whether or not you had good cause. Good cause is an event or circumstance beyond your control that prevents you from complying with the work requirements. If it is found you had good cause, you will be excused for the day(s) you did not report to your appointment or your assigned work activity. We will notify you of our decision.

(Continue on Page 2)

Some examples of good reasons for not complying with a work requirement may include, but are not limited to:

- You or your child was sick on the day of the work activity;
- You had a household emergency;
- You did not have child care for your child who is under the age of 13; or
- You were unable to participate due to a domestic violence situation.

If you have an ongoing physical or mental health limitation that prevents you from participating in a work activity, you will be referred to our medical provider to determine if you should be exempt from the work requirements.

Additionally, if you have an Equal Employment Opportunity (EEO) complaint, the complaint should be brought to the EEO Officer at your location first. If you do not get satisfactory results from this process or you do not want to go to the EEO Officer for some reason, the complaint can be addressed as part of the conciliation/grievance process.

If you do not report to the interview or come in to the Center by the expiration date noted on page 1, you will receive a Notice of Intent advising you that you are not eligible for temporary assistance and/or SNAP, or that your temporary assistance benefits and/or SNAP benefits will be reduced. The notice will give you a 10-day period during which you may request a conference. A conference provides you with the opportunity to resolve the issue of noncompliance. After you receive the Notice of Intent, you are entitled to request a Fair Hearing if you do not agree with our decision. You are entitled to a Fair Hearing even if you do not request a conference.

**Please note: Failure to comply with temporary assistance work requirements has no effect on your Medicaid eligibility. There are no work requirements for Medicaid.**

M E M O R A N D U M  
DS9-524ELTO: All Hearing Officers  
and Professional Staff

DATE: May 1, 1991

FROM: Russell J. Hanks  
RJH

SUBJECT: Policy Clarifications

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The purpose of this memorandum is to set forth Office of Administrative Hearings' (OAH) policy on social services districts' failures to comply with Part 358 of the Department's regulations, and the resulting difficulties hearing officers have in making specific directives. Inadequate notices, the failure to provide documents to appellants before hearings, and unavailable case files at hearings violate appellants' due process rights and undermine the hearing process. Frequently, hearing officers are unable to ascertain adequate information to make decisions that provide specific relief to appellants.

The Department's supervisory responsibilities over social services districts encompass ensuring compliance with Department regulations, including regulations pertaining to fair hearings. The OAH is responsible for reviewing the propriety of social services district actions and ensuring appellants are afforded due process protections. Where social services districts fail to meet regulatory requirements, the OAH must assure that such failures do not interfere with appellants' due process rights.

The clarification of OAH responsibilities set forth in this memorandum is intended to ensure Statewide consistency and, in conjunction with other efforts, to result in an improvement in social services district compliance with Part 358. In a series of meetings, the General Counsel and OAH management discussed the issues described above and developed ways to reduce their detrimental impact on hearings and deter their future occurrence. These issues have also been discussed with social services districts and representatives of advocacy groups. Specific areas of concern are inadequate notices and the failure to provide requested documents before hearings and case files at hearings.

INADEQUATE NOTICES

The content requirements for notices of intent set forth in Part 358 reflect concern for appellants' due process rights. In every hearing involving a notice of intent, the sufficiency of the notice is a threshold issue. Raising the issue is not an affirmative responsibility of the appellant. Where a hearing involves a notice of intent, it is the responsibility of the social services district to appear with a copy of the notice of intent. If the social services district cannot present the notice of intent, it must withdraw its intended action. When the social services

district does present the notice of intent, the hearing officer must review the sufficiency of the notice to assess whether it complies with regulatory requirements and whether any deficiencies in the notice impinge on the appellant's due process rights. This assessment must include consideration of the notice's deficiencies, the issues for review, the appellant's circumstances, and the need to direct specific relief. This assessment should be conducted on the record and, where appropriate, reflected in the decision. The hearing officer must determine whether to find a notice void, require the social services district to provide additional documentation, or grant a recess or adjournment on the appellant's behalf.

In evaluating the adequacy of a notice, the hearing officer should consider if the appropriate notice was sent and if the explanation of the district's intended action is understandable by the particular appellant. Where the social services district's determination was based on a budget computation, a copy of the budget or the basis for the computation must be provided in or with the notice as required by 18 NYCRR Section 358-2.2n. Failure to meet this regulatory requirement makes a notice of intent void. A notice that fails to provide any reason or explanation for an intended action is void. A notice that cites the wrong regulation as justification for the intended action, while deficient, may not be void. In every case involving a deficient notice, the hearing officer must ensure that the deficiency does not result in harm to the appellant.

Pursuant to Section 22 (4) of the Social Services Law, fair hearings must be requested within 60 days (90 days for food stamps) of the date of the action or failure to act by a social services district which is being appealed. Where a hearing involves a notice of intent, any defect in the notice tolls the statute of limitations (Bryant). When the statute of limitations is tolled, the underlying merits of the case must be addressed unless it is determined that the defects in the notice are so serious that the notice is void. This kind of determination must be made on a case by case basis as described above.

The implementation of WMS generated notices of intent (scheduled for early 1993) should greatly improve the quality and consistency of notices. Until such improvements occur, hearing officers must scrutinize notices of intent for sufficiency, ensure appellants are not disadvantaged by notice defects, and void seriously deficient notices.

#### FAILURE TO PROVIDE REQUESTED DOCUMENTS BEFORE HEARINGS

18 NYCRR Section 358-4.2(c) requires a social services district, upon request, to "provide to the appellant or appellant's representative copies of the documents to be presented at the fair hearing." Subsection (d) imposes a similar requirement for "copies of any documents from appellant's case file which the appellant requests for purposes of hearing preparation." Social services districts were reminded of their obligations in this regard in 89 LCM-215. When a social services district fails to comply with 18 NYCRR Section 358-4.2, the hearing officer must ensure that the appellant is not disadvantaged. This means not only requiring the district to provide the appropriate documents but also giving the appellant

time to review them. The hearing officer can order a short or long recess or an adjournment and direct the social services district to obtain the requested documents. In appropriate circumstances, the hearing officer should preclude the district from submitting the documents into evidence.

#### FAILURE TO PROVIDE CASE FILES AT HEARINGS

18 NYCRR Section 358-4.3 requires that "a representative of the social services agency must appear at the hearing along with the case record." Violations of Section 358-4.3 not only compromise appellants' due process rights, they also frequently impede the hearing officer's ability to develop a full record and make specific directives.

In New York City, for public assistance and medical assistance cases arising out of notices of intent, settlements in two federal lawsuits (Rodriguez and Annunziata) require the Human Resources Administration (HRA) to withdraw the underlying notices whenever complete, relevant and legible case records are not available at hearings. For all other situations in New York City and for all hearings outside of New York City, the following guidelines apply:

For violations of 18 NYCRR Section 358-4.3, a recess or adjournment may be provided to enable the district to obtain the case record and the appellant to review it. This approach is only appropriate when there is a strong expectation that the district will obtain the case record and that the appellant will not be harmed by the delay. Multiple adjournments are not justifiable for this purpose. When the relevant case file materials are available, the hearing officer must ensure that the social services district provides the appellant or the appellant's representative with copies of the documentary evidence upon which it intends to rely, as required by 18 NYCRR Section 358-4.3(a).

When a recess or adjournment is not appropriate (e.g., emergency assistance issues, certain non-aid-continuing cases), the hearing officer must elicit the appellant's testimony and other evidence and, to the extent possible, make specific directives in the decision. The hearing officer must rely on the appellant's credible testimony and direct specific relief consistent with this evidence. In those cases in which it is necessary to remand to the social services district for reconsideration or other action, the hearing officer must direct the district to act within a limited, specified time period (e.g., recompute eligibility and send appropriate notice within 10 days).

#### OTHER CONCERNS

Hearing officers must always demonstrate appropriate demeanor and maintain, and appear to maintain, their impartiality prior to, during, and after hearings. This includes avoiding ex-parte conversations and suggesting to the parties how the case will be decided. Hearing officers should make all required opening statements. Where an aid-continuing issue arises, the hearing officer has the authority to direct the social services district to continue, discontinue or restore aid when appropriate.

In some cases, an appellant will provide evidence for the first time during a hearing which was not provided to the social services district at the time the original determination was made. Where the evidence demonstrates that a determination in the appellant's favor is now appropriate, the decision should indicate that the determination of the district was correct when it was made but that new evidence now requires a different result.

For a social services district that routinely fails to meet regulatory requirements, a directive in similar cases (18 NYCRR Section 358-6.3) should be issued requiring the district to review other cases for conformity with the principles and findings in the decision.

These statements of policy are only a part of our overall effort to improve the hearing process. On-going meetings are being held with HRA to resolve problems in New York City hearings. We are assisting HRA in developing appropriate materials and training for its workers. We are also encouraging the use of conferences to resolve disputes without hearings. A pilot test of center specific calendars is in progress. Legislation has been proposed to strengthen our enforcement authority through sanctions of social services districts for failures to comply with law, regulations, policy or hearing decisions. Added computer capability is being provided to social services districts to improve access to and accuracy of hearing information.

These actions should help to reduce the number of hearings, improve the quality of hearings and permit more specific directives to be made in hearing decisions. The efforts of hearing officers and supervising hearing officers to address social services districts' violations of regulations and to direct specific relief in hearing decisions are essential aspects of this undertaking.

RJH:mh

cc: Susan V. Demers  
Anne Grace

XL0005 (02/15)  
OAH-4420

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete each task.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. The final step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals and identifying any areas for improvement or further action.

NOTICE TO REPRESENTATIVE

COPY SENT TO:

101  
05/06/16

This is to advise you that a Fair Hearing Request has been received for:  
 Esto es para notificarle que una Solicitud de Vista Imparcial ha sido recibido por:

**PLEASE READ THE OTHER SIDE  
POR FAVOR LEA EL OTRO LADO**





## Assistance Information

Important notice enclosed. If you need help reading the notice, call 1-800-342-3334.

Aviso importante adjunto: si necesita ayuda para leer este aviso, marque el 1-800-342-3334.

1-800-342-3334. إذا احتجت إلى المساعدة في قراءة الإخطار يرجى الاتصال بالرقم 1-800-342-3334.

內附重要通告。如需幫助閱讀此通告，請撥打1-800-342-3334。

Avis important à l'intérieur. Si vous avez besoin d'aide pour lire cet avis, veuillez appeler au 1-800-342-3334.

Avi enpòtan enkli. Si w bezwen èd pou w li avi a, rele 1-800-342-3334.

중요한 공지사항이 포함되어 있습니다. 이 공지사항을 읽는데 도움이 필요하시면, 1-800-342-3334로 전화하세요.

Содержит важную информацию. Если при чтении этого извещения у Вас возникнут трудности, позвоните по телефону 1-800-342-3334.

Kèm theo là thông báo quan trọng. Nếu quý vị cần giúp đọc thông báo này, hãy gọi 1-800-342-3334.

1-800-342-3334. בייעוץ א וויכטיקע מעלונג אויב איר דארפט דאס ברעם לייזען די מעלונג, קלערט אן 1-800-342-3334.

Importante avviso allegato. Se occorre aiuto per leggere l'avviso, telefonare al numero 1-800-342-3334.



## SUMMARY OF ENCLOSED FAIR HEARING DECISION

APPELLANT:

FAIR HEARING NUMBER:

This is a summary of the decision for the fair hearing that you attended on February 29, 2016. Please see the enclosed State Fair Hearing Decision for complete details. If you need help understanding the Fair Hearing Decision, you may call 1 (800) 342-3334.

Action	Issue	Notice Date	Outcome*	Reason
SNAP - DISCONTINUANCE	DISC/REDU/DENY BASED UPON EXCESS INCOME	01/27/2016	AFFIRM	AGENCY AFFIRMED

*What do the Outcomes Mean?	
REVERSE	This means that the agency's action was wrong. The State Fair Hearing Decision may order the agency to take an action to correct its mistake. It may also order it to repay benefits that you lost because of the action.
REMAND	This means that the agency didn't give the hearing officer enough evidence to prove that it was correct. The State Fair Hearing Decision may order the agency to go back and look at its action again. It may also order it to repay benefits that you lost because of the action.
AGENCY AGREEMENT	This means that the agency decided not to take the action it had originally wanted to take. The State Fair Hearing Decision may order the agency not to take the action. It may also order it to repay any benefits that you lost because of the action.
CORRECT WHEN MADE	This means that there were facts that the agency didn't know about when it took its action. Now that it knows them, it shouldn't take the action. The State Fair Hearing Decision may order the agency not to take the action. It may also order it to repay any benefits that you lost because of the action.
AFFIRM	This means that the State Fair Hearing decision has found that the agency's action was correct.
OTHER	This means that the State can't review the action. This may be because too much time has passed, it was already reviewed, it's an action the State isn't allowed to review or you asked the State not to review it.

NOTICE OF FAIR HEARING  
AVISO DE VISTA IMPARCIAL

STATE OF NEW YORK  
ESTADO DE NUEVA YORK



OAH-457  
XL0001 (02/15)

KEEP THIS NOTICE AND BRING THIS NOTICE TO YOUR HEARING

8 03/31/16 260

A FAIR HEARING  
HAS BEEN SCHEDULED FOR:

NASSAU/SUFFOLK LAW SERVICES  
RUFF DOUGLAS  
ONE HELEN KELLER WAY  
HEMPSTEAD, NY 11550-3903

DATE: 03/31/16  
TIME: 09:00 AM

Pursuant to Section 22 of the Social Services Law and in response to your request for a fair hearing, your hearing will be held at the following time and place:  
Seguñ la Sección 22 de la Ley de Servicios Sociales y respondiendo a su solicitud para una vista imparcial, queremos informarle que su vista se  
llevará a cabo en el día, la hora y el lugar siguiente:

<b>A</b> FAIR HEARING NUMBER (NUMERO DE LA VISTA IMPARCIAL)	7248144J	<b>E</b> DATE (FECHA)	04/18/16	<b>H</b> TIME (HORA)	09:00 AM
<b>B</b> AID STATUS (ESTADO DE LA AYUDA) The local office is NOT DIRECTED to continue assistance unchanged until the Fair Hearing decision is issued	<b>F</b> PLACE OF HEARING (LUGAR DE LA VISTA) NASSAU CO. DEPT. OF SOCIAL SERVICES 60 CHARLES LINDBERGH BLVD., RM #160 UNIONDALE, NY 115533686 YOUR HEARING WILL BE CALLED IN THE ORDER IN WHICH YOU SIGN IN				
<b>C</b> REPRESENTATIVE (REPRESENTANTE) NASSAU/SUFFOLK LAW SERVICES	<b>G</b> AGENCY (AGENCIA) NASSAU		<b>I</b> CATEGORY AND CASE NO. (PROGRAMA Y NUMERO DEL CASO) MA/		
<b>D</b> ISSUES (ASUNTOS A DISCUTIRSE) MA SURPLUS INCOME COMPUTATION MA MEDICARE PART B PREMIUM PAYMENT PROGRAM			<b>J</b> DATE OF HEARING REQUEST (FECHA DE LA SOLICITUD) 02/24/2016 RESCHEDULED		

INSTRUCTIONS TO PARTIES

- If you requested a hearing because the agency has changed your assistance, benefits or services, you may be entitled to receive your assistance, benefits or services unchanged until the decision is issued. In this case, the STATE COMMISSIONER HAS NOT directed the agency to continue your assistance, benefits or services unchanged until the fair hearing decision is issued.
- If you are unable to appear at the scheduled time you may request an adjournment in person at our offices at 14 Boerum Place, Brooklyn, NY, or by phone at 877-209-1134 or online at <http://www.otda.ny.gov/oah> where you may complete an online request form or print out a form that may be mailed or faxed to us. Adjournment requests received less than ten days prior to the hearing date may not allow sufficient processing time. If you do not hear back from us do not assume that the request was granted.  
An adjournment will be granted only if you have a valid reason for not appearing. If you are continuing to receive assistance, benefits or services unchanged during the hearing process and you request an adjournment, your assistance, benefits or services will continue until the hearing decision ONLY if an adjournment is granted. Failure to appear or contact us with a valid reason for your non-appearance will result in your assistance, benefits or services not being continued unchanged.
- If you are late, your hearing may have to be adjourned. If you or your representative fail to appear at a scheduled hearing your hearing request will be considered abandoned unless within one year of the schedule date of the hearing you or your representative request restoration to the calendar and you provide good cause for failing to appear.
- If you no longer wish to have a fair hearing, please sign the statement below and return this notice to the OTDA, Administrative Hearings, P.O. Box 1930, Albany, N.Y. 12201.

I wish to withdraw my request for a fair hearing.

INSTRUCCIONES A LAS PARTES ENVUELTAS

- Si usted solicitó una audiencia debido a que la agencia ha cambiado su asistencia, beneficios o servicios, puede tener derecho a recibir su asistencia, beneficios o servicios sin cambio alguno hasta que se emita el fallo. En este caso, el COMISIONADO DE ESTADO LE NO ordenado a la agencia que continúe su asistencia, beneficios o servicios sin cambio alguno hasta que se emita el fallo de la audiencia imparcial.
- Si no le es posible comparecer en el horario programado, puede solicitar un aplazamiento presentándose en persona a nuestras oficinas ubicadas en: 14 Boerum Place, Brooklyn, NY, llamando por teléfono al 877-209-1134 o en línea en <http://www.otda.ny.gov/oah>, donde puede llenar un formulario de solicitud en línea o imprimir un formulario que nos puede enviar por correo postal o fax. Las solicitudes de aplazamiento recibidas con menos de diez días anterioridad a la fecha de la audiencia pueden no permitir el tiempo suficiente para su procesamiento. Si no recibe noticias de nosotros, no asuma que su solicitud ha sido concedida.  
Únicamente se concederá un aplazamiento si usted cuenta con una razón válida para no comparecer. Si usted sigue recibiendo asistencia, beneficios o servicios sin cambio alguno durante el proceso de la audiencia y solicita un aplazamiento, su asistencia, beneficios o servicios continuarán hasta el fallo de la audiencia, ÚNICAMENTE si se ha concedido un aplazamiento. El no cumplir con comparecer o comunicarse con nosotros con una razón válida para no comparecer dará como resultado que su asistencia, beneficios o servicios no continúen sin cambio alguno.
- Si llega tarde, su audiencia puede que deba ser aplazada. Si usted o su representante no cumple con comparecer ante una audiencia programada, su solicitud de audiencia será considerada como abandonada a menos que usted o su representante solicite su restitución en el calendario dentro de un año de la fecha programada de la audiencia y proporcione buena causa por no haber cumplido con su responsabilidad de comparecer.
- Si ya desea tener una audiencia imparcial, por favor firme la declaración más abajo y devuelva este aviso a: OTDA Administrative Hearings, P.O. Box 1930, Albany, NY 12201.

Deseo retirar mi solicitud de audiencia imparcial.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
TURN OVER FOR ADDITIONAL INSTRUCTIONS

Firma \_\_\_\_\_ Fecha \_\_\_\_\_  
VOLTEE PARA INSTRUCCIONES ADICIONALES



035 DYCKMAN JOB CENTER

4055 TENTH AVE 1ST FLOOR  
NEW YORK, NY 10034-1147Date: 02/24/2016Case Number: 00000

Case Name: \_\_\_\_\_

Fair Hearing Number: \_\_\_\_\_

Center: \_\_\_\_\_

40 WORTH ST FL 606  
NEW YORK, NY 10013-2904

3 as representative for the recipient

### Mandatory Dispute Resolution Appointment

**NOTE:** As of August 29, 2012, any reference to the Food Stamp Program in this notice shall mean the Supplemental Nutrition Assistance Program (SNAP), and any reference to Food Stamps shall mean SNAP benefits.

New York State informs us that you have a Fair Hearing request, with the above Fair Hearing number.

This notice informs you that, prior to the Fair Hearing, you must attend a Mandatory Dispute Resolution (MDR) interview to discuss the issues relating to your cash assistance benefits that you intend to raise at the Fair Hearing.

#### You Must Report to Reception on:

Appointment Date: 03/04/2016 Time: 10:00 AM Telephone: 1-212-569-2608Address: DYCKMAN JOB CENTER (035)4055 TENTH AVE 1ST FLOORCity: NEW YORK State: NY Zip Code: 10034-1147

At the MDR Interview appointment, you will meet with a Supervisor to attempt to resolve the issues regarding your requested Fair Hearing. This will be your opportunity to discuss the issues regarding your cash assistance benefits. You will not be required to discuss any Medicaid or Supplemental Nutrition Assistance Program (SNAP) issues unless you choose to. At this appointment, you should present any evidence, testimony, and/or documentation that you intend to present at the Fair Hearing.

If you have been designated as a homebound appellant or are scheduled for a telephone hearing by the New York State Office of Temporary and Disability Assistance, Office of Administrative Hearings, we will contact you by telephone to attempt to resolve your issues.

If you are unable to keep the MDR appointment, you can reschedule it by calling 1-212-569-2608. If you fail to keep the MDR appointment, the Hearing Officer will determine whether or not you had good cause for missing it. If he/she determines that you did not have good cause, this could affect your benefits. The Hearing Officer may consider your failure to appear at the MDR appointment in deciding whether to believe your testimony concerning the issue for which you requested the hearing. In determining whether good cause exists, the Hearing Officer must consider the facts, circumstances, and information submitted by you, including circumstances beyond your control.





035 DYCKMAN JOB CENTER

4055 TENTH AVE 1ST FLOOR  
NEW YORK, NY 10034-1147

Fecha: 02/24/2016

Número del Caso: 000

Nombre del Caso: \_\_\_\_\_

Núm.  
de Audiencia Imparcial: \_\_\_\_\_

Centro: \_\_\_\_\_

NEW YORK, NY 10013-2904

as representative for the recipient

### Cita para Resolución Obligatoria de Disputa

**NOTA:** A partir del 29 de agosto, toda referencia al Programa de Cupones para Alimentos en este aviso se denominará el Programa de Asistencia de Nutrición Suplementaria (SNAP), y toda referencia a Cupones para Alimentos se denominará beneficios de SNAP.

El Estado de Nueva York nos ha informado de su petición para una Audiencia Imparcial cuyo número aparece más arriba.

Mediante el presente aviso le informamos de que antes de la Audiencia Imparcial, usted tiene que asistir a una entrevista de Resolución Obligatoria de Disputa (Mandatory Dispute Resolution – MDR) para tratar de los asuntos relativos a sus beneficios de asistencia en efectivo que desea plantear en la audiencia.

Debe Presentarse a la Recepción el:

Fecha de la Cita: 03/04/2016 Hora: 10:00 AM Teléfono: 1-212-569-2608

Dirección: DYCKMAN JOB CENTER (035)

4055 TENTH AVE 1ST FLOOR

Ciudad: NEW YORK Estado: NY Código Postal: 10034-1147

En la entrevista de Cita de MDR, usted se reunirá con un Supervisor para tratar de solucionar los problemas relacionados con la Audiencia Imparcial que ha solicitado. Esta será su oportunidad de tratar los problemas relacionados con sus beneficios de asistencia en efectivo. Sin embargo, no será necesario que se trate ningún asunto de Medicaid o beneficios del Programa de Asistencia de Nutrición Suplementaria (SNAP), a menos que así usted lo desee. Durante esta cita usted debe presentar cualquier prueba, testimonio y/o documentos que se proponga presentar en la Audiencia Imparcial.

Si usted ha sido designado como apelante confinado al hogar o si se le ha programado una audiencia telefónica de la Oficina de Asistencia Temporal para Incapacitados del Estado de Nueva York y la Oficina de Audiencias Administrativas (New York State Office of Temporary and Disability Assistance, Office of Administrative Hearings), entonces nos comunicaremos con usted por teléfono para tratar de resolver sus problemas.

Si usted no puede presentarse a la cita de la MDR, puede reprogramarla llamando al 1-212-569-2608.


Si no se presenta a su cita de la MDR, el oficial de la audiencia determinará si usted tuvo motivo justificado para faltar a la cita de la MDR. Si el/ella determina que usted no tuvo motivo justificado, esto le podría afectar sus beneficios. El Oficial de la Audiencia puede tomar en consideración el que haya faltado a la cita de la MDR al decidir si su testimonio es verídico respecto a los problemas por los cuales ha solicitado una audiencia. Para determinar si existe motivo justificado, el Oficial de Audiencia tiene que considerar todo dato, circunstancia e información que usted presente, a incluir circunstancias ajenas a su voluntad.

James K. Whelan, Deputy Commissioner  
Policy, Procedures, and Training

Lisa C. Fitzpatrick, Assistant Deputy Commissioner  
Office of Procedures

**POLICY BULLETIN #10-64-OPE**  
(This Policy Bulletin Replaces PB #07-54-OPE)

**HANDLING REQUESTS FOR CASE RECORD REVIEW**

<b>Date:</b> June 10, 2010	<b>Subtopic(s):</b> Fair Hearing
<p> This procedure can now be accessed on the FIAweb.</p>	<p><b>Revisions to Original Policy Bulletin</b></p> <p>This policy bulletin has been revised to:</p> <ul style="list-style-type: none"> <li>include the requirement that if an applicant's/participant's representative wishes to review the case record, he/she must provide a photo ID and a letter from the applicant/participant authorizing the representative to review the case record.</li> <li>state that for Non Cash Assistance Food Stamp (NCA FS) <u>Rivera</u> requests, the Division of Fair Hearing Administration (DFHA) is responsible only for mailing evidence packets. <u>Rivera</u> evidence packets for NCA FS <u>Rivera</u> requests are prepared at the NCA FS Fair Hearing Unit.</li> </ul> <p><b>Purpose</b></p> <p>The purpose of this policy bulletin is to remind staff that all requests for Fair Hearing (FH)-related documents from the case record must be made through the Centralized <u>Rivera</u> Office (CRO). Requests to view an applicant's/participant's case record, or to obtain specific documents from that case record, for any reason not related to a FH, must be directed to the Job Center.</p>

HAVE QUESTIONS ABOUT THIS PROCEDURE?  
Call 718-557-1313 then press 3 at the prompt followed by 1 or  
send an e-mail to *FIA Call Center Fax* or fax to: (917) 639-0298

### Requests Related to a Fair Hearing

Currently, applicants/participants can request copies of documents from their case record to prepare for a FH. All Cash Assistance (CA) and Food Stamps (FS) notices of intent to reduce or deny benefits provide information on how to request copies of specific documents needed to prepare for a FH and/or documents that the Agency plans to submit as evidence (Evidence Packet) at the FH. As a result of the Rivera lawsuit regarding this issue, a centralized process was developed and these requests for documents became known as Rivera Requests.

As a result of this new language – “Access to your files and copies of documents” – on all notices of intent to discontinue, reduce or deny benefits, Rivera requests are made through the CRO. Job Centers must inform appellants and their representatives that Rivera requests must be directed to the CRO as follows:

Mail or in-person	HRA Division of Fair Hearing, 14 Boerum Place Brooklyn, NY 11201, 6th Floor
Telephone	(718) 722-5042
Fax	(718) 722-5018

#### New Information

If an applicant's/participant's representative or attorney wishes to review the applicant's/participant's case record, the representative or attorney must provide a photo ID and a letter from the applicant/participant authorizing him/her to review the record.

### Requests Received at the CRO

#### Requests at the CRO

The FH Clerk receives all Rivera requests at the CRO from the appellant or his/her representative by one of the methods indicated above. If the request is by phone or in-person, the FH Clerk must complete a Rivera Request Intake Form (**W-186B**). The FH Clerk forwards the request and/or the **W-186B** to the FH Supervisor II/AJOS II.

The FH Supervisor II/AJOS II will review the request and/or **W-186B** forwarded to him/her from the FH Clerk. He/she will evaluate the requests and determine whether the Rivera request response will be prepared at the CRO, Non Cash Assistance (NCA) FS locations, or the BEV/DFRP. The Rivera request may consist of a request for the evidence packet that will be presented at the hearing and/or Specifically Identified Documents (SIDs) from the case record needed to prepare for a FH.



The FH Supervisor II/AJOS II at the CRO must inform the FH Clerk to fax the NCA FS locations or BEV/DFRP the Rivera request and/or **W-186B** that they are responsible for preparing. The FH Supervisor II/AJOS II must then enter one of the following NYCWAY Action Codes based on the type of request:

Rivera Evidence Packet Requests

Codes used for Job  
Centers and NCA FS  
locations

**70RP** (Rivera Request – In Person)  
**70RM** (Rivera Request – Mail)  
**70RT** (Rivera Request – Telephone)  
**70RF** (Rivera Request – Fax)

BEV/DFRP Rivera Requests

**137F** (Request For FH Related Documents Made By Fax)  
**137T** (Request For FH Related Documents Made Via Telephone)  
**137M** (Request For FH Related Documents Made By Mail)  
**137P** (Request For FH Related Documents Made In Person)

SID Rivera Requests

Codes used for Job  
Centers and NCA FS  
locations

**70SF** (Rivera SID Requested By Fax)  
**70ST** (Rivera SID Requested By Phone)  
**70SM** (Rivera SID Requested By Mail)  
**70SP** (Rivera SID Requested In Person)

Each action code will allow a Future Action Date (FAD) of three days in which time the specifically requested documents/evidence packet must be given or mailed to the appellant (or the appellant's representative/attorney).

Rivera evidence packet requests, including those from BEV/DFRP, appear on the **RIVER** Worklist. SID evidence packet requests appear on the **RISID** Worklist. All outstanding requests will be available on a daily basis to inform the FH Clerk/CRO Director's designee of Rivera requests that have not been completed.

If for any reason the appellant or the appellant's representative/ attorney elects to cancel the request for a specifically requested documentation/evidence packet, the Supervisor II/AJOS II must:

- ask for the cancellation request in writing and enter a case note (**700A**) in NYCWAY.
- post Action Code **703X** (Request for FH Related Documents Cancelled) and enter a comment indicating the cancellation request has been received. Additional comments can also be entered in the Action Code **703X** Comment field.

**Note:** If the Supervisor II/AJOS II makes a data entry error that requires cancelling the Rivera request, he/she must enter a case note describing the error and post Action Code **703X**.

#### Packet/SID Preparation at Ancillary Locations

NCA FS Centers and  
BEV/DVRP

Upon receipt of the faxed request from the CRO, the NCA FS or BEV/DFRP Site Manager's Designee must:

- prepare the Rivera Evidence Packet and a SID when appropriate.
- forward the completed Rivera Evidence Packet and the Rivera Request Response (**W-186A**) by messenger to the CRO within two days from receipt of the request to insure a timely response to the appellant.

Revised

**Note:** CRO will prepare Rivera Evidence Packets for all Job Center Fair Hearings (except those related to BEV/DVRP). DFHA is responsible only for mailing evidence packets for Non Cash Assistance Food Stamps (NCA FS) Rivera requests. Rivera evidence packets for NCA FS Rivera requests are prepared at the NCA FS Fair Hearing Unit located at 253 Schermerhorn Street – 2nd floor (FS Fair Hearing Unit). The RIVER and RISID Worklists will also be monitored by this unit.

#### CRO Packet Distribution

Packets prepared by  
CRO, NCA FS and  
BEV/DFRP

Upon receipt of the completed packets, the FH Supervisor II/AJOS II will advise the Supervisor I/AJOS I to prepare a minimum of four packets if the appellant is unrepresented or a minimum of five packets if the appellant is represented, containing the requested material (including the initial request). The packets are distributed to: the Appellant, the Appellant's Representative (if represented), the FH Representative, the Administrative Law Judge, and the 98A folder.

The FH Supervisor II/AJOSII must:

- review the completed packets for content, and
- forward the packets back to the FH Clerk.

The FH Clerk will:


- prepare the Rivera Request Receipt (**W-186**) and obtain the requestor's signature if the packet is to be picked up by the appellant or his/her representative/attorney.
- prepare Form **W-186A** by placing a check in the appropriate box indicating what documents are being mailed as part of the Rivera response, describing any specifically identified documents requested that are not included in the response, and placing a check by the appropriate reason for not including such document(s).
- attach Form **W-186A** to the packet.
- complete a Certificate of Mailing for all packets sent to the appellant via mail. The completed packets are brought to the post office for mailing. The Certificate of Mailing must be stamped by the post office to verify the date of mailing.

The designated person at the CRO will sign off on the completed Rivera requests based on receipt of the Certificate of Mailing or the **W-186** (when packet picked up by appellant or his/her representative/attorney) and enter Action Code **703S** (Packet Complete Certificate of Mailing/Signed Receipt Obtained) in NYCWAY. If the Rivera request includes a SID, enter Action Code **70SS** (Rivera SID Complete Certificate Obtained).

#### Requests Not Related to a Fair Hearing

If the applicant/participant wishes to view or have copies made of specific documents in the case for reasons not involving a Fair Hearing, he/she must make that request to his/her Job Opportunity Specialist (JOS)/Worker. Each Job Center must designate a worker who shall be responsible for scheduling appointments for applicants/participants to view their records. The JOS/Worker will alert the designated person of the request so that an appointment can be scheduled for the applicant/participant to come in and view the case record.

Job Centers

NCA FS Centers	If the applicant/participant makes the request to view or have copies made of specific documents <u>not related to a Fair Hearing</u> through an NCA FS Center, the applicant/participant will be directed to the Supervisor of the Mail Processing Unit (MPU) in order to schedule an appointment within five business days from date of request. On the day of the appointment, the MPU Supervisor will review the case with the applicant/participant.										
New Information	If the request to view a CA or NCA FS case record is made by the applicant's/participant's representative, the representative must provide the Agency with a letter from the applicant/participant, authorizing the representative to view the case record. The representative must also present a photo ID.										
Reviewing electronic files	Each Job Center and NCA FS Center must designate a Worker who shall be responsible for providing access to electronic files. This Worker will sit with the applicant/participant and/or his/her representative to view the contents of the case record and print requested documents. Most CA and FS program documents in the case record, including NYCWAY and Wellness, Comprehensive Assessment, Rehabilitation and Employment (WeCARE) documents, can be viewed and copies provided, <u>except</u> for those documents listed below:										
Documents which may not be viewed	<ul style="list-style-type: none"> <li>• Documents containing information concerning child abuse or neglect,</li> <li>• Documents concerning domestic violence,</li> <li>• Documents or files maintained separately from the CA/FS case record, such as BEV or Bureau of Fraud Investigation (BFI) files, that contain information concerning potential criminal prosecution, and</li> <li>• Documents concerning foster care and adoption.</li> </ul> <p><i>Effective Immediately</i></p> <p><b>Attachments:</b></p> <table> <tr> <td><b>W-186</b></td><td><u>Rivera</u> Request Receipt (Rev. 6/10/10)</td></tr> <tr> <td><b>W-186 (S)</b></td><td><u>Rivera</u> Request Receipt (Spanish) (Rev. 6/10/10)</td></tr> <tr> <td><b>W-186A</b></td><td><u>Rivera</u> Request Response (Rev. 6/10/10)</td></tr> <tr> <td><b>W-186A (S)</b></td><td><u>Rivera</u> Request Response (Spanish) (Rev. 6/10/10)</td></tr> <tr> <td><b>W-186B</b></td><td><u>Rivera</u> Request Intake Form (Rev. 6/10/10)</td></tr> </table>	<b>W-186</b>	<u>Rivera</u> Request Receipt (Rev. 6/10/10)	<b>W-186 (S)</b>	<u>Rivera</u> Request Receipt (Spanish) (Rev. 6/10/10)	<b>W-186A</b>	<u>Rivera</u> Request Response (Rev. 6/10/10)	<b>W-186A (S)</b>	<u>Rivera</u> Request Response (Spanish) (Rev. 6/10/10)	<b>W-186B</b>	<u>Rivera</u> Request Intake Form (Rev. 6/10/10)
<b>W-186</b>	<u>Rivera</u> Request Receipt (Rev. 6/10/10)										
<b>W-186 (S)</b>	<u>Rivera</u> Request Receipt (Spanish) (Rev. 6/10/10)										
<b>W-186A</b>	<u>Rivera</u> Request Response (Rev. 6/10/10)										
<b>W-186A (S)</b>	<u>Rivera</u> Request Response (Spanish) (Rev. 6/10/10)										
<b>W-186B</b>	<u>Rivera</u> Request Intake Form (Rev. 6/10/10)										
 Please use Print on Demand to obtain copies of forms.											

Date: \_\_\_\_\_

Case Number: \_\_\_\_\_

Case Name: \_\_\_\_\_

Fair Hearing Number: \_\_\_\_\_

Fair Hearing Date: \_\_\_\_\_

### **Rivera Request Receipt**

\_\_\_\_\_ requested copies of his/her:

- ☐ Evidence Packet
- ☐ Specifically Identified Documents
- ☐ Evidence Packet and Specifically Identified Documents for his/her Fair Hearing

\_\_\_\_\_  
CRO Worker's Name

\_\_\_\_\_  
CRO Worker's Signature

-----  
**(Section below dotted line to be completed by Appellant/Appellant's Representative)**

I have received copies of the requested:

- |  |  |
|--|--|
| <input type="checkbox"/> Evidence Packet   | <input type="checkbox"/> Evidence Packet and some of the Specifically Identified Documents requested |
| <input type="checkbox"/> Specifically Identified Documents                         | <input type="checkbox"/> Some Specifically Identified Documents                                      |
| <input type="checkbox"/> Evidence Packet and all Specifically Identified Documents |  |

\_\_\_\_\_  
Appellant/Representative's Name (print)

\_\_\_\_\_  
Appellant/Representative's Signature

\_\_\_\_\_  
Date

Fecha: \_\_\_\_\_

Número del Caso: \_\_\_\_\_

Nombre del Caso: \_\_\_\_\_

Número de  
Audiencia Imparcial: \_\_\_\_\_

Fecha de la Audiencia

Imparcial: \_\_\_\_\_

### Recibo de la Petición Rivera

\_\_\_\_\_ requested copies of his/her:  
solicitó copias de su:

- ☐ Evidence Packet (*Paquete de Pruebas*)  
☐ Specifically Identified Documents (*Documentos Específicamente Identificados*)  
☐ Evidence Packet and Specifically Identified Documents for his/her Fair Hearing  
(*Paquete de Pruebas y Documentos Específicamente Identificados para la Audiencia Imparcial*)

\_\_\_\_\_ CRO Worker's Name (*Nombre del Trabajador de CRO*)

\_\_\_\_\_ CRO Worker's Signature (*Firma del Trabajador de CRO*)

-----  
**(La sección más abajo de esta línea intermitente debe ser llenada por el Apelante/Representante del Mismo)**

He recibido copias de los siguientes documentos solicitados:

- |  |   |
|--|---|
| <input type="checkbox"/> Paquete de Pruebas  | <input type="checkbox"/> Paquete de Pruebas y algunos de los Documentos Específicamente Identificados |
| <input type="checkbox"/> Documentos Específicamente Identificados                                | <input type="checkbox"/> Algunos Documentos Específicamente Identificados                             |
| <input type="checkbox"/> Paquete de Pruebas y todos los Documentos Específicamente Identificados |   |

\_\_\_\_\_  
Nombre del Apelante/Representante (en letra de molde)

\_\_\_\_\_  
Firma del Apelante/Representante

\_\_\_\_\_  
Fecha

Date: \_\_\_\_\_  
Case Number: \_\_\_\_\_  
Case Name: \_\_\_\_\_  
Fair Hearing Date: \_\_\_\_\_

Re: Rivera request for Fair Hearing Number: \_\_\_\_\_

### **Rivera Request Response**

Pursuant to the Rivera request, enclosed is a copy of the Evidence Packet, requested on \_\_\_\_\_, that the City intends to present at the above-referenced Fair Hearing and/or the Specifically Identified Documents that you requested, as indicated by the box(es) checked ☒ below.

- ☐ Evidence Packet
- ☐ Specifically Identified Documents
- ☐ Evidence Packet and all Specifically Identified Documents
- ☐ Evidence Packet and some of the Specifically Identified Documents requested
- ☐ Some Specifically Identified Documents

---

Specifically Identified Documents for the above-referenced Fair Hearing, identified as \_\_\_\_\_

are **not** enclosed because:

- ☐ they will be sent under separate cover.
- ☐ they are not part of the case file. Pursuant to the Rivera request, only Specifically Identified Documents from the case file must be provided as part of the Rivera request.
- ☐ the documents requested go beyond the scope of the issue(s) pertaining to this Fair Hearing.

Fecha: \_\_\_\_\_  
Número del Caso: \_\_\_\_\_  
Nombre del Caso: \_\_\_\_\_  
Fecha de la Audiencia Imparcial: \_\_\_\_\_

Re: Petición Rivera de un Número de Audiencia Imparcial: \_\_\_\_\_

### Respuesta a la Petición Rivera

Conforme a la petición Rivera, adjuntos encontrará tanto una copia del Paquete de Pruebas, solicitado el \_\_\_\_\_, que la Ciudad tiene la intención de presentar en la Audiencia Imparcial antemencionada, y/o los Documentos Específicamente Identificados y solicitados por usted, tal como lo indican la(s) casilla(s) marcada(s) ☒ a continuación.

- ☐ Paquete de Pruebas
- ☐ Documentos Específicamente Identificados
- ☐ Paquete de Pruebas y todos los Documentos Específicamente Identificados
- ☐ Paquete de Pruebas y algunos de los Documentos Específicamente Identificados que se haya solicitado
- ☐ Algunos de los Documentos Específicamente Identificados

---

Los Documentos Específicamente Identificados para la Audiencia Imparcial antemencionada, identificada como

---

**no** se encuentra adjunta porque:

- ☐ será enviada por separado.
- ☐ no es parte del expediente de caso. Conforme a la petición Rivera, sólo se deben proporcionar como parte de la petición Rivera los Documentos Específicamente Identificados del expediente del caso.
- ☐ los Documentos que se han solicitado no son pertinentes a los asuntos a ser tratados en la Audiencia Imparcial.





### Rivera Request Intake Form

☐ Telephone Request

☐ In-Person Request

Date: \_\_\_\_\_

Case Number: \_\_\_\_\_

Case Name: \_\_\_\_\_

Center: \_\_\_\_\_

#### Requestor (Appellant/Representative) Information

FH Date	FH Number	Appellant's Case Number	
		( )	
Appellant's Last Name	Appellant's First Name	M.I.	Telephone
Appellant's Home Address	Street	Town/City/Boro	Zip Code
Representative's Last Name	Representative's First Name	M.I.	Telephone
Representative's Address	Street	Town/City/Boro	Zip Code

Appellant requested copies of: ☐ Evidence Packet ☐ Specifically Identified Documents ☐ Evidence Packet and Specifically Identified Documents

#### Fair Hearing Issues

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

#### Specifically Identified Documents (SID) Requested

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

#### For Office Use Only

Received by (enter initials): \_\_\_\_\_

Entered in NYCWAY by (enter initials): \_\_\_\_\_

Date entered in NYCWAY: \_\_\_\_\_

## **FAX COVER SHEET**

### **Evidence Packet Request**

**DATE:** August 1, 2016  
**TO:** DARLENE KENNEDY  
HRA DIVISION OF FAIR HEARINGS –  
REPRESENTATION  
14 BOERUM PLACE, 6<sup>TH</sup> FLOOR  
BROOKLYN, NY 11201  
**FAX:** (718) 722-5018  
**FROM:** Sienna Fontaine  
**TEL/FAX:** (718) 565-8500  
**PAGES (INCLUDING COVER):** 1

---

**Re:** [client name / FH # #####]

We are requesting an evidence packet for the above-referenced Fair Hearing. Please also include the following separately identified documents:

- Address history, NYCWAY printout, and infraction history;
- Any and all information regarding a missed work appointment on or around September 10, 2013;
- Any and all case notes / screens from a conciliation appointment or recertification appointment on September 13, 2013;
- Any and all notices sent to Ms. XXXXXX re: a reduction / sanction on this case;
- All benefits paid screens for the past 6 months;
- Semi-monthly PA / Food Stamp budget calculation sheets, to evaluate the budgeting method used.

Thank you.

Please mail to: Sienna Fontaine  
Make the Road New York  
301 Grove Street  
Brooklyn, NY 11237

**\*\*\*OR FHEMS\*\*\***

*This communication is intended for the above addressee(s) only and may include information that is privileged, confidential or otherwise exempt from disclosure. If you are not the intended recipient, please note that any disclosure, copying, distribution or use of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by collect telephone call and return by mail this page and all materials sent with it.*



M E M O R A N D U M  
DSS-524EL

TO: All Hearing Officers and                      DATE: December 11, 1996  
     Supervising Hearing Officers

FROM: Russell J. Hanks                      SUBJECT: Policy Guidelines  
     RJH

---

The purpose of this memorandum is to reaffirm Office of Administrative Hearings' (OAH) policy on the development of an adequate hearing record and related matters. Portions of this memorandum were addressed previously in my memorandum of May 1, 1991, concerning policy clarifications. These guidelines are premised upon the recognition that each case is unique and must be addressed in accordance with its particular circumstances. Administrative hearings are designed as a means of efficiently resolving disputes between the parties in a fundamentally fair manner. The State Administrative Procedures Act, federal and Departmental regulations contain procedural provisions which address fundamental fairness. Bearing in mind that administrative hearings require less procedural and evidentiary rigor than civil courts, these guidelines are intended to provide hearing officers with illustrative instructions for ensuring fundamental fairness.

INADEQUATE NOTICES

The content requirements for notices of intent set forth in Part 358 reflect concern for appellants' due process rights. Where a hearing involves a notice of intent, the hearing officer must review the sufficiency of the notice to assess whether it complies with regulatory requirements and whether any deficiencies in the notice impinge on the appellant's due process rights. This assessment must include consideration of the notice's deficiencies, the issues for review, the appellant's circumstances, and the need to direct specific relief. This assessment should be conducted on the record and, where appropriate, reflected in the decision. The hearing officer must determine whether to find a notice void, require the social services district to provide additional information, or grant a recess or adjournment on the appellant's behalf.

In evaluating the adequacy of a notice, the hearing officer should consider if the appropriate notice was sent and if the explanation of the district's intended action, contained in the notice, is understandable by the particular appellant. A notice that fails to provide any reason or explanation for an intended action is void. A notice that cites the wrong regulation as justification for the intended action or an unclear explanation, while deficient, may or may not be void. In every case involving a deficient notice, the hearing officer must ensure that the deficiency does not result in harm to the appellant.

### INTRODUCTION OF DOCUMENTS

When documents are introduced at a hearing, by the agency or by the appellant, it is important that they be identified, marked, and verbally noted as they are entered into the record. Each page of the agency's packet should be marked in case the pages should become separated. (The exhibit letter or number should be the only mark made on a submitted document; any other notations made by the hearing officer serve only to compromise the integrity of the document). The hearing officer should ensure that all parties have had an opportunity to see the documents introduced before proceeding. Where the documents have not been seen previously, a brief recess or an adjournment may be necessary, as the hearing officer deems appropriate. This approach is limited in New York City by the decision in Rivers, which requires that if documents or evidentiary packages are not sent out timely where requested, the notice of intent must be withdrawn.

The hearing officer also should ensure that the appellant is given a reasonable opportunity to question the agency representative concerning any documents that the social services district seeks to introduce, and to state any objections to the introduction of such evidence. The agency also should be given the opportunity to question the appellant concerning any documents introduced by the appellant at the hearing.

### DEVELOPING THE RECORD

While it can be difficult to focus on its importance in light of heavy calendar assignments, the development of a complete record is an essential element of the hearing officer's responsibilities. In addition to the formal entry of documents discussed above, the hearing officer must ask questions, if necessary, to complete the record, particularly where the appellant demonstrates difficulty or inability to question a witness. (See 18 NYCPR §358-5.6). This may involve the questioning of either party to elicit information that may not have been volunteered due to a lack of understanding of its relevance.

The hearing officer must also consider adjourning or recessing a hearing where, in the judgment of the hearing officer, it would be prejudicial to the due process rights of the parties to go forward with the hearing on the scheduled hearing date. For example, an adjournment may be granted for an appellant to obtain additional relevant supporting documentation, where the hearing officer determines that there was a good reason for the appellant's failure to produce it at the hearing on the first scheduled date. This may include situations where it is found that an appellant did not know that a particular type of document would have an effect on the outcome of the hearing. When such an adjournment is granted and it appears that the appellant is uncertain as to exactly what documents are needed, the hearing officer should make clear to the appellant what types of documents would be preferred forms of evidence in a particular case.

### BURDEN OF PROOF

18 NYCRR §358-5.9 provides that the social services agency has the burden of establishing that its determination was correct where the issue for the hearing involves the discontinuance, reduction or suspension of benefits or services. To meet its burden of proof, the agency must establish facts in support of the basis for the action as stated in the notice of discontinuance or reduction. For example, where the agency has determined to impose a sanction for failure to comply with work rules, the agency must produce evidence establishing the elements of the appellant's willful failure to cooperate without good cause, or its determination cannot be affirmed.

The burden is on the appellant to establish that a denial of benefits was incorrect, or that the benefit level determined by the agency is inadequate. When an appellant claims, for instance, that his or her benefits have been inadequate for a long period of time (e.g., "since 1992"), the appellant should be questioned as to exactly how the assistance was inadequate, rather than requiring the agency to establish that it was.

### CREDIBILITY

When a decision turns on the credibility of the appellant, the basis for the determination should be included in the decision as specifically as possible. For example, if the appellant's testimony is found to be vague and inconsistent, some explanation should be included to explain why it is so found. Please note that the lack of documentary evidence is not a per se basis for finding an appellant's testimony incredible. A hearing officer may find uncorroborated testimony to be credible, especially where it is found to be uncontradicted or internally consistent.

### OTHER CONCERNS

Hearing officers must always demonstrate appropriate demeanor and maintain, and appear to maintain, their impartiality prior to, during, and after hearings. This includes avoiding ex-parte conversations with either the agency or the appellant, or suggesting to the parties how the case may be decided. Off-the-record discussions should also be avoided; where such discussions do take place, a precise summary of the conversation should be stated for the record, and agreed upon by the parties, before proceeding. A simpler method would be to leave the tape recorder running at all times. Cassette tapes are cheaper than litigation losses due to incomplete records, and no time need be spent summarizing off the record activity.

RJH:bp

cc: John E. Robitzek  
Sebastian Addamo

# Reversal of Agency Determinations Due to Defective Notices

by [Gene Doyle](#), LMSW

State policy requires that the threshold issue to be considered at every Fair Hearing is the adequacy of the notice that the appellant received. See Office of Administrative Hearings (OAH) Memoranda dated [May 1, 1991](#) and [December 11, 1996](#).

## **Fair Hearing Decision Digest on Reversal of Agency Determinations Because of Defective Notices**

The Fair Hearing Decisions (and Decisions without Hearings) listed in the table below have reversed determinations based solely on the inadequacy or untimeliness of local agency's notices.

Most of the decisions listed below are quite old. Decisions issued since November 2010 are available through the [Fair Hearing Decision Archive of the Office of Administrative Hearings \(OAH\)](#).

Upon finding a useful decision below, select a key phrase or set of words from the decision and search OAH's archive for similar decisions. For searching tips, see the article entitled, "[Effectively Searching OAH's Fair Hearing Decision Archive](#)."

Upon [registering](#), you can also [log in](#) and search the [Online Resource Center's \(ORC's\) Fair Hearing Bank](#) for selected decisions.

<b>Notice Was Found Defective Due to:</b>	FH #:
<b>Contradictory Information on Proposed Action:</b>	-----
Public Assistance (PA) Recoupment (PA Grant Increase):	<a href="#">1367445J</a>
<b>Failure to Comply with Notice Reissuance Requirements of <a href="#">Rodriguez v Blum</a>:</b>	<a href="#">1042107H</a>
<b>Failure to Send Prior Conciliation Notice:</b>	<a href="#">2013443K</a>
<b>Failure to Specify the Date of Infraction:</b>	-----
PA Sanction (Failure to Comply with Alcohol/Substance Abuse	<a href="#">4814231L</a>

Screening and/or Assessment):	<a href="#">4968669J</a> <a href="#">4968682L</a> <a href="#">5148534N</a> <a href="#">5158226Y</a> <a href="#">5203011H</a> <a href="#">5203033H</a> <a href="#">5203247M</a>
<b>Failure to State the Prior Amount of Assistance:</b>	-----
Medical Assistance (MA) Reduction:	<a href="#">4513979P</a> <a href="#">4838853P</a> <a href="#">5096859Q</a>
<b>Failure to State the Prior and New Amounts of Assistance:</b>	-----
PA Recoupment:	<a href="#">5142356R</a> <a href="#">5161804R</a> <a href="#">5164410Q</a> <a href="#">5167207Z</a> <a href="#">5171460P</a> <a href="#">5174447K</a> <a href="#">5182116M</a> <a href="#">5228278H</a>
PA Reduction:	<a href="#">4288178L</a>
Social Services (Child Care) Reduction (Increase in Fee)	<a href="#">7171994M</a>
<b>Failure to State the Proposed Action in Easily Understandable Language:</b>	-----
PA Discontinuance:	<a href="#">2501446J</a>
PA Recoupment:	<a href="#">1367445J</a> <a href="#">4232326R</a>
PA Reduction:	<a href="#">4288178L</a>
PA/MA Discontinuance:	<a href="#">4275160R</a>
PA/Food Stamp (FS) Discontinuance:	<a href="#">1501258H</a>
MA Discontinuance:	<a href="#">1399065P</a>
	<a href="#">3432131R</a>



MA (Personal Care Service) Reduction:	
FS Reduction:	<a href="#">1190797K</a>
<b>Failure to Use State-Prescribed Notice of Intent, as Required by:</b>	-----
<a href="#">81 ADM-55</a> :	<a href="#">0158092H</a>
<a href="#">84 ADM-41</a> :	<a href="#">0929264N</a>
	<a href="#">0998610P</a>
<a href="#">85 ADM-17</a> :	<a href="#">0847321J</a>
<b>Lack of Details of Reasons for Proposed Action:</b>	-----
PA Discontinuance (Assets Exceed Standards):	<a href="#">1169471N</a>
PA Recoupment (Contested Reduction):	<a href="#">5163524K</a>
PA Recoupment (Contested Reduction & Concealment):	<a href="#">0509561P</a>
PA Recoupment (Utility Advances):	<a href="#">1042107H</a>
PA Recoupment (Income Lowered PA):	<a href="#">1751303L</a>
PA Reduction (Failure to Cooperate with the Child Support Enforcement Program):	<a href="#">3755901N</a>
PA Reduction (Failure to Accept Referral or Take Part in Vocational Rehabilitation or Training):	<a href="#">4643640Z</a>
PA/MA/FS Discontinuance (Failure to Give Complete and Accurate Information about Household Composition):	<a href="#">3567666K</a>
PA/MA/FS Discontinuance (Failure to Pursue an Available Resource):	<a href="#">1526794M</a>
PA/MA Discontinuance (Income Exceeds Standards):	<a href="#">0344551Q</a>
PA/FS Discontinuance (Per Special Investigation Request):	<a href="#">0259005R</a>
MA Discontinuance (No Reason):	<a href="#">0576139K</a>
MA Discontinuance (Either/Or	<a href="#">0929264N</a>

Reason):	<a href="#">0998610P</a>
MA (Managed Long Term Care) Reduction (Most Recently Completed Assessment):	<a href="#">3915572Z</a>
FS Reduction (Information in File):	<a href="#">1964657J</a>
FS Reduction (Income Increased Lowered FS):	<a href="#">1751303L</a>
<b>No Budget Computations:</b>	-----
PA Discontinuance:	<a href="#">0509394N</a>
	<a href="#">2150918H</a>
PA Recoupment:	<a href="#">1042107H</a>
	<a href="#">2055279N</a>
	<a href="#">4232326R</a>
PA/MA/FS Discontinuance:	<a href="#">0158437L</a>
PA/FS Reduction:	<a href="#">0668182Q</a>
	<a href="#">1751303L</a>
	<a href="#">1805776M</a>
	<a href="#">3159788M</a>
MA Discontinuance:	<a href="#">4780396M</a>
MA (Personal Care Services) Discontinuance:	<a href="#">3768271Z</a>
MA Reduction:	<a href="#">4506226R</a>
FS Discontinuance:	<a href="#">0259005R</a>
FS Reduction:	<a href="#">1269575R</a>
	<a href="#">1934959L</a>
	<a href="#">1964657J</a>
	<a href="#">2013443K</a>
	<a href="#">4585731Y</a>
	<a href="#">4646039J</a>
	<a href="#">4899929Z</a>
	<a href="#">4917735Q</a>
	<a href="#">5018715Q</a>
<b>No Budget Narratives:</b>	-----
FS Reduction:	<a href="#">1269575R</a>
<b>No Case Number:</b>	-----

PA Discontinuance: Emergency Housing Assistance:	<a href="#">1711094H</a>
<b>No Date:</b>	-----
PA Discontinuance: Emergency Housing Assistance:	<a href="#">1711094H</a>
<b>No Effective Date:</b>	-----
PA Discontinuance:	<a href="#">2501446J</a>
PA Discontinuance: Emergency Housing Assistance:	<a href="#">1711094H</a>
MA Discontinuance:	<a href="#">04450625</a> <a href="#">1379054N</a> <a href="#">1399065P</a>
MA Reduction:	<a href="#">4838853P</a>
FS Reduction:	<a href="#">1190797K</a> <a href="#">5018715Q</a>
Social Services (Day Care) Discontinuance:	<a href="#">4629088J</a>
<b>No Information About How to Have a Sanction Lifted:</b>	-----
FS Discontinuance (Voluntary Quit):	<a href="#">1518846R</a>
<b>No Information on the Right and Circumstances Regarding Aid-Continuing and Aid- Restoration:</b>	-----
PA Discontinuance:	<a href="#">1025385Q</a>
PA/MA Discontinuance:	<a href="#">4275160R</a>
MA Discontinuance:	<a href="#">1379054N</a> <a href="#">1399065P</a>
MA Reduction:	<a href="#">04450625</a> <a href="#">4838853P</a>
MA (Personal Care Services) Reduction:	<a href="#">3432131R</a>
FS Reduction:	<a href="#">1190797K</a>
Social Services (Child Care) Reduction (Increase in Fees)	<a href="#">7171994M</a>
<b>No Information on the Right to Claim PA Recoupment Rate Causes an Undue Hardship:</b>	<a href="#">1042107H</a> <a href="#">1097523Q</a> <a href="#">1137635L</a>

	<a href="#">1147626Y</a>
	<a href="#">1174554Y</a>
<b>No Information on the Right to Request an Agency Conference:</b>	-----
PA Reduction	<a href="#">1367445J</a>
Social Services (Child Care) Reduction (Increase in Fees)	<a href="#">7171994M</a>
<b>No Information on the Right to Request a Fair Hearing:</b>	-----
PA Recoupment:	<a href="#">1367445J</a>
MA Denial of Medical Transportation:	<a href="#">1309299J</a>
MA Reduction:	<a href="#">04450625</a>
FS Reduction:	<a href="#">1261305Z</a>
Social Services (Child Care) Discontinuance:	<a href="#">2067142H</a>
Social Services (Child Care) Reduction (Increase in Fees):	<a href="#">7171994M</a>
<b>No Name:</b>	-----
PA Discontinuance: Emergency Housing Assistance:	<a href="#">1711094H</a>
<b>No Notice:</b>	-----
PA Discontinuance:	<a href="#">2207466P</a>
	<a href="#">3196315Z</a>
PA Discontinuance of Emergency/Temporary Housing Assistance:	<a href="#">1142762M</a>
	<a href="#">3513875J</a>
	<a href="#">3628005Y</a>
PA Employability:	<a href="#">0449255L</a>
	<a href="#">1533384N</a>
	<a href="#">2359948P</a>
	<a href="#">2605196H</a>
	<a href="#">2801383J</a>
	<a href="#">2828606H</a>
	<a href="#">3758755H</a>
PA Reclassification (ADC to HR):	<a href="#">0449255L</a>
PA Reclassification (FA to SNA):	<a href="#">3107374N</a>
PA Reduction:	<a href="#">1005179R</a>

	<a href="#">1378996K</a>
	<a href="#">2305690J</a>
PA Restriction:	<a href="#">3839951M</a>
Shelter Allowance Supplement (Housing Stability Plus) Discontinuance (Separate and Apart from PA Discontinuance):	<a href="#">4972591P</a>
MA Discontinuance:	<a href="#">0449255L</a> <a href="#">1158519R</a> <a href="#">1241475L</a> <a href="#">2254077Z</a> <a href="#">2422679N</a> <a href="#">3196315Z</a> <a href="#">3264417J</a>
MA (Family Health Plus) Discontinuance:	<a href="#">4192841L</a>
MA Discontinuance: Personal Care Services:	<a href="#">1066103M</a>
FS Discontinuance:	<a href="#">0626068K</a> <a href="#">1985170H</a> <a href="#">2150918H</a> <a href="#">2190630J</a> <a href="#">2207466P</a> <a href="#">2319206R</a> <a href="#">3196315Z</a> <a href="#">4149618H</a>
FS Reduction:	<a href="#">0630804Q</a> <a href="#">1005179R</a> <a href="#">1311836Q</a> <a href="#">1805776M</a> <a href="#">2036068Z</a>
Social Services (Child Care) Denial:	<a href="#">2267993J</a>
Social Services (School Transportation) Discontinuance:	<a href="#">3513875J</a> <a href="#">3628005Y</a>

<b>No Reason:</b>	-----
PA Recoupment:	<a href="#">4232326R</a>
FS Reduction:	<a href="#">2013443K</a>
<b>No Regulation or Other Legal Authority Cited:</b>	-----
PA Denial	<a href="#">6957263M</a> <a href="#">6928263Z</a> <a href="#">7079200Y</a>
PA Discontinuance:	<a href="#">0344551Q</a> <a href="#">1202930K</a> <a href="#">1206648K</a> <a href="#">1264392P</a>
PA Discontinuance: Temporary Housing Assistance:	<a href="#">4444354J</a>
PA Recoupment:	<a href="#">0509561P</a> <a href="#">5164410Q</a> <a href="#">6971500P</a> <a href="#">7012102Q</a> <a href="#">7063809M</a>
PA/MA/FS Discontinuance:	<a href="#">1526794M</a>
MA Denial	<a href="#">7065020N</a>
MA Denial: Medical Transportation	<a href="#">1309299J</a>
MA Discontinuance:	<a href="#">0344551Q</a> <a href="#">0998610P</a> <a href="#">1264392P</a>
MA Discontinuance: Personal Care Services by Managed Long Term Care Plan	<a href="#">7080924L</a>
MA Reduction	<a href="#">6486377Y</a>
MA Reduction: Personal Care Services by Managed Long Term Care Plan	<a href="#">7068290Q</a> <a href="#">7076509H</a> <a href="#">7103389Y</a> <a href="#">7105382Q</a> <a href="#">7159068L</a>
FS Denial:	<a href="#">1238335R</a>
FS Discontinuance:	<a href="#">1206648K</a> <a href="#">1264392P</a>

	<a href="#">1518846R</a>
FS Reduction:	<a href="#">1119153J</a> <a href="#">1159306M</a> <a href="#">1190797K</a> <a href="#">1260397N</a> <a href="#">1934959L</a>
Social Services (Child Care) Reduction (Increase in Fee):	<a href="#">7171994M</a>
<b>No Separate MA/FS Determination When Adverse PA Action:</b>	-----
MA:	<a href="#">0344551Q</a>
MA/FS:	<a href="#">0158437L</a> <a href="#">0509394N</a>
FS:	<a href="#">0259005R</a>
<b>No Telephone Number to Request Agency Conference:</b>	-----
FS Denial:	<a href="#">1238335R</a>
<b>No Valid Reason:</b>	-----
PA/MA/FS Discontinuance:	<a href="#">2899277Y</a>
PA Reduction (No Allegation That Failure to Comply with Work Rules Was Willful):	<a href="#">4941886L</a>
<b>Notice of Change in Grant Not Timely or Adequate:</b>	<a href="#">1367445J</a>
<b>Overly Broad Citation of Regulation:</b>	-----
18 NYCRR § 505.14 (Personal Care Services) ["citation . . . lacks even a minimum of detail such that it is meaningless"]	<a href="#">5864983K</a> <a href="#">5874132H</a> <a href="#">5877226K</a> <a href="#">5884411M</a> <a href="#">5902803M</a> <a href="#">5903620P</a> <a href="#">5904034L</a> <a href="#">5904234N</a>

	<a href="#">5937423P</a>
	<a href="#">5937534Q</a>
	<a href="#">5937877H</a>
<b>Untimely Notice:</b>	-----
PA Discontinuance:	<a href="#">1025385Q</a>
	<a href="#">1040914N</a>
PA Discontinuance: Temporary Housing Assistance:	<a href="#">4173687Z</a>
	<a href="#">4444354J</a>
PA Recoupment:	<a href="#">1367445J</a>
	<a href="#">1751303L</a>
PA Reduction:	<a href="#">1321642M</a>
PA/MA Discontinuance:	<a href="#">4275160R</a>
MA Discontinuance:	<a href="#">1379054N</a>
	<a href="#">1399065P</a>
MA Reduction:	<a href="#">4513979P</a>
	<a href="#">4522481Y</a>
	<a href="#">4838853P</a>
MA Reduction (to Chronic Care Budgeting):	<a href="#">4801218L</a>
FS Reduction:	<a href="#">1190797K</a>
	<a href="#">1752151M</a>
Social Services (Day Care) Discontinuance:	<a href="#">2067142H</a>
	<a href="#">4629088J</a>
Social Services (Day Care) Reduction (Increase in Fee)	<a href="#">7171994M</a>
<b>Wrong Name of:</b>	-----
Absent Parent:	<a href="#">3755901N</a>
Appellant:	<a href="#">3789016H</a>
<b>Wrong Notice:</b>	-----
Acceptance for Reduction:	-----
MA:	<a href="#">4838853P</a>
Denial for Discontinuance:	-----
PA: Emergency Housing Assistance:	<a href="#">1711094H</a>
PA/MA:	<a href="#">4275160R</a>
MA:	<a href="#">1379054N</a>



	<a href="#">1399065P</a>
MA: Personal Care Services:	<a href="#">3789016H</a>
FS:	<a href="#">2190630J</a>
Denial for Reduction:	-----
MA:	<a href="#">5096859Q</a>
Immediate/Special Needs for Discontinuance:	-----
Temporary Housing Assistance:	<a href="#">4173687Z</a>
Reauthorization for Reduction:	-----
MA (Personal Care Services):	<a href="#">3432131R</a>
<b>Wrong Reason for Proposed Action:</b>	-----
PA Discontinuance (Failure to Complete Application for a Job):	<a href="#">4895172Y</a>
PA Recoupment (Unreported Income):	<a href="#">0509394N</a>
PA Reduction (Failure to Comply with Alcohol/Substance Abuse Assessment):	<a href="#">4638065K</a> <a href="#">4866376Q</a> <a href="#">4910557K</a>
MA (Managed Long Term Care) Reduction (Most Recently Completed Assessment):	<a href="#">3915572Z</a>
<b>Wrong Regulation Cited:</b>	-----
PA Discontinuance Due to Excess Assets:	<a href="#">1169471N</a>
PA Recoupment of Utility Advance:	<a href="#">1042107H</a> <a href="#">1097523Q</a> <a href="#">1137635L</a> <a href="#">1147626Y</a> <a href="#">1174554Y</a> <a href="#">1298320Z</a>
PA Reduction Due to Presence of SSI Recipient in Household:	<a href="#">4288178L</a>
PA Reduction (Failure to Accept Referral or Take Part in Vocational Rehabilitation or Training):	<a href="#">4941886L</a>
PA Reduction (Failure to Comply with Alcohol/Substance Abuse	<a href="#">4910557K</a>

Assessment):	
PA/MA Discontinuance Due to Failure to Sign Repayment and Assignment Forms:	<a href="#">2501446J</a>
PA/FS Discontinuance Due to Institutionalization:	<a href="#">1188526Q</a>
MA: Change in Recognition of Over-the-Counter Drugs to Meet a Spenddown	<a href="#">7111258H</a>

**Please read the [Disclaimer](#).**

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Article ID: 14

Last updated: 24 Apr, 2016

Revision: 28

Fair Hearing Decision Digests -> Reversal of Agency Determinations Due to Defective Notices

[http://www.wnyc.com/kb\\_wnyc/entry/14/](http://www.wnyc.com/kb_wnyc/entry/14/)

# OFFICIAL REPORT OF FAIR HEARING

OFFICE OF ADMINISTRATIVE HEARINGS

APPELLANT'S NAME  - - - - -	HEARING OFFICER  - - - - -
	DATE OF HEARING  5 - 1 - 76

## APPEARANCES

	NAME	WAIVER	NOT PRESENT	TITLE
AGENCY REPRESENTATIVE		<input type="checkbox"/>	<input type="checkbox"/>	
AGENCY WITNESSES				
APPELLANT	RL		<input type="checkbox"/>	
APPELLANT'S REPRESENTATIVE			<input type="checkbox"/>	
APPELLANT'S WITNESSES				
INTERPRETER				

## MODEL OPENING STATEMENT

My name is DR (Name of Hearing Officer) and I have been designated by the Commissioner to conduct this hearing.

This Fair Hearing was requested by ic (Name of Person) who is appealing from a determination by the DAWCHER (County) Department of Social Services relating to ON THE GROUND OF A NON-QUALIFYING EDUCATIONAL PROGRAM Is that the issue, RL (Name of Person)?

The hearing will be conducted in the following manner: Each side will present its case through testimony and the introduction of documents. Each side will have an opportunity to question the other side. Upon completing the hearing, the record will be sent to Albany where the Commissioner will render his/her decision.

If you asked the Agency for documents necessary for your hearing and the Agency failed to provide them, please bring this to my attention.

Also, if I have ever dealt with your case, except as a hearing officer, I have any interest which makes me no longer independent, or I display bias or partiality to any party at this hearing, you have the right to ask that a different hearing officer be assigned to this case.

If Aid-Continuing was directed, was aid continued? ☐ Yes ☐ No NA

## FAMILY COMPOSITION (Specify age, relationship and other persons in house if material)

NAME	AGE	RELATIONSHIP	NAME	AGE	RELATIONSHIP
2001					
11-22-1976					
25					

Trans child case

**STATE OF NEW YORK**  
**OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**  
**MEMORANDUM**

**TO:** All Supervising ALJ's  
All ALJ's

**DATE:** April 3, 2001

**FROM:** Russell J. Hanks

**SUBJECT:** "Correct When Made"

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The following guidelines have been prepared in response to inquiries from local districts and ALJ's, to assist ALJ's in their deliberative process, and to promote statewide consistency. They are intended to provide direction for the use of the Decision Outcome, "Correct When Made."

Where the decision to direct relief (either specific relief or a remand) turns on evidence not available to the agency at the time of the original determination. "Correct When Made" may apply, rather than an outright reversal or affirmance. While this outline addresses the most common circumstances to use "Correct When Made," it is not intended to be all-inclusive.

In cases where "Correct When Made" is the appropriate outcome, the basis for this determination should be addressed in the Discussion section of your recommended decision. In addition, the Decision and Order section should indicate that the Agency's determination was "correct when made." The decision should then contain the directives that would have been applicable if the Agency were being reversed. It should also include the form paragraph advising the appellant of the need to cooperate where the decision (or the agency) indicates the need for additional information from the appellant.

If you are drafting a decision using the scripting process and the script asks for a choice between "Affirm" and "Reverse", you should choose "Reverse," so that the appropriate directives are inserted into the decision. The document should then be edited to reflect that the decision was "correct when made."

The Decision and Order should conform to the following example:

Decision and Order:

The Agency's determination was correct when made. However,

(Use Directives for Reversals or Remands)

Several of the checklist decisions used in New York City have been modified to allow selection of the "Correct When Made" outcome in appropriate cases. Daniel Bloodstein will be sending detailed instructions on use of the revised checklist forms.

**OUTLINE for “Correct When Made”**

**ISSUE: FAILURE TO PROVIDE ELIGIBILITY DOCUMENTATION**

**IF SUBMISSION WAS TIMELY (e.g., before the agency determination at issue):**

Reverse agency

Direct Agency to continue assistance or continue to process application  
(directing retroactive relief)

**IF SUBMISSION WAS UNTIMELY:**

**WHERE CLIENT ESTABLISHES DIFFICULTY IN OBTAINING  
INFORMATION AND ASKED FOR EXTENSION OR ASSISTANCE PRIOR TO THE  
AGENCY’S DETERMINATION:**

Reverse agency if assistance or extension not provided

Direct Agency to continue assistance or continue to process application  
and provide collateral assistance (directing retroactive relief)

**WHERE CLIENT HAS GOOD CAUSE FOR NOT SUBMITTING  
DOCUMENTS, BUT DID NOT PREVIOUSLY EXPLAIN TO AGENCY  
PRIOR TO FAIR HEARING:**

Correct when Made

Direct Agency to continue assistance or continue to process application  
and allow additional time to submit (directing retroactive relief)

**WHERE CLIENT DOES NOT HAVE GOOD CAUSE FOR NOT  
SUBMITTING DOCUMENTS, AND SUBMITS THEM ONLY AT FAIR  
HEARING:**

Affirm (advise appellant to reapply in appropriate circumstances)

**ISSUE: EMPLOYMENT SANCTION**

(This analysis can be applied in non-employment situations as well)

**WHERE GOOD CAUSE WAS ESTABLISHED AT CONCILIATION:**

Reverse

Direct agency to continue assistance

**WHERE GOOD CAUSE IS ESTABLISHED FOR FIRST TIME AT FAIR HEARING:**

Correct When Made

Direct Agency to continue assistance

**WHERE GOOD CAUSE NOT ESTABLISHED:**

Affirm



May 1, 2016

Transcript Unit Supervisor  
Office of Fair Hearings, Transcript Unit  
New York State Office of Temporary and Disability Assistance  
P.O. Box 1930  
Albany, NY 12201  
Email: [AdminRecords@otda.ny.gov](mailto:AdminRecords@otda.ny.gov)

**Re: Fair Hearing Record Request**

To Whom It May Concern:

We are assisting the below-named appellant who is considering an appeal of the Decision After Fair Hearing, also referred to below.

Fair Hearing #: 5555555N

Hearing Date: January 15, 2016

Decision Date: February 10, 2016

Appellant: John Brown

Address: 555 Justice Avenue, Brooklyn, NY 11111

Please send a copy of the transcript or tape/CD/audio file and all exhibits offered in to evidence at the hearing. A signed release is attached.

If you need more information, please call me at (718) 565-8500. Thank you very much for your assistance in this matter.

Sincerely,

Sienna Fontaine


**STATE OF NEW YORK  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

**REQUEST:** February 27, 2015

**AGENCY:** Nassau

**FH #:** 6967614M

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the Nassau County	:
Department of Social Services	:

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**JURISDICTION**

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on July 7, 2015, in Nassau County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Mr. Hyland, Fair Hearing Representative

**ISSUE**

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements by willfully failing, without good cause, was terminated from her assigned worksite for unprofessionalism correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age forty-eight, has been in receipt of Public Assistance for herself only.
2. The Appellant is not the parent or caretaker of a dependent child.



3. The Appellant was assigned to a worksite at [REDACTED].
4. On January 12, 2015, the Appellant reported to her assigned worksite but was terminated from the worksite after it was reported that she was “speaking out of turn” and her alleged behavior was deemed unprofessional by the worksite supervisor.
5. On February 26, 2015, the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant for 90 days and until the Appellant is willing to comply with work experience requirements on the grounds that the Appellant refused cooperate with work experience requirements by willfully failing, without good cause was terminated from her assigned worksite due to unprofessionalism.
6. Before sending the Notice of Intent, the Agency sent the Appellant a notice of conciliation advising this individual of the opportunity to take part in conciliation regarding the Agency's claim.
7. The Appellant responded to the notice of conciliation and had a conciliation with the Agency to give reasons for the failure to comply. After evaluating the Appellant's reasons, the Agency issued the Notice of Intent.
8. On February 27, 2015, the Appellant requested this fair hearing. The Appellant further sought review of the Agency's Notice dated May 27, 2014 that denied the Appellant's application for assistance with rent arrears. At the hearing, however, the Appellant's representative withdrew that portion of the request pertaining to such review.

### **APPLICABLE LAW**

Section 131.5 of the Social Services Law provides that no Public Assistance shall be given to an applicant for or recipient of Public Assistance who has failed to comply with the requirements of the Social Services Law, or has refused to accept employment in which he or she is able to engage. Section 131(7)(b) of the Social Services Law provides that where a person is judged employable or potentially employable, a social services official may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. A person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Pursuant to Section 336-c of the Social Services Law and 18 NYCRR 385.9, work experience programs meeting State and federal requirements may be established by social services districts. Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the State or in the operation of or in an activity of a nonprofit agency or institution.

Work experience opportunities are limited to projects which serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural

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development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care.

Social services officials are required by Section 341 of the Social Services Law and 18 NYCRR 385.11 to establish a conciliation procedure for applicants and recipients of Public Assistance.

Social services officials must establish a conciliation procedure for the resolution of grievances initiated by individuals assigned to work activities to give individuals an opportunity to dispute an assignment to a work activity. No sanction related to the participant's failure to comply may be imposed during this conciliation period. If the individual's grievance is not resolved, the individual shall be informed of the right to a fair hearing. Individuals shall be required to participate in work activities as assigned during the fair hearing process.

Social services officials are responsible for determining good cause. The official must consider the facts and circumstances, including information submitted by the individual subject to such requirements. Good cause includes circumstances beyond the individual's control, such as but not limited to, illness of the member, illness of another household member requiring the presence of the member, a household emergency, or the lack of adequate child care for children who have reached the age of six but are under age 13. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 18 NYCRR 385.12(c).

Section 342 of the Social Services Law and 18 NYCRR 385.12 provides that in the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

- (a) For the first such failure or refusal to comply, a period of ninety days and thereafter until willing to comply;
- (b) For the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply; and
- (c) For the third and all subsequent such failures or refusals, a period of 180 days and thereafter until willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

Regulations at 18 NYCRR section 385.12 (a)(2) provide that:

(2) A public assistance applicant or recipient subject to employment requirements who is determined to have refused or failed to comply without good cause with the requirements of this Part in accordance with the provisions of section 385.11 of this Part regarding conciliation must be provided a notice of such determination and of the intent of the social services district to deny, discontinue or reduce assistance, as follows:

- (i) An applicant must be issued an adequate notice of denial of public assistance which informs him/her that he/she has refused or failed to comply without good cause with employment requirements in accordance with the provisions of this Part.
- (ii) A recipient must be issued an adequate and timely notice of intent to discontinue or reduce assistance which informs him/her that he/she has refused or failed without good cause to comply with employment requirements in accordance with the requirements of this Part.
- (iii) The notices specified in subparagraphs (i) and (ii) of this paragraph must also inform:
  - (a) the applicant or recipient of the specific instance(s) of refusal or failure to comply without good cause with the requirements of this Part and of the specific section of this Part in which the requirement(s) is contained;
  - (b) the applicant or recipient that he/she has the right to apply for public assistance at any time, and for safety net recipients that he/she may reapply at least 45 days before the end of the sanction period to ensure restoration of benefits immediately following the applicable sanction period;
  - (c) the recipient of the duration for which he/she will be ineligible for public assistance or for a reduced amount of public assistance in accordance with this section; and
  - (d) that he/she has the right to a fair hearing in accordance with the provisions of Part 358 of this Title.

## **DISCUSSION**

At the hearing, the Appellant's representative contended that the Agency's May 27, 2015 Notice was vague and failed to cite to a specific Work Experience Rule that was violated. The Appellant's representative further added that the Agency's Notice failed to detail what "unprofessionalism" the Appellant allegedly displayed that resulted in her termination from the worksite.

The Agency noted that on January 12, 2015, the Appellant arrived to the worksite and the Appellant was asked to lower her voice because the children had naptime. The Agency further

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noted that the Appellant met with the chairman of the board and everyone involved and the Appellant was speaking out of turn and was being unprofessional.

However, in accordance with the authority cited above at 18 NYCRR 385.12(a)(2), a Notice containing a determination that a recipient has failed to comply with employment requirements must contain the specific instance(s) of refusal or failure to comply without good cause with the regulatory requirements and the specific regulatory section in which the requirement(s) is contained.

The Agency's May 27, 2015 Notice, stated that the reason for the proposed discontinuance of the Appellant's Public Assistance benefits was that "You did not comply with WEP at [REDACTED] (terminated from site due to unprofessionalism) on or by January 12, 2015." However, the Notice did not describe the specific behavior which was unprofessional. As such, the Agency's determination to discontinue the Appellant's Public Assistance benefits cannot be upheld at this time.

### **DECISION AND ORDER**

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to comply with work experience requirements by willfully failing, without good cause, cause was terminated from the worksite for unprofessionalism was not correct and is reversed.

1. The Agency is directed to continue the Appellant's Public Assistance grant and to restore any assistance withheld as a result of the Agency's action retroactive to the date of discontinuance.
2. The Agency is directed to remove the proposed sanction from the Appellant's case record of assistance.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

FH# 6967614M

DATED: Albany, New York  
07/09/2015

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Richard A. Lurhuck". The signature is written in a cursive, flowing style with a large initial 'R'.

Commissioner's Designee

## **SOURCES OF LAW CHEAT SHEET**

**Federal Law/Regulation:** In New York State, the program known as Family Assistance is federally funded from a block grant called Temporary Assistance to Needy Families (TANF). The Supplemental Nutrition Assistance Program (SNAP); and of the provision of Medical Assistance, or Medicaid.

- Federal Law pertaining to TANF / Family Assistance, is found at: 42 U.S.C. § 601 et seq. TANF regulations are found at: 45 C.F.R. § 260.10 et seq.
- SNAP law and regulations are found at: 7 U.S.C. § 2011 et seq. and 7 C.F.R. § 271.1 et seq.
- Medicaid law and regulations are found at: 42 U.S.C. § 1396 et. seq. and 42 C.F.R. § 430.0 et seq.

**New York State Law:** All relevant state law that governs programs such as Public Assistance, SNAP, and Medicaid is found in the Social Services Law.

- General Provisions are found at Soc. Serv. Law § 131 et seq.
- Safety Net Assistance (formerly Home Relief) at § 157 et seq.
- Family Assistance (formerly Aid to Dependent Children) at § 342 et seq.
- Public Assistance Employment Programs at § 330 et seq.
- Emergency Assistance to Aged, Blind or Disabled Persons at § 300 et seq.
- Emergency Assistance to Needy Families § 350-j.
- Food Stamp Program at § 95 et seq.
- Medical Assistance at § 363 et seq.

**New York State Regulations:** Additional requirements for Public Assistance, SNAP and Medical Assistance programs are found in Subchapter B of Chapter II of Title 18 of New York's Codes, Rules, and Regulations (18 NYCRR).

- General Provisions are at 18 NYCRR § 349 et seq.
- Safety Net Assistance at § 370 et seq.
- Family Assistance at § 369 et seq.
- Public Assistance and Food Stamp Employment Program Requirements at § 385 et seq.
- Emergency Assistance to Aged, Blind or Disabled at § 368 et seq.
- Emergency Assistance to Needy Families at § 372.l et seq.
- Child Care Assistance at § 415 et seq.; Special provisions for PA recipients at § 415.8.
- Food Stamps at § 387 et seq.
- Medical Assistance Program at § 360-1.1 et seq.

**\*\*Social Services Law § 22 and 18 NYCRR § 358.1 et seq. govern the provision of Fair Hearings.**

**Prior Fair Hearing Decisions:** These serve as persuasive guidance for ALJs, and can be found in two key places: 1) The Online Resource Center -- <http://onlineresources.wnylc.net> (Must register for full access to databases); or in the online archive kept by OTDA -- <http://otda.ny.gov/hearings/search/>. These decisions only span back to November, 2010.

**State Policy Documents:** Policy Directives, GIS Messages, and other helpful guidance are found on the OTDA website: <http://otda.ny.gov/resources/>. OTDA sets out its interpretation of the state regulations in the Temporary Assistance Source Book (TASB) and a Food Stamp Source Book (FSSB) ; both are available online at OTDA'S website at <http://otda.ny.gov/programs/temporary-assistance/TASB.pdf> and <https://otda.ny.gov/programs/snap/SNAPSB.pdf>

- Many of the policy documents, including older ones not available on the OTDA website, can also be found in the Online Resource Center cosponsored by the Western New York Law Center and the Empire Justice Center at: <http://onlineresources.wnyc.net/pb/default.asp>

**New York City Policy Documents:** Policies governing the Human Resources Administration are available here: The Online Resource Center at: <http://onlineresources.wnyc.net/nychra/default.asp>