

NEW YORK STATE  
DEPARTMENT OF SOCIAL SERVICES  
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001



BRIAN J. WING  
*Acting Commissioner*

(518) 473-4775

December 12, 1995

Mr. Eugene Doyle  
P.O.O.R.  
102-12 164th Avenue  
Hamilton Beach, New York 11414

Re: Corrected and Amended Fair  
Hearing Decisions

Dear Mr. Doyle:

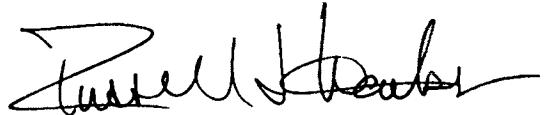
This will respond to your letter of October 27, 1995 in which you ask for information concerning the procedures followed by the Office of Administrative Hearings regarding the post-issuance review of fair hearing decisions. I will respond to your questions in the order in which they were posed:

1. This office follows the procedures outlined in 18 NYCRR 358-6.6 in reviewing issued fair hearing decisions for the purpose of correcting any errors found therein. This process is specifically limited to decisions which the Commissioner, or his designee, determines may need correction or reopened hearings. This process is not intended to be an appeal process for a second level of Department hearings and does not make provision for specific requests for appeals of issued decisions. Such appeals are adequately provided for in Article 78 of the Civil Practice Law and Rules.
2. The right to appeal the decision made after an administrative hearing is set forth in Article 78 of the Civil Practice Law and Rules and appellants are informed of this right in the transmittal notice that accompanies each issued decision (copy attached). Departmental regulations do not set forth any right to appeal an issued decision within the Department. Any inquiry received by this office which might reasonably be considered as requiring review of a fair hearing decision is so treated. Additionally, review may be commenced during the course of a compliance review.
- 3 In most circumstances, a request for a hearing regarding an issue which was reviewed at a previous fair hearing does not generate review of the accuracy of the previous hearing decision. However, if a reading of the previous decision indicates an error may have occurred, the Commissioner may make further review and take appropriate action.

4. No time limit is specified for the Commissioner's review of a previously issued decision since such review and a determination to correct or reopen are solely within the Commissioner's discretion. The Statute of Limitations for judicial review imposed by the Civil Practice Law and Rules is a factor considered in the Commissioner's determination.
5. Heard and closed cases are retained by this office for a minimum of three years from date of decision issuance.
- 6 and 7. If a review of an issued decision indicates an error in production or errors in fact or law which are substantiated in the hearing record, the decision is corrected and reissued to all parties. In appropriate cases, on notice to all parties, the hearing may be reopened to complete the record.
8. Review of issued decisions can involve the hearing officer who issued the decision, the hearing officer's supervisor, the supervisor's supervisor, and myself.
9. The determination to amend or correct a decision or to reopen a hearing is made on a case-by-case basis, after considering the evidence of record.
10. Any materials related to the determination to review an issued decision and related to the determination made as a result of the review (i.e., to issue a corrected decision or reopen the hearing) are made a part of the record of the hearing.

I hope that this letter satisfactorily responds to the questions which you have raised.

Sincerely,



Russell J. Hanks  
Deputy General Counsel  
for Administrative Hearings

RJH:DB

cc: Henry Pedicone  
Daniel Bloodstein