

MEMORANDUM
DSS-524E

TO: All Administrative Law Judges DATE: January 5, 2004
All Supervising ALJs

FROM: Russell Hanks SUBJECT: Effect of Death of Appellant on
Statute of Limitations

This memorandum is intended to clarify the policy of this Office concerning the application of the statute of limitations in cases where the potential appellant has died before a fair hearing is requested.

There is no provision either in Social Services Law §22 or in 18 NYCRR Part 358 that would toll the 60 or 90-day time limit in which a fair hearing must be requested based on the death of a potential appellant. In the interest of fairness, however, this Office has looked to the provisions of Section 210 of the CPLR for some guidance concerning a reasonable extension to allow for the appointment of an estate representative. While §210(a) extends a one year time period for causes of action accruing prior to a potential claimant's death, §210(c) extends a three year period for causes of action accruing after the potential claimant's death. Again, in the interests of fairness to all parties, we believe it is reasonable to extend the time period for one year in either circumstance. **Please note, however, that the basis of this extension is OAH policy; CPLR Section 210 does not, in itself, apply to the administrative hearing process.**

Accordingly, where a person dies before the time in which to request a hearing expires, or where the agency determination is made after the person's death, a hearing may be requested by that person's estate representative within one year from the date of death, or 60 or 90 days after the agency's notice of determination (depending on the program involved), whichever date is later. Of course, if the 60 or 90 day SOL has run by the time of the potential appellant's death, no extension may be given on this basis.

Please note that these guidelines do not represent an absolute one-year limitation on the ability to request a hearing. All tolling provisions regarding notices (defective notices, failure to notify representative, etc.) remain applicable. Also, any of the bases for tolling contemplated in the CPLR, and related case law, may be applied.

It is anticipated that we will seek to have this policy incorporated into a future revision of 18 NYCRR Part 358.