

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>			<b>Transmittal Number:</b> 07-05
			<b>Date:</b> March 2, 2007
<b>Distribution:</b>			<b>Page:</b> 1 of 4
<b>ALB OAH Staff</b> <input checked="" type="checkbox"/>	<b>UPS ALJs</b> <input checked="" type="checkbox"/>	<b>Upstate LDSS</b> <input type="checkbox"/>	<b>Subject:</b>  Revised Waiver of Personal Appearance Instructions for Department of Health (DOH) Prior Approval Program Representatives
	<b>SUP ALJs</b> <input checked="" type="checkbox"/>	<b>DOH Only</b>	
<b>NYC OAH Staff</b> <input checked="" type="checkbox"/>	<b>NYC ALJs</b> <input checked="" type="checkbox"/> (MA Only)	<b>NYC Agencies</b> <input type="checkbox"/>	
	<b>SUP ALJs</b> <input checked="" type="checkbox"/>		

This transmittal is being released by the Office of Administrative Hearings (OAH) to document instructions for Department of Health (DOH) Program representatives in requesting a waiver of personal appearance at an administrative hearing. These procedures have been in effect with changes noted in bold effective immediately.

The Office of Administrative Hearings has responsibility for scheduling and holding fair hearings on Department of Health Program issues, notably issues concerning client's requests for prior approval for such items as Licensed Private Duty Nursing, Out-of State Services, Dental Care, Physical Therapy, and Durable Medical Equipment.

In accordance with 18 NYCRR 358-4.3(c) (1), the Department of Health (hereinafter referred to as the "agency") can request a waiver of personal appearance and submit to this office, prior to the hearing date, a waiver request and evidentiary packet.

It should be noted that even in situations where a waiver of appearance has been granted, the Administrative Law Judge may require the testimony of the agency representative at the time of the hearing. It will, therefore, be necessary that a primary contact person be available (and a back-up contact be designated to be available) during the course of the hearing to accept a telephone call from the Administrative Law Judge. The primary and back-up contact persons' name and telephone number should be included on the request for waiver. The waiver request should also contain the fair hearing number, date of hearing, and a summary of the specific facts relevant to the issue under review at the hearing. A proposed format for requesting a waiver of appearance is attached as an example.

For proper inclusion in the fair hearing record, the waiver request and evidentiary packet should be submitted immediately upon notification of the hearing request, as follows:

**For all Upstate and NYC requests, the original waiver request and evidentiary packet must be mailed or faxed to the Albany Central Office address or fax number listed below.** It is essential that the packets are received in the Albany Central Office to allow sufficient time for forwarding to the hearing site--allow at least five calendar days prior to the hearing date. If packets are not received within this timeframe, there is no guarantee that they will be available at the hearing.

Mail via regular mail to:

**DOH Packet**  
Office of Administrative Hearings  
NYS Office of Temporary and Disability Assistance (OTDA)  
P.O. Box 1930  
Albany, New York 12201-1930

-or-

Mail via Express Mail to:

**DOH Packet**  
Office of Administrative Hearings  
NYS Office of Temporary and Disability Assistance (OTDA)  
1 Commerce Plaza, 12<sup>th</sup> Floor, Suite 1200  
Albany, New York 12260

-or-

Fax to the attention of **DOH Packet** at:

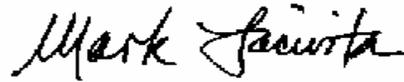
**Fax Number: (518) 473-6735**

When faxing Upstate and NYC requests, please include on the fax transmittal the name of the appellant, the fair hearing number, the date of the hearing, and the number of pages contained in each package to assist in matching the submission to the appropriate fair hearing file.

Please note, it is the responsibility of the agency to provide a copy of the waiver request and evidentiary packet to the appellant and/or representative, in addition to that required above, if requested. **When the hearing is scheduled as a telephone hearing, since the appellant will not appear, it is essential that the agency mail the appellant and/or representative a copy of the evidence packet prior to the hearing even when not requested by the client.** Also, when the agency's representative appears in person, it is essential that two copies of the evidence packet are brought to the hearing, one for the Administrative Law Judge and one for the client.

**Questions previously addressed to Robin Lee or Joanne McGrath with respect to individual cases and/or receipt of waiver requests/evidentiary submissions, should now be addressed to the OAH Liaison desk at 518-474-8787.**

If there are any questions with respect to this transmittal, you may contact your supervisor or Susan Fiehl at (518) 473-4779 or via email [susan.fiehl@otda.state.ny.us](mailto:susan.fiehl@otda.state.ny.us).



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Mark Lacivita, Director of Administration  
Office of Administrative Hearings

SAMPLE WAIVER REQUEST

**DOH Packet**

Office of Administrative Hearings  
NYS Office of Temporary & Disability Assistance  
P.O. Box 1930  
Albany, New York 12201-1930

**Re: DOH Prior Approval Program**

Appellant's Name \_\_\_\_\_

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

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

To Whom It May Concern:

This will acknowledge receipt of notice that the above fair hearing is being scheduled for the above-named appellant. This information is submitted in relation to the hearing and submitted in lieu of personal appearance.

In accordance with the requirements contained in 18 NYCRR 358-4.3(c) (1) please consider this as this agency's request to present evidence in the form of written documentation in lieu of appearing at the hearing. Should the content of this document raise issues requiring further elaboration or cross-examination during the course of the hearing, please contact:

\_\_\_\_\_ (name) at \_\_\_\_\_ (telephone number)

-or-

\_\_\_\_\_ (name) at \_\_\_\_\_ (telephone number).

The following should be noted for the record:

(In this section, summarize the Department of Health's position relative to the issue under review at the hearing. Attach all appropriate documentation and submit within the timeframe required for information to be available on the scheduled date of the hearing.)

These facts, as presented, should be of assistance in your review of this case.

Sincerely,