

Office of Administrative Hearings (OAH) Procedures Transmittal			Transmittal Number: 07-07
			Date: July 24, 2007
Distribution:			Page: 1 of 4
ALB OAH Staff <input checked="" type="checkbox"/>	UPS ALJs <input checked="" type="checkbox"/>	Upstate LDSS <input checked="" type="checkbox"/>	Subject: New Disposition PEND and New Adjournment Reason Code 99
	SUP ALJs <input checked="" type="checkbox"/>		
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input checked="" type="checkbox"/>	
	SUP ALJs <input checked="" type="checkbox"/>		

Dispositions in the Fair Hearing Information System (FHIS) have been amended to include a new PEND status. The distinguishing characteristic for cases that have a disposition of PEND is that these cases are essentially non-aid continuing cases that will not be placed back on the calendar unless and until contacted by the appellant or representative, as there is information received by the Office of Administrative Hearings which indicates that a hearing may no longer be required. Cases that are simply not to be scheduled for a specified time period will continue to be placed in Subcategory HOLD rather than Disposition PEND.

The need for a disposition of PEND will most likely come to the attention of Albany or NYC administrative staff who should, in turn, discuss it with an LAS III. The ultimate determination to place the hearing in PEND will be made by Mark Lacivita upon consultation with the appropriate NYC/Upstate Principal Hearing Officer. In the event that an Administrative Law Judge (ALJ) feels that PEND disposition is appropriate, it should be brought to a Supervising ALJ, who should then raise it with the appropriate Principal Hearing Officer. This will ensure that directions are provided ensuring that the file and the Fair Hearing Information System are appropriately noted so that the file is stored rather than rescheduled. A PEND disposition has also been applied to certain cases maintained by Karen Hazzard. Future litigation may also benefit from the use of PEND disposition to the extent that the cases involved in that litigation do not require calendaring pending resolution.

It will be the responsibility of an LAS III to ensure that the proper FHIS modification entry is completed. Any staff who become aware of a situation where a PEND disposition may be appropriate, should bring it to the attention of a supervisor, who in turn should refer it to an LAS III for review by Mark Lacivita in conjunction with the appropriate Principal Hearing Officer. Once it is determined that a case is to have a PEND disposition, it will require the following action by the LAS III depending on the status of the file folder, as noted below:

Not yet scheduled:

Similar to dispositions OADG, OADD, HADG, HADD, WITH, UWTH, DEF, and HRD, LAS III or other designated staff will enter PEND on the Modification Screen (PFMOD1) as follows:

Enter Disposition PEND and Subcategory HOLD (an FHIS edit will ensure that HOLD is entered).

Disposition: PEND
Reason Code: None
Scheduling Status: Z
Subcategory: HOLD (FHIS edit will require HOLD entry)
Comments will be pulled over by FHIS: "PEND _____date and____ worker's initials"
(FHIS will require further comments by the worker).

This coding will result in its appearance on a COGNOS Report which will be emailed to the designated support person for further necessary action.

Scheduled but not yet folder received:

Enter **OADG 99** or **HADG 99** (this is a new Adjournment Reason Code defined as "**Pend Status**") and enter Subcategory HOLD. Once the folder is received, a COGNOS report will be emailed to the designated support person for further necessary action including modification to PEND disposition.

Disposition: OADG or HADG
Reason Code: 99
Scheduling Status: P
Subcategory: HOLD (FHIS edit will require HOLD entry)
Comments will be pulled over by FHIS: "OADG 99 or HADG 99 of _____date
_____time hearing and ____ worker's initials"
(FHIS will require further comments by the worker).

Previously adjourned for any reason other than 99 and folder received:

Enter PEND as the disposition on FHIS (if missing, also enter Subcategory HOLD) which will result in its appearance on a COGNOS Report which will be emailed to the designated support person for further necessary action.

Disposition: PEND
 Reason Code: None
 Scheduling Status: Z
 Subcategory: HOLD (FHIS edit will require HOLD entry)
 Comments will be pulled over by FHIS: "PEND _____date and _____ worker's initials" (FHIS will require further comments by the worker).

In all of the above situations ("not yet scheduled," "scheduled but not yet folder received," "previously adjourned for any reason other than 99 and folder received"), for written, faxed, emailed, and telephone requests, FHIS Letter 12 (Advise App FH Removed from Calendar) will be sent to the appellant and/or the representative that the hearing will not be rescheduled until such time as OAH is notified by either the appellant or the representative that it needs to be returned to the calendar. (Attachment A). This letter will be automatically generated from FHIS by designated staff entering on the Modification (or Change) screen: "Send Letter #12."

Instructions to ALJs if a Determination to PEND is Made Upon Appearance at Hearing:

If an Upstate ALJ encounters a PEND situation upon consultation with a supervising ALJ and at the direction of the Principal Hearing Officer, the file is to be returned to Albany after noting the file as an HADG 99 and noting the "Additional Information" box on the file jacket as "PEND" with a brief explanation. The on-line calendar should also be noted as HADG 99. The Fair Hearing Information System will automatically enter HOLD in the Subcategory field.

If a NYC ALJ encounters a PEND situation upon consultation with a supervising ALJ and at the direction of the Principal Hearing Officer, the file should be given to either Vicki Shuster or Nelly Liranzo at Boerum Place, who will enter HADG 99 and Subcategory HOLD on the PFHMOD screen of FHIS. Cases from 330 West 34th Street should be given to Evelyn Cobian, who will forward the file to Vicki Shuster or Nelly Liranzo for appropriate coding and forwarding to Albany's Scheduling Unit.

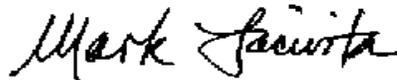
For any determination to PEND made upon appearance at the hearing, designated staff will generate FHIS Letter 12 to be sent to the appellant and/or the representative that the hearing will not be rescheduled until such time as OAH is notified by either the appellant or the representative that it needs to be returned to the calendar.

Upon receipt of the file in Albany, Scheduling Unit staff will "folder receive" it and file it with all other files received that day. The following day, a COGNOS report will be emailed to the designated staff member who will retrieve from the Scheduling Unit any OADG 99 or HADG 99 files on the report, enter Subcategory HOLD, if not already so noted, enter PEND as the new disposition, and store ALL PEND files either in the Correspondence Unit (including files designated PEND by Litigation), or in Karen Hazzard's area, as appropriate. It is essential that any PEND cases maintained by Karen Hazzard are not modified, reopened, withdrawn, or otherwise changed without authorization from her.

Requests in PEND will not appear in reports of unscheduled cases but can appear in a COGNOS report if the query specifically includes the Disposition PEND. Daily transaction reports notifying local districts/agencies of hearing activity will not include cases put into PEND. These cases will never be deleted from FHIS in the event that a request to reopen is received.

These cases cannot be reopen denied. However, CIU staff should only reopen a hearing with a PEND disposition upon consultation with appropriate supervisory staff.

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.



Mark Lacivita, Director of Administration
Office of Administrative Hearings



Eliot Spitzer
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

David A. Hansell
Commissioner

Re:

Dear Appellant/Representative:

Please be advised that the above-referenced fair hearing will be removed from the calendar for further scheduling until such time as we are notified by either the appellant or the appellant's authorized representative that the hearing should proceed. If you are successful in resolving the issue(s) subject to review at the hearing, kindly contact this office in writing, at:

NYS Office of Temporary and Disability Assistance
Office of Administrative Hearings
PO Box 1930
Albany, NY 12201-1930

The disposition can then be noted as withdrawn. If you have any questions, feel free to call 1-800-342-3334.

Sincerely,

Mark Lacivita, Director of Administration
Office of Administrative Hearings