

Office of Administrative Hearings (OAH) Procedures Transmittal Distribution: ALB OAH Staff <input checked="" type="checkbox"/> UPS ALJs <input checked="" type="checkbox"/> Upstate LDSS <input checked="" type="checkbox"/> 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"/> (MA Only) SUP ALJs <input checked="" type="checkbox"/>	Transmittal Number: 07-11
	Date: October 18, 2007 Page: 1 of 4
	Subject: Waiver of Personal Appearance Instructions for Agencies Preparing for Issues Scheduled Out of District

This transmittal is being released by the Office of Administrative Hearings (OAH) to document instructions for local district/agency representatives in requesting a waiver of personal appearance at an administrative hearing in situations where a hearing is scheduled at an out-of-district hearing location. These cases are easily identifiable on the Fair Hearing Information System (FHIS) by noting that the "Agency" field differs from the "Hearing Location" field (e.g. Agency: N054 (NYC Job Center 54); Hearing Location: SUFF (Suffolk County)).

The Office of Administrative Hearings has responsibility for scheduling and holding fair hearings regarding Interjurisdictional Disputes (IDDs) between local districts including NYC agencies as well as issues where an appellant has requested review of an issue against a local district or NYC agency but no longer resides in that jurisdiction, resulting in an out-of-district scheduling. In these situations where a local district or NYC agency elects to waive personal appearance at the hearing location and submit written evidentiary material for the hearing, the following guidelines apply:

In accordance with 18 NYCRR 358-4.3(c) (1), the local district/NYC agency (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. Waiver requests will be reviewed and granted on a case-by-case basis. At this time, "blanket" waivers of appearance will not be granted; however, if the agency contact does not receive a telephone call from this office prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted.

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' names and telephone numbers 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:

Waiver of Appearance Request
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:

Waiver of Appearance Request
Office of Administrative Hearings
NYS Office of Temporary and Disability Assistance (OTDA)
1 Commerce Plaza, 12th Floor, Suite 1200
Albany, New York 12260

-or-

Fax to the attention of **Waiver of Appearance Request** 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 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.

A handwritten signature in black ink that reads "Mark Lacivita". The signature is written in a cursive, flowing style.

Mark Lacivita, Director of Administration
Office of Administrative Hearings

SAMPLE WAIVER REQUEST

WAIVER OF APPEARANCE

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

Re: **Waiver of Appearance**

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 Agency'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,