Office of Administrative Hearings (OAH) Procedures Transmittal			Transmittal Number: 06-06
			Date: April 7, 2006
Distribution:			Page: 1 of 2 plus Attach.
ALB OAH Staff [X]	UPS ALJs [X]	Upstate LDSS [ ]	Subject:
	SUP ALJs [X]	All Medicaid Waiver Agencies	Waiver of Personal Appearance Instructions for Medicaid Waiver Program Representatives
NYC OAH Staff [X]	NYC ALJs [X]	NYC Agencies [ ]	
	SUP ALJs [X]		

This transmittal is being released by the Office of Administrative Hearings to document instructions for Medicaid Waiver Program representatives in waiving personal appearances at administrative hearings. 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 Medicaid Waiver Program issues. The Medicaid Waiver Program requests consist of:

OMRDD Home and Community-Based Services Waivers 3, 4, and 6
Care at Home Waivers 1, 2, and 5 (Department of Health-DOH)
Traumatic Brain Injury Waiver (Department of Health-DOH)
Emotionally Disturbed Adolescents' Waiver (Office of Mental Health-OMH)

Pursuant to 18 NYCRR 358-4.3(c) (1), the Medicaid Waiver Program 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 Medicaid Waiver Program 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 a Medicaid Waiver Program 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 summary 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 Personal Appearance Processing
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 Personal Appearance Processing
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 Personal Appearance Processing** 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 Medicaid Waiver Program 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 Medicaid Waiver Program 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 Medicaid Waiver Program'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 Louise Finkell with respect to individual cases, should now be addressed to the OAH Liaison desk at 518-474-8787.

If you have any questions regarding this transmittal, please contact Susan Fiehl at 518-473-4779 or via e-mail at susan.fiehl@otda.state.ny.us.

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Mark Lacivita, Director of Administration
Office of Administrative Hearings

SAMPLE WAIVER REQUEST

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

Re: Medicaid Waiver Program
Appellant's Name _____
Fair Hearing Number: _____
Hearing Date: _____

To Whom It May Concern:

This information is submitted with respect to the above-mentioned fair hearing and is submitted in lieu of appearance at the hearing. A personal appearance is not necessary because_____

_____.

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 Medicaid Waiver Program'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,