

Office of Administrative Hearings (OAH) Procedures Transmittal			Transmittal Number: 06-10
Distribution:			Date: August 24, 2006
			Page: 1 of 2 plus Attach.
ALB OAH Staff <input checked="" type="checkbox"/>	UPS ALJs <input checked="" type="checkbox"/>	Upstate LDSS <input type="checkbox"/>	Subject: Waiver of Personal Appearance Instructions for EBT Account Adjustment Program Representatives
	SUP ALJs <input checked="" type="checkbox"/>	NYS EBT Only	
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input type="checkbox"/>	
	SUP ALJs <input checked="" type="checkbox"/>		

This transmittal is being released by the Office of Administrative Hearings (OAH) to document instructions for State representatives handling requests for fair hearings on Food Stamp Notices of Action concerning the EBT Account Adjustment Program. The OAH has responsibility for scheduling and holding fair hearings on issues pertaining to the EBT Account Adjustment process. A blanket waiver has been granted so that personal appearance by the agency representative at the administrative hearing is not required for all such requests.

Pursuant to 18 NYCRR 358-4.3(c) (1), a request for a waiver of personal appearance may be submitted to this office prior to the hearing date. If such a waiver is granted, an evidentiary packet is then submitted in lieu of a personal appearance. Since these EBT Account Adjustment hearing requests pertain to the merits of an appellant's contention that benefits were affected as a result of an electronic malfunction at the point of service, an administrative matter supported mainly by computer records, a "blanket" waiver of appearance has been granted by the OAH so that each request does not require an individualized request for a waiver. Submission of an evidentiary packet in advance of the hearing remains a requirement.

It should be noted, however, that even in situations where a waiver of appearance has been granted, the Administrative Law Judge may require the testimony of the EBT Account Adjustment 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 with the submission of the evidentiary packet. The evidentiary packet 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 submission of the evidentiary packet is attached.

For proper inclusion in the fair hearing record, the 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 (EBT Blanket Waiver)
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 (EBT Blanket Waiver)
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 (EBT Blanket Waiver)** 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 packet to assist in matching the submission to the appropriate fair hearing file.

In addition, the EBT Account Adjustment Program representative must mail a copy of the evidentiary packet to the appellant and/or representative so that it will be received by the appellant/representative prior to the hearing. Also, if the EBT Account Adjustment Program 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 appellant.

Questions with respect to individual cases should 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 COVER LETTER FOR SUBMISSION OF THE EBT ACCOUNT
ADJUSTMENT PROGRAM'S EVIDENTIARY PACKET

Waiver of Personal Appearance Processing (EBT Blanket Waiver)

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

Re: EBT Account Adjustment 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 in accordance with a waiver granted by the Office of Administrative Hearings pursuant to requirements contained in 18 NYCRR 358-4.3(c) (1). 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 EBT Account Adjustment 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,