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| Office of Administrative Hearings (OAH) Procedures Transmittal | | Transmittal Number: 05-31 |
| Distribution: | | Date: December 15, 2005 |
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| ALB OAH Staff <input checked="" type="checkbox"/> | UPS ALJs <input checked="" type="checkbox"/> | Upstate LDSS <input checked="" type="checkbox"/> |
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| NYC OAH Staff <input checked="" type="checkbox"/> | NYC ALJs <input checked="" type="checkbox"/> | NYC Agencies <input checked="" type="checkbox"/> |
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| | | Subject: Varshavsky Remand Monitoring Procedure |

The Preliminary Injunction in Varshavsky v. Perales (Supreme Court, New York County) requires the Office of Administrative Hearings (“OAH”) to monitor certain Decisions After Fair Hearing (“DAFH”). This monitoring is required where a DAFH is issued after a telephone hearing or representative-only hearing involving a homebound person, and the DAFH contains a directive requiring the local district (the “Agency”) to make a new determination of eligibility. This directive is called a “remand.”

If as a result of a remand the Appellant does not receive what he or she was seeking in the original fair hearing request, the Preliminary Injunction requires OAH to schedule a Home Fair Hearing without a new hearing request from the Appellant. This transmittal outlines the procedures that have been put in place regarding the monitoring of these Varshavsky-related remands.

Sixty days after the issuance of a Varshavsky-related DAFH containing a remand directive (Outcome Reason Code of 41, 42, 43, 44, 45, 46 or 47), the OAH Compliance Unit is notified through the Fair Hearing Information System (“FHIS”) of each such DAFH. The notification is labeled as “Varshavsky Remand Monitoring,” and is assigned a Coordinator Code 11, “Varshavsky Remands.” The related DAFHs are reviewed by an OAH Compliance Coordinator (assigned by the Compliance Supervisor) to ascertain the Agency’s compliance with the DAFH.

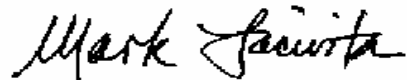
Local social service districts have been instructed to use the FHIS Agency Tracking Program to reflect their actions taken in compliance with DAFHs. The OAH Compliance Coordinator reviews any Agency entries in FHIS or contacts the Agency as necessary to learn what new determination was made in compliance with the DAFH. If the OAH Compliance Coordinator concludes that the outcome of the remand results in the Appellant not receiving the level of services, or a particular service or piece of medical equipment sought in the original fair hearing request, a new hearing request will be processed for the Appellant, without further input from the Appellant. The new request will be set up as a Home Fair Hearing.

In addition to the issue code of the hearing, a new issue code 940 - Automatic Fair Hearing Request (Varshavsky) will be used to track these new hearings. The Appellant will be notified by letter (Homebound Hearings – Letter R) of the new hearing request.

If the Agency has not completed the determination required by the remand, the Compliance Unit will monitor the remand until the new determination is made. If the Appellant has, in fact, received authorization of services or assistance equal to or exceeding the original request, no further action will be taken by OAH.

The results of the compliance review and any necessary follow-up will be reflected in comments made by the OAH Compliance Coordinator on FHIS.

If there are any questions with respect to this transmittal, you may contact your supervisor or Jackie Donovan at 518-473-4989 or by email at Jackie.donovan@otda.state.ny.us.

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

Mark Lacivita, Director of Administration
Office of Administrative Hearings