

Office of Administrative Hearings (OAH)		Transmittal Number: 96-13
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Distribution:		
ALB OAH Staff [X]	UPS ALJs/ [X] Upstate LDSS []	Subject: ADH Administrative Disqualification Hearing Procedures for Non-ADH Staff
	SUP ALJs [X]	
NYC OAH Staff [X]	NYC ALJs/ [] NYC Agencies []	
	SUP ALJs []	

The following summarizes procedures pertaining to the Administrative Disqualification Hearing (ADH) process that impact on non-ADH staff. Albany and NYC Office of Administrative Hearings (OAH) staff should follow these guidelines when handling ADH phone contacts, walk-ins, inquiries, etc.

UPSTATE ADH ADJOURNMENT/REOPEN REQUESTS

All requests for adjournments or reopening of ADH cases must be referred to the ADH Coordinator, Edward McCarthy, (or his backup, David Szary), without exception. This includes cases for which the client claims non-receipt of notice, or for any other reason for which good cause must be established. Upstate Intake Unit staff should transfer relevant ADH telephone calls to Ed McCarthy at (518) 473-8920 or Dave Szary at 473-8231. In instances where a telephone call cannot be transferred (due to the unavailability of the ADH Coordinator), the Intake worker should either take a message for call back at a later time or give the phone number of the ADH Coordinator to call directly.

NYC ADH ADJOURNMENT/REOPEN REQUESTS

For NYC walk-in adjournment requests only, when the client is there on the day of the hearing, the client should be referred to the Administrative Law Judge for resolution. All walk-in requests for adjournments, prior to the hearing date, should be referred to the designated NYC Calendar Management Unit staff (currently Elisa Fowler) who will process the adjournment and notify the ALJ, as appropriate.

Requests for reopens (post hearing), whether walk-in or via telephone, are to be referred to the ADH Coordinator, without exception. (These will not be defaulted cases but, rather heard cases for which a decision has been issued.) The reopen request cannot be initiated in NYC but, rather, the client must be directed to call or write the Albany ADH Unit in accordance with the information provided on the transmittal that is included with the client's decision.

WAIVERS/NOTICE/PENALTIES (UPSTATE AND NYC)

Clients cannot withdraw from an ADH hearing. If a client chooses to accept the penalty (disqualification from receiving food stamps/public assistance for a given period or recovery of overpayment) and does not wish to contest the agency's allegations, s/he can sign the waiver form provided to the client at the time of notification of hearing and return it to the Albany office. Waivers can also be secured at pre-hearing conferences at the local district level. No hearing will be held and the agency can proceed to impose the penalty. Upon receipt of the signed waiver, the disposition is noted as WAVD, meaning the agency can proceed with their action.

If, after being duly notified of the scheduled hearing, a client chooses not to participate and has not submitted a waiver, the hearing will be held without the client present and a decision will be issued based solely on the agency's testimony and evidence submission. Intake staff may receive inquiries regarding the notice and penalties, at which time a brief explanation can be given. (The client may require an explanation of why a hearing was scheduled since it is at the request of the agency rather than the client or the client may need an explanation of what it means to sign a waiver). All calls should be logged and appropriate notation made on the Comment Screen. If assistance is needed due to the complexity of the inquiry, or for any other reason, intake staff can either take a phone number and indicate that the ADH Coordinator will call the client back or place the person on hold and consult with the ADH Coordinator.

CALENDAR RECONCILIATION

The NYC Calendar will continue to be reconciled by the ALJ in conjunction with the appropriate staff member in the Albany Scheduling Unit (currently Karen Giminiani), and the yellow ADH files will be appropriately marked by the ALJ. Staff in the Calendar Management Unit will separate the files into adjourned vs. waived cases and forward the files to the Scheduling Unit in Albany (Karen Giminiani). Upstate calendars will continue to be called into the Scheduling Unit.

ALJs should continue to call the Albany office prior to the ADH calendar to obtain adjournments, as well as waivers, from the appropriate staff member in the Scheduling Unit (currently Karen Giminiani). If the ALJ fails to obtain notification of the adjournment, the hearing will be held without the client. It is, therefore, crucial that all ADH adjournment requests are processed immediately, particularly if the hearing is imminent.

ADH MAILING VERIFICATION

As of August 14, 1996, as a result of regulatory changes, packets to clients notifying them of the scheduling of the ADH proceeding will be sent by first class mail rather than by certified, return-receipt requested, mail. Therefore, it is essential that a mailing procedure be established to verify the mailing. This procedure is set forth below:

All Fair Hearing information packets for a particular calendar date should be put in a large, white Tyvek envelope. A copy of the calendar must be included. The label should be addressed as follows:

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
MAILROOM - MEZZANINE
40 NORTH PEARL STREET
TEN EYCK BUILDING
ALBANY, NY 12243

The label should also be noted in RED ink: ADH
ATTN: RICK PLACE

Mailroom staff will meter and mail each packet and indicate the date and time of the mailing on the calendar. These calendars will be returned to us to keep on file for verification of mailing.

Training for Intake staff will be scheduled to review these procedures. All questions related to the ADH process should be brought to the attention of Ed McCarthy at (518) 473-8920 or via e-mail LA0088.

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Mark Lacivita, Director of Administration
Office of Administrative Hearings