

Office of Administrative Hearings (OAH) Internal Procedures Transmittal			Transmittal Number: 13-01
Distribution:			Date: June 6, 2013
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ALB OAH Staff <input checked="" type="checkbox"/>	UPS ALJs <input checked="" type="checkbox"/>	Upstate LDSS <input type="checkbox"/>	Subject: <u>Fishman v. Daines</u> Litigation Procedures (Amended 11-003a(DRAFT))
	SUP ALJs <input checked="" type="checkbox"/>		
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input type="checkbox"/>	
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This amends and replaces OAH Internal Procedures Transmittal 11-003a (DRAFT) dated December 14, 2011.

Pursuant to the court order in Fishman v. Daines, upon the default of a hearing requested to contest the adequacy, denial, reduction, restriction or determination of Medicaid benefits (MA-only), the Office of Administrative Hearings (OAH) will issue a letter entitled Fishman Default Letter (FHIS Letter 16) to the appellant and the appellant’s representative. The date of the letter will be the mailing date, approximately two business days after the default is entered in the Fair Hearing Information System (FHIS). FHIS comments will be updated automatically with the insertion of the following language: “**Letter 16 Fishman Default Letter sent (mm/dd/yyyy).**” A copy of Letter 16 is attached.

The Fishman Default Letter will instruct clients who wish to have their hearing rescheduled to return the letter by U.S. Mail within 10 days of the date of the letter. Except as provided below, no other forms of response will be accepted. All information contained in the Fishman Default Letter appears in Spanish on the reverse side of the letter.

Designated staff will review all responses. Communication Intake Unit (CIU) staff will not review whether the appellant had good cause to default the hearing; the good cause determination and the determination whether to restore aid-to-continue will be made by the Administrative Law Judge at the Fair Hearing.

Procedures for review of Fishman Default Letter response:

- If the response is postmarked **within ten days** of the date of the Fishman Default Letter, the hearing will be reopened using Disposition REOP 93, FISHMAN DEFAULT WITHIN 10 DAYS. The hearing will be scheduled on the next available calendar; scheduling status “N”. The aid status will be non-aid to continue (NA).

- If the appellant is seeking to have the hearing rescheduled but the Fishman response is postmarked **more than ten days** after the date of Letter 16, the hearing will be processed as a “reopen denial,” using Disposition RPDN 94, FISHMAN DEFAULT OVER 10 DAYS. As with all RPDN dispositions, a new hearing request will be processed, using the date of contact as the new request date.

If the appellant contacts OAH by means other than mailing the Fishman Default Letter, the procedures indicated below will be followed:

- **In-person returns:** The letter should be date-stamped and processed by designated staff. If the appellant does not have the letter with them CIU staff should print the Fishman Default Letter and have the appellant sign it in person. Staff at the 14 Boerum Place office should date-stamp and forward any letters to the Albany office in a separate envelope marked “Fishman.” If the hearing has been defaulted recently and the Fishman Default Letter has not yet been created, the appellant should await receipt of the letter and return it as instructed.
- **Telephone:** If the caller has the Fishman Default Letter, regardless of when they are calling, they should be instructed to return the letter by mail as directed in the letter.

If the appellant claims not to have received the Fishman Default Letter, phone staff should verify the address and give a printout to a designated Fishman staff member after noting the claim and the new address in FHIS comments. Designated staff will process the appropriate transactions.

If the appellant claims to have misplaced or discarded the Fishman Default Letter, CIU staff should note the claim in FHIS comments and give a print out of the comments to designated Fishman staff to process a “reopen denial,” using disposition RPDN 92, FISHMAN - DID NOT FOLLOW REQUIREMENTS.

- **Correspondence other than Fishman Default Letters or Faxes or E-Requests:** Designated staff will enter in FHIS Disposition RPDN 92, FISHMAN - DID NOT FOLLOW REQUIREMENTS.

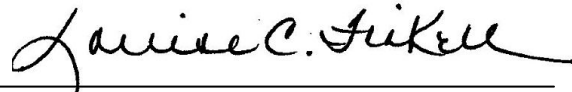
Any letters returned by the U.S. Postal Service as undeliverable will be reviewed by designated staff who will note the returned letter in FHIS. If the Notice of Fair Hearing (457) is returned as undeliverable due to OAH error, the default should be corrected to an adjournment using Disposition OADG 09.

If the Fishman Default Letter is returned as undeliverable due to OAH error, the letter must be re-sent with a corrected address and a new mailing date. Designated staff will update FHIS indicating the Fishman Default Letter was returned as undeliverable.

Staff should not include any other issues on reopened or reopen/denied hearings (RPDN 92, REOP 93 or RPDN 94). Other requested issues can be processed as a separate hearing(s) and scheduled with the Fishman hearing. However, it is important that the Administrative Law Judge issue separate decisions after hearing rather than combining all issues into one decision.

If the appellant defaults the hearing scheduled pursuant to Fishman, a subsequent Fishman Default Letter will not be issued. Requests to have the underlying issue reviewed will be processed by designated staff as a “Reopen/Denial” using disposition RPDN 75 FISHMAN HEARING DEFAULT. The FHIS comments will note FISHMAN PROCESS CONCLUDED default of FH# (old FH#_____). In that instance, the ALJ must not entertain a “good-cause” explanation for missing the originally defaulted hearing, as the opportunity to present argument on good cause for that default is reserved exclusively for the Fishman hearing that the appellant has now defaulted.

If you have any questions regarding this transmittal, you may contact your supervisor or Victoria Fiorino at (518) 373-9739 or via email victoria.fiorino@otda.ny.gov.



Louise C. Finkell, Director of Administration
Office of Administrative Hearings



STATE OF NEW YORK

FISHMAN DEFAULT LETTER

HAVE YOU ABANDONED YOUR FAIR HEARING REQUEST?

Our records indicate that you did not attend your fair hearing (referenced above) concerning your Medicaid benefits. Pursuant to the terms of the stipulation in the federal class action, Fishman v. Daines, (EDNY, 09CV5248, Bianco, J, 04/06/11), this letter is sent to ask if you wish to reschedule the fair hearing and to explain to the Hearing Officer the reason you did not attend your fair hearing. If you wish to request a rescheduled hearing date and have an opportunity to explain your failure to attend your prior fair hearing, please simply return this letter by US Mail to:

OTDA
Office of Administrative Hearings – Fishman
PO Box 1930
Albany, NY 12201

- **You have only 10 days from the date of mailing of this letter to postmark your response.**
- **Responses postmarked more than 10 days from the date of this letter will not be considered and your request for a hearing will be deemed abandoned.**
- **Your response must be sent by US Mail.**
- **No other forms of response will be accepted.**

Class counsel in the Fishman litigation is Peter Vollmer, Esq. (516) 730-5024. Contact him if you have questions concerning the Fishman litigation.



CARTA FISHMAN POR FALTA DE COMPARECENCIA

STATE OF NEW YORK

¿HA DESISTIDO USTED A SU PETICIÓN DE AUDIENCIA IMPARCIAL?

En nuestros archivos consta que usted no se presentó a la audiencia imparcial (señalada anteriormente) pertinente a su caso de Medicaid. Según los términos de la estipulación en la demanda colectiva federal, a saber, Fishman vs. Daines (EDNY, 09CV5248, Bianco, J, 04/06/11), esta carta se la enviamos para saber si desea programar otra cita para sostener una audiencia imparcial con motivo de explicarle al funcionario de audiencias el motivo por el cual usted no asistió a la audiencia imparcial. Si desea solicitar una nueva cita para la audiencia imparcial con motivo de tener la oportunidad de explicar por qué no se presentó a la cita prevista, sencillamente regrese esta carta por correo regular (U.S. Mail) a:

OTDA
Office of Administrative Hearings – Fishman
PO Box 1930
Albany, NY 12201

- **Usted tiene solamente 10 días, contados a partir de la fecha que se envía esta carta por correo, para matasellar su respuesta.**
- **Toda respuesta que se reciba con fecha matasellada posterior al plazo de 10 días de la fecha de esta carta, no se tomará en cuenta y su petición de audiencia se considerará desistida.**
- **Deberá enviar su respuesta por correo regular (*U.S. Mail*).**
- **No se aceptan respuestas por ningún otro medio.**

El asesor legal de la demanda en grupo en el litigio Fishman, es el Sr. Peter Vollmer, Esq. (516) 726-4301. Comuníquese con él si tiene preguntas pertinentes al litigio Fishman.