

Office of Administrative Hearings (OAH) Internal Procedures Transmittal			Transmittal Number: 11-003a
			Date: December 14, 2011
Distribution:			Page: 1 of 3 plus Attach.
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)
	SUP ALJs <input checked="" type="checkbox"/>		
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input type="checkbox"/>	DRAFT for OAH Internal Use ONLY
	SUP ALJs <input checked="" type="checkbox"/>		

This amends and replaces OAH Internal Procedures Transmittal 11-003 (DRAFT) dated June 17, 2011. Amendments appear in bold type.

Pursuant to the court order in Fishman v. Daines, upon the default of any hearing (statewide) involving a Medicaid-only case, the Office of Administrative Hearings (OAH) will generate a letter entitled Fishman Default Letter (FHIS Letter 16) to the appellant and any representative listed in the Fair Hearing Information System (FHIS). The letter will be dated on the date of mailing, roughly two business days after the default is entered in 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 Letter will instruct clients who wish to have their hearing rescheduled to return the letter by U.S. Mail only within 10 days of the date of the letter. **All information contained in the Fishman Letter appears in Spanish on the reverse side of the letter.** Designated staff will review all replies received by mail.

If the response is postmarked within ten days of the mailing of the Fishman Letter, the hearing will be reopened using new Disposition REOP 93, FISHMAN DEFAULT WITHIN 10 DAYS. If there are issues other than the MA-only issue, the other issue(s) should be bifurcated and scheduled separately. The scheduling status will be entered as "N" for scheduling on the next available calendar. The aid status will either remain non-aid to continue or be changed to non-aid to continue. Communication Intake Unit (CIU) staff will not review whether the appellant had good cause to default the hearing; that determination and the determination whether or not to restore aid-to-continue will be made by the Administrative Law Judge at the next scheduled date, as appropriate.

If the appellant is seeking to have the hearing rescheduled but mails/postmarks the response more than ten days after the mailing of Letter 16, CIU staff will not reopen the hearing but will process a "reopen denial," using new 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 procedures indicated below will be followed:

In-person returns: The letter should be manually date stamped and processed by designated staff. If the appellant does not have the letter, they should be instructed to mail in the letter within ten days. Alternatively, CIU staff can print out the Fishman 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."

Telephone: Explain to the caller that the letter must be returned to enable review by designated staff. Circumstances may fall into one of the following categories and should be handled accordingly:

If the caller has the Fishman letter, regardless of when they are calling, they should be instructed to return the letter by mail as directed in the letter. (CIU staff should be aware that the letter indicates it should be returned by mail within ten days of the default.)

If the letter was not received, misplaced, or discarded, phone staff should give a printout to a designated Fishman staff member after noting the circumstances in FHIS. If the appellant's address is incorrect in FHIS, it should be corrected and noted on the printout. Designated staff will process the appropriate transactions.

If fewer than 10 days have passed since the default and the client does not have the letter, the appellant may go to 14 Boerum Place to request a copy of the letter, which they may then submit to staff on site.

Fax and E-Requests: Designated staff will enter in FHIS new Disposition RPDN 92, FISHMAN-DID NOT FOLLOW REQUIREMENTS.

Any letters returned by the U.S. Postal Service as undeliverable will be forwarded to designated CIU staff who will note the circumstances in FHIS. If the letter was mailed to the incorrect address by fault of OAH, a copy of the letter will be sent to the appellant's correct address and any listed representative.


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

Should the appellant default the hearing scheduled pursuant to Fishman, there is no requirement that OAH send a subsequent Fishman letter. If the appellant, or his/her representative, seeks to have the Fishman hearing reopened, s/he should be informed that the defaulted Fishman hearing cannot be rescheduled. However, OAH can treat that request as a request to have the underlying issue reviewed and process a "Reopen/Deny" of the original hearing and schedule a new hearing. 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.

When processing the Reopen/Deny, CIU staff should enter in FHIS on the # 03 PFHMOD MODIFICATION Screen disposition RPDN 75 indicating FISHMAN HEARING DEFAULT and check the selection "Re-Use Hearing ___" to schedule a new fair hearing. The following should be indicated in the Comments of the newly scheduled fair hearing:

Fishman process concluded: Default of FH# (old FH# _____)

If you have any questions regarding this transmittal, you may contact your supervisor or Susan Fiehl at (518) 473-4779 or via email susan.fiehl@otda.state.ny.us.



Louise 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.

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