

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>		<b>Transmittal Number:</b> 09-08 (Replaces 05-20)
<b>Distribution:</b>		<b>Date:</b> April 1, 2009 <b>Page:</b> 1 of 4
ALB OAH Staff <input checked="" type="checkbox"/>	UPS ALJs <input checked="" type="checkbox"/>	Upstate LDSS <input type="checkbox"/>
	SUP ALJs <input checked="" type="checkbox"/>	
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input checked="" type="checkbox"/> (HRA, FEPS Only)
	SUP ALJs <input checked="" type="checkbox"/>	
		<b>Subject:</b>  Revised Coding for Family Eviction Prevention Supplement (FEPS) Hearings for NYC HRA Clients

This is a reissuance of OAH Transmittal 05-20, issued on August 12, 2005 which will update and replace the previous instructions for Communications Intake Unit (CIU) staff and NYC Calendar Management staff when coding NYC cases involving the Family Eviction Prevention Supplement (FEPS) program. FEPS is a program which provides an enhanced supplement for housing to public assistance (PA) clients in New York City. This program is a successor to the previous Jiggetts-related housing allowance supplement program. Unlike Jiggetts cases, FEPS issues are hearable.

Instructions on coding hearings for clients **IN RECEIPT OF** FEPS benefits are being changed. If the client is no longer eligible for a FEPS allowance solely as a result of an action taken by HRA regarding a client's eligibility for PA, this should be noted in the Comments section of FHS (Fair Hearing Information System) without separately identifying FEPS with an issue code.

The FEPS agency does not need to be notified. The hearing would, instead, be scheduled on the regular Income Support Center calendar to review the PA issue that is affecting the FEPS supplement, as follows:

Agency: NO\_\_  
Category: FA or SNA  
Sub-category: As appropriate  
Action: DISC or REDU or INAD  
Issue code: As appropriate  
Aid status: As appropriate  
Comments: After identifying the PA issue, enter Comments regarding the discontinuance of FEPS benefits resulting from the PA-related action.

Coding for issues involving determinations made by the NYS OTDA to **DENY** eligibility for FEPS benefits continues to be as follows and should continue to be manually scheduled on the NYC EA calendar:

Agency: NIM/FEPS  
 Category: EA  
 Sub-category: None  
 Action: **DENY**  
 Issue code: 686 SHELTER SUPPLEMENT PROGRAMS  
 (Ex. NYC Programs--Housing Stability Plus, Family Eviction Prevention Supplement--FEPS) **[Other issues should not be added.]**  
 Aid Status: NA

The fair hearing for FEPS Denials should be manually scheduled on the EA calendar, similar to the scheduling of regular EA issues.

Other scenarios such as the discontinuance of eligibility for FEPS, itself, or the failure to restore FEPS after a lapse in PA eligibility should be brought to the attention of a supervisor for direction on how to handle the particular situation.

The remainder of this transmittal with respect to procedures for the FEPS administering agency to utilize in requesting a waiver of appearance and submitting documents in lieu of appearance into the fair hearing record represents no change in procedure from what was set forth in OAH Transmittal 05-20, other than the fact that it now pertains only to DENIALS of eligibility for FEPS benefits rather than DISC, REDU, or INAD actions.

Use of the FEPS agency in the secondary agency field on FHIS for DENIAL actions will result in notification to:

FEPS  
 Evelyn Miller  
 New York State Office of Temporary and Disability Assistance  
 40 North Pearl Street , 11<sup>th</sup> Floor  
 Albany, New York 12243  
 (518) 486-4634  
[Evelyn.Miller@otda.state.ny.us](mailto:Evelyn.Miller@otda.state.ny.us)

who will prepare and submit the evidentiary packet. The hearings will be handled without appearance on the part of the agency, similar to managed care and OHSM cases. A suggested format is attached for the agency to submit requests for such waivers of appearance and supporting documentary evidence.

The Office of Administrative Hearings has responsibility for scheduling and holding fair hearings on Family Eviction Prevention Supplement issues. Pursuant to 18 NYCRR 358-4.3(c) (1), the FEPS-administering agency (hereinafter referred to as “the agency”) can request a waiver of personal appearance and submit to this office, prior to the hearing date, a waiver request and evidentiary packet. Waiver requests will be reviewed and granted on a case-by-case basis. At this time, "blanket" waivers of appearance will not be granted; however, if the agency does not

receive a telephone call from this office prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted.

It should be noted that even in situations where a waiver of appearance has been granted, the Administrative Law Judge may require the testimony of an agency 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 on the request for waiver. The waiver request 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 requesting a waiver of appearance is attached as an example.

For proper inclusion in the fair hearing record, the waiver request and evidentiary packet should be submitted immediately upon notification of the hearing date, as follows:

The original waiver request and summary must be faxed to the Albany Central Office 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—since these hearings are scheduled to the EA calendar within three to ten calendar days, allow at least one business day prior to the hearing date.

Fax to the attention of **FEPS** at:

Fax Number: (518) 473-6735

When faxing 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 package to assist in matching the submission to the appropriate fair hearing file.

Please note, it is the responsibility of the agency to provide a copy of the waiver request and evidentiary packet to the appellant and/or representative, in addition to that required above, if requested. Also, when the agency 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 client. If a telephone hearing is being conducted, the agency **MUST** provide a copy of the waiver request and evidentiary packet to the appellant and/or representative in advance of the hearing, even if not requested.

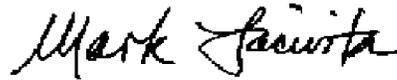
Upon receipt of the waiver request and evidentiary packet from the administering FEPS agency representative, OAH staff will process it as follows:

Staff in the Central Distribution Unit in Albany will sort the waiver request/evidentiary packet into the FEPS folder in Faxinator. Staff in the Calendar Management Unit in NYC will print two copies (one for the file and one for the appellant/representative), will NAME the fax in Faxinator and STORE it. The process of storing it automatically ensures document imaging into Panagon. Both printed copies are then inserted into the file for use at the hearing. A notation must also be entered in the Comment section

(PFREQ3) on the Fair Hearing Information System (FHIS) as follows: "Packet received from FEPS (E. Miller) by fax \_\_\_\_\_ (date)." Initials/Date

IT IS IMPORTANT that staff DO NOT change the Agency field NIM to the actual center at any time during the scheduling or hearing process due to current system configurations that will create problems unless they remain coded EXACTLY in the manner set forth here. Therefore, any cases with NIM in the Agency field with a category of EA and issue Code 686 should not be amended without consultation with a supervisor.

If there are any questions with respect to this transmittal, you may contact your supervisor or Susan Fiehl at (518) 473-4779 or via email [susan.fiehl@otda.state.ny.us](mailto:susan.fiehl@otda.state.ny.us).



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Mark Lacivita, Director of Administration  
Office of Administrative Hearings