NEW YORK STATE OF OPPORTUNITY. | Office of Temporary and Disability Assistance

# Office of Administrative Hearings (OAH) Transmittal

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| **Transmittal:** | 22-03 |
| **Date:** | September 16, 2022 |
| **Subject:** | Expedited Medicaid Hearings |
| **Attachments:** | A. APPROVAL OF REQUEST FOR EXPEDITED APPEALS PROCESS<br>B. DENIAL OF REQUEST FOR EXPEDITED APPEALS PROCESS |
| **Distribution:** | Office of Administrative Hearings Staff Members, Local Social Services Districts, Managed Care and Managed Long-Term Care Organizations, New York State Department of Health, The Office for the People with Developmental Disabilities, Office of Mental Health, and New York City Agencies |

Federal regulations at 42 CFR 431.224 require the State to establish and maintain an expedited fair hearing process for individuals to request an expedited Medical Assistance (Medicaid) fair hearing when the Office of Administrative Hearings (OAH) determines that the standard time permitted for a hearing could jeopardize the individual's life, health, or ability to attain, maintain or regain maximum function. This transmittal outlines how OAH processes expedited Medicaid hearing requests. Additional information is available on the OTDA OAH website under the tab "How Do I…". This process is effective immediately.

## Request Processing

Requests for an expedited Medicaid hearing may be made through any of the currently available modalities for requesting a fair hearing. Requests to expedite a Medicaid hearing will be forwarded to an OAH assigned staff member for immediate review in all cases except those involving integrated appeals demonstrations such as the Fully Integrated Duals Advantage and the Fully Integrated Dual Eligible programs (FIDA/FIDE). FIDA/FIDE cases will be automatically expedited when the FIDA/FIDE Plan advises OAH that the hearing should be expedited. Subsequent requests to expedite FIDA/FIDE hearings that are made directly to OAH should be processed in accordance with the procedures described herein.

The assigned OAH staff member will review each request on a case-by-case basis and determine whether the time otherwise permitted for a standard hearing could jeopardize the appellant's life, health, or ability to attain, maintain, or regain maximum function. The assigned OAH staff member will consider evidence from an appellant offered in support of the request to expedite, including statements or documents from the appellant's health care providers, family members, or other individuals with personal knowledge of an appellant's situation. Supporting evidence may be sent by fax, U.S. mail, in person at the Albany or New York City office locations, or through "UploadNY" at https://upload.ny.gov/en-US/.

In addition to an appellant's medical urgency, the assigned OAH staff member may also consider "whether the individual currently is enrolled in health insurance that will cover most of the costs of the requested treatment, whether or not the individual has a needed procedure or treatment scheduled, or whether the individual is unable to schedule a procedure or treatment due to lack of coverage". (*see,* 81 FR 86397).

## Scheduling and Noticing

Appellants must be orally advised of the hearing date and approximate time range once OAH grants requests to expedite Medicaid hearings. The hearing date should be as close to the next working day as possible. All expedited hearings will be scheduled as telephone hearings. As described in 42 CFR 431.224(b), OAH will send written notice granting the expedited hearing request to the appellant as expeditiously as possible. See, Attachment “A”.

The expedited hearing will be scheduled with an assigned OAH staff member authorized to conduct fair hearings, who will be advised of the scheduled hearing by email with a copy to that individual’s supervisor. The next line supervisor must arrange coverage for the expedited hearing if the assigned staff member is unable to conduct the hearing.

The Social Services Agency, as defined in 18 NYCRR 358-2.21, will be orally advised of the expedited hearing’s date and time range and directed to forward evidence to the appellant and OAH so that it is available prior to the hearing. Consistent with the general obligations applicable to telephone hearings set forth in GIS 20 TA/DC 097, the Social Services Agency must ensure that their delivery processes meet this standard.

Appellants must be orally advised when an expedited Medicaid hearing is denied. 42 CFR 431.224(b) requires written denial notices be sent as expeditiously as possible. See, Attachment “B”. Fair hearing requests will be processed following standard scheduling procedures when expedited processing is denied. OAH’s determination is not subject to appeal.

## Hearings and Decisions

At expedited hearings, the staff member assigned to conduct the hearing should ask appellants to waive their right to a written scheduling notice if not otherwise received.

If the appellant requests an adjournment and the hearing cannot be rescheduled within the expedited time frame due to the length of time being requested, an adjournment under standard time frames for a Medicaid hearing is appropriate. However, the reason for the appellant-requested adjournment must be documented in the hearing record.

If the appellant does not appear for the expedited hearing, the hearing request may be considered abandoned subject to 18 NYCRR 358-5.5. For the purposes of determining an appellant’s failure to appear for an expedited telephone hearing, the policy set forth in 20 GIS TA/DC 097 controls unless otherwise inconsistent with the guidance set forth herein.

As set forth in 42 CFR §431.244(d), the Decision issued after an expedited hearing must be in writing. When a request for an expedited fair hearing is received for eligibility, nursing facility, and preadmission screening and annual resident review ("PASARR") matters, final administrative action must be taken within seven (7) working days from the date that the State agency receives the expedited fair hearing request. For expedited fair hearing requests related to a services or benefits matter, the final administrative action must be taken within three (3) working days from the date that the expedited fair hearing request is received by the State agency. (*see* 81 FR 86397, citing 42 CFR §431.244(f)). If an individual requests a hearing on an expedited Managed Care Plan-level appeal decision, final administrative action must be taken within three (3) working days from the date OAH receives the appellant’s case file and information. (*see* 42 CFR §431.244(f)((2); 81 FR 86398)

Questions about this guidance should be directed to OAHTransmittals@otda.ny.gov.

Attachment A

APPELLANT
MAILING
ADDRESS

Notice Date:

Matter of “Appellant Doe”

FH# 1234567A

APPROVAL OF REQUEST FOR EXPEDITED APPEALS PROCESS

Dear _____,

On ***Date of Request for Hearing***, you requested the above referenced hearing that involved a determination regarding Medical Assistance (Medicaid). On ***Date of Request to Expedite***, you requested that your Medical Assistance hearing be expedited.

Your expedited hearing is scheduled for ***Date of Expedited Hearing***, at Time Range. A hearing officer will call you on the day of the hearing at the telephone number you provided to the Office of Administrative Hearings for purposes of contacting you. You must be available to receive a call for your expedited hearing at any time between the hours of ***Insert Times for AM or PM Hearings***.

Attachment B

APPELLANT
MAILING
ADDRESS

Notice Date:

Matter of “Appellant Doe”

FH# 1234567A

DENIAL OF REQUEST FOR EXPEDITED APPEALS PROCESS

Dear _____,

On ***Date of Hearing Request***, you requested the above referenced hearing that involved a determination regarding Medical Assistance (Medicaid). On ***Date of Request to Expedite***, you requested that your Medical Assistance hearing be expedited. Your request is denied.

The Office of Administrative Hearings (OAH) must allow a Medical Assistance appeal to be addressed on an expedited basis if OAH determines that the time otherwise permitted for a standard hearing under 42 CFR 431.244(f)(1) “could jeopardize the appellant’s life, health, or ability to attain, maintain, or regain maximum function”. 42 CFR 431.224(a)(1).

OAH reviewed your request, including any evidence you submitted in support of your request, and found that it is insufficient to warrant an expedited appeals process. Your appeal will be handled through the standard process, and you will receive advance written notice of when a hearing has been scheduled, which will include the date and time of the hearing.