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General Information System (GIS) Message

Transmittal:	Office of Administrative Hearings Transmittal 23-01
Date:	March 10, 2023
To:	Office of Administrative Hearings, All Social Services Districts, Managed Care and Long-Term Managed Care Organizations, New York State Department of Health, State Supplement Program
Suggested Distribution:	Fair Hearing Workers
From:	Samuel L. Spitzberg Associate Deputy Commissioner Office of Administrative Hearings
Subject:	Continuing Demonstration Project on Allowing or Requiring Fair Hearing Appearances by Written, Telephonic, Video, or Other Electronic Means
Effective Date:	March 12, 2023
Contact Information:	OAHTransmittals@otda.ny.gov

Starting March 12, 2020, the OTDA Office of Administrative Hearings (OAH) began operating under a demonstration project designed to ascertain the viability of conducting fair hearings to the greatest extent possible utilizing telephone, video, and other means of communication.

The demonstration project was designed to evaluate whether holding hearings utilizing telephone, video, and other means will improve timeliness and reduce unnecessary travel and crowding where hearings were previously held in-person while protecting due process rights.

OAH is considering additional metrics including participation, abandonment, and adjournment rates, OAH staff member and appellant travel, and reported telephonic interpretation issues.

The demonstration project will continue through March 12, 2024, with some amendments, clarifications, new expectations, and requirements as set forth in this transmittal. This transmittal (23-01) supersedes transmittals 20-02/ 20TA/DC014; 20-03; 20-04/ GIS TA/DC 076; 20-05/ 20TA/DC097; 21-01/ 21TA/DC013; and 22-01/22TA/DC024 where the terms of those transmittals conflict with those of this transmittal (23-01).

Local social services districts and their agents are reminded of their responsibility to cooperate in this demonstration project.

The demonstration project allows OAH to hold hearings by telephone, video, or other means, provided that an in-person hearing will still be held when: 1) the applicant or recipient makes a request for an in-person hearing; 2) when, in the judgment of OAH or the Hearing Officer, a party's due process rights would best be served by conducting a hearing in-person; or 3) when, in the judgment of OAH or the Hearing Officer, there are circumstances which make proceeding with the hearing by telephone, video, or other means inadvisable.

Generally, hearings will be conducted by telephone, video, or other means. Agencies will generally appear by telephone, video, or other means. Interpreters will participate via telephone, video, or other means or be in the same physical location as the Hearing Officer as necessary. Authorized Appellant representatives will generally appear by telephone, video, or other means. Party witnesses will generally appear by telephone, video, or other means.

Evidentiary documents must be shared with OAH in advance of the hearing. See below for information on submitting evidence to other parties and OAH.

Agency Responsibility

Social Services Agencies (*see*, 18 NYCRR § 358-2.21) must provide evidence packets to Appellants, their authorized representatives, and OAH, as well as provide contact information to OAH. Information about the hearing (*i.e.*, in-person, telephonic, video, or other means) will be provided by OAH in the normal course of business.

Except as authorized under 18 NYCRR §§ 358-3.7 and 358-4.2(c), 18 NYCRR § 358-4.3 requires documentary evidence to be provided to Appellants and their authorized representatives at the scheduled hearing. However, under this demonstration, Appellants, their authorized representatives, and OAH must receive evidentiary packets two business days in advance of hearings scheduled by telephone, video, or other means. Agencies must ensure delivery processes meet this standard.

Agencies must provide a telephone number and designated representative to participate in fair hearings conducted by written, telephonic, video, or other means, regardless of whether the Agency intends to waive personal appearance. Hearing Officers may require telephonic, video, or other means of participating even when an Agency asks to waive personal appearance and submits documentary evidence.

Hearings will be scheduled between 9:00 am and 1:00 pm for morning calendars and 1:00 pm and 5:00 pm for afternoon calendars. Hearing Officers may use blocked numbers; Agency representatives must ensure their phones accept blocked calls.

Agency representatives should be prepared to transition from a telephonic to video hearing during the hearing. Agency representatives should have access to a camera allowing them to participate seamlessly. Agency representatives may be asked to share relevant documents via video.

Agencies must submit evidentiary packets to OAH via hand delivery, secure upload, US mail, encrypted email, fax, and/or secure File Transfer Protocol (FTP). Contact Hearings.Assistance@otda.ny.gov for more information about FTP.

OAH will accept Agency evidence after a hearing is scheduled. OAH only accepts .doc, .pdf, .wav, .jpg, .mp3, or .mp4 files. Agencies interested in withdrawing notices prior to scheduling should utilize the prehearing determination process. Agencies may email Hearings.Assistance@otda.ny.gov for more information about the prehearing determination process.

Secure Upload:	UpLoad.NY.gov
Encrypted Email:	otda.sm.hearings.waivers@otda.ny.gov
Fax:	518-473-6735
Mail:	Office of Administrative Hearings 40 N. Pearl St, Fl 15B, Albany NY 12243 Or PO Box 1930 Albany NY 12201

Agencies must include the fair hearing number, designated representative name and contact number, and summary with the evidentiary packets delivered to OAH (*see*, Transmittals 19-01 and 22-02). Please include the fair hearing number on fax or mail coversheets and in the subject line on encrypted emails. If using FTP, Agencies must adhere to the FTP naming convention to ensure evidence is received, processed, and available.

Agencies must have systems in place to meet deadlines for delivering documentary evidence consistent with confidentiality and security requirements to OAH and Appellants and their authorized representatives. Agencies are reminded they will generally be unable to hand documentary evidence to Appellants and their authorized representatives at the hearing when the hearing is not in-person. Agencies are encouraged to include rebuttal documentary evidence in the original evidence packet to avoid unnecessary adjournments and delays.

Local social services districts must have space and resources available for appellants who appear at their offices for hearings conducted in-person, by telephone, video, or other means. Expected space and resources includes access to a confidential space with a telephone. A computer with internet and video capabilities may also be required when directed by OAH.

Agencies may request to waive personal appearance at any hearing. OAH may draw a negative inference if an Agency representative is needed and not available to participate or contact information is not provided. Agencies planning to have a representative participate in the hearing should make specific reference thereto in the coversheet, summary, and encrypted email. Failure to request contact may result in a decision being issued based on documentary evidence alone. OAH will generally not reopen the hearing under such circumstances.

Absent a compelling reason, OAH will not adjourn a hearing based on an Agency's failure to submit evidence in advance of the hearing. Similarly, OAH will generally not adjourn a hearing if the Agency fails to participate if there is enough evidence in the record to issue a decision.

Appellant Responsibility

The scheduling notice (OAH Form 457) identifies the scheduled hearing time in Block H. All hearings are scheduled for 9:00 am or 1:00 pm. Appellants and their authorized representatives must be available to participate between 9:00 am and 1:00 pm for morning calendars and 1:00 pm and 5:00 pm for afternoon calendars. Please remember, Appellants and their representatives need to be prepared to accept a call from the Hearing Officer during the morning or afternoon scheduling window.

The scheduling notice (OAH Form 457) identifies the "hearing location" in Block B. For telephonic hearings, the words, "**TELEPHONE HEARING**" appear immediately above the physical address. Appellants should not appear at the physical address listed below the words, "**TELEPHONE HEARING**" unless the Appellant and/or the authorized representatives require a private location and telephone.

Hearing Officer telephone calls may appear as Blocked Caller, Private, Unknown, or have 212, 718, or 518 area codes. Appellants and their authorized representatives must ensure their phones accept blocked calls and answer calls during the designated hearing window notwithstanding Caller ID.

In addition to any contact information provided at the time a hearing is requested, Appellants and their authorized representatives must update contact information if it changes prior to scheduled hearings. OAH accepts address, email, and telephone contact updates via phone, UploadNY, encrypted email, fax, and US mail.

OAH cannot guarantee same day contact updates will be delivered to the Hearing Officer in time for hearings. Please submit updates prior to scheduled hearing dates. Failure to do so may result in the abandonment of the hearing request, (*see*, 18 NYCRR § 358-5.5).

OAH recognizes some individuals do not have telephone service. Appellants and their authorized representatives without access to a telephone or who lose access to a telephone should notify OAH at the earliest possible time so an alternate appearance method can be coordinated. Failure to do so may result in the abandonment of the hearing request, (*see*, 18 NYCRR § 358-5.5).

Appellants and their authorized representatives are instructed to submit documentary evidence to OAH at least two business days before the hearing. The Hearing Officer will transmit evidence received from the Appellant or the authorized representative to the Agency via encrypted email during the hearing. OAH accepts evidence via secure upload, encrypted email, fax, in person, or US mail. If using US mail, please take delivery time into account to ensure evidence is available for the hearing.

Secure Upload:	UpLoad.NY.gov
Encrypted Email:	intakemail.hearings@otda.ny.gov
Fax:	518-473-6735
Mail:	Office of Administrative Hearings 40 N. Pearl St, Fl 15B, Albany NY 12243 Or PO Box 1930 Albany NY 12201

Please include the fair hearing number on fax or mail coversheets. Please note, AppDocs@otda.ny.gov will be discontinued shortly. Notices and instructions will be updated to reflect the change. Please use UpLoad.NY.gov to submit evidence securely.

Appellants and their authorized representatives who do not have access to a fax or other means of submitting such documentation should contact OAH to identify a different method of submitting documentation. Hearings are generally held at least three weeks after receiving a request. The time between the request and hearing date should be used to gather necessary evidence and submit it to OAH.

For hearings conducted by telephone, when possible, Hearing Officers will leave voice messages for Appellants and their authorized representatives who fail to answer their phones. Hearing Officers will call Appellants and their authorized representatives two times during the scheduled hearing period, with at least ten minutes between calls. Failure to answer phones may cause the fair hearing request to be abandoned in accordance with 18 NYCRR § 358-5.5.

Notwithstanding the above, Administrative Disqualification Hearings (ADH) will proceed if the individual involved cannot be reached by telephone. OAH will reopen an ADH only in accordance with 18 NYCRR § 359.7(g).

OAH can accommodate Appellants and their authorized representatives who require a private place with a telephone to participate in a hearing. OAH will work with District Offices to identify locations and methods when needed. Please advise OAH when requesting the hearing.

Hearing Officer and OAH Responsibility

OAH will confirm Appellant and authorized representative contact information when processing a fair hearing request. OAH will update contact information in the fair hearing record. OAH will try to provide same day contact updates to Hearing Officers.

OAH will direct Aid to Continue whenever authorized by regulation (18 NYCRR 358-3.6). Hearings will be scheduled in accordance with 18 NYCRR § 358-3.2 and 358-5.2.

Hearing Officers will contact the parties at the provided phone numbers. If there is no answer, Hearing Officers will try to leave voice messages. Hearing Officers will call Appellants and their authorized representatives two times with at least ten minutes between calls. If the Appellant and their authorized representative fails to answer, OAH may deem the request for a fair hearing abandoned in accordance with 18 NYCRR § 358-5.5. OAH will attempt to advise Agencies if hearing requests are withdrawn prior to the hearing date or if the Appellant or Appellant's representative fails to participate in the hearing.

Hearing Officers will conference all participants into the telephonic hearing and may permit parties to add others to develop a complete record. All parties will be identified. The audio component of hearings will be recorded. Only OAH may record the fair hearing (*see*, 18 NYCRR § 358-5.11).

Hearing Officers will generally inquire whether the Appellant and their authorized representative received a copy of the Agency's evidence and if the Appellant submitted evidence. OAH can accept Appellant documentary evidence in many formats including .doc, .pdf, and .jpg files. Please note, the Hearing Officer may require an offer of proof before considering such submissions. Additionally, evidence will not be accepted after the hearing is closed.

Hearing Officers are empowered to adjourn or take other administrative action up to precluding the Agency's evidence depending on the facts and circumstances of an individual hearing, (*see*, 18 NYCRR § 358-3.7). OAH may specifically direct Agencies to serve evidence on Appellants and their authorized representatives. OAH may coordinate a specific date and time for adjourned hearings to allow for evidence packets to be delivered to Appellants and their authorized representatives.

For discontinuances and reductions, the burden of proof rests with the Agency (18 NYCRR 358-5.9). If the Agency fails to participate and/or does not submit sufficient evidence to OAH and the Appellant, OAH may resolve issues in Appellant's favor if Appellant appears for their hearing. Agencies may also withdraw discontinuance and reduction notices prior to scheduling. In such circumstances, OAH will issue a letter to the Appellant and any authorized representative explaining that the issues have been resolved in the Appellant's favor.

For adequacy and eligibility issues, the burden of proof rests with the Appellant (18 NYCRR 358-5.9). The Appellant must present sufficient evidence to meet that burden. If the Appellant and/or the authorized representative appears for their hearing and produces sufficient evidence to meet their burden, and the Agency fails to participate or does not submit sufficient evidence to rebut the appellant's evidence, OAH may resolve issues in Appellant's favor.

Direct questions about Transmittal 23-01 to OAHTransmittals@otda.ny.gov. Please refer to https://my.ny.gov/NYgovId/faqs.xhtml for questions about NY.gov.

Urgent questions can be directed to:

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Dominique.Simoneaux@otda.ny.gov 518.486.4027

Chief Hearing Officer Marc Isaacs
Marc.Isaacs@otda.ny.gov 518.486.9586

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