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

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General Information System (GIS) Message

Transmittal:	Office of Administrative Hearings Transmittal 23-02
Date:	May 15, 2023
To:	OTDA Division of Employment and Income Support Programs, OTDA Division of Audit and Quality Improvement, OTDA Bureau of Training and Staff Development, OTDA Office of Administrative Hearings, and All Social Services Districts
Suggested Distribution:	All Fair Hearings Workers and Investigators
From:	Samuel L. Spitzberg, Associate Deputy Commissioner Office of Administrative Hearings
Subject:	Demonstration Project – Administrative Disqualification Hearings for Intentional Program Violations
Effective Date:	June 1, 2023
Contact Information:	OAHTransmittals@otda.ny.gov

Demonstration Project Overview

In accordance with Social Services Law Sections 36-a and 113 and 18 NYCRR Section 300.11, the Office of Temporary and Disability Assistance (OTDA) Office of Administrative Hearings (OAH) is initiating a demonstration project to ascertain the viability of streamlining the processing and review of Administrative Disqualification Hearings (ADHs), the use of secure electronic transmission for request submissions and evidentiary packets, and conducting ADHs by telephone, video, and other means of communication.

This demonstration project will evaluate if the above measures improve timeliness, reduce unnecessary travel for hearing participants, increase participation rates, conserve resources, and meet federal standards.

All Social Services Districts (Districts) must comply with this demonstration project. All Districts must submit requests to schedule ADHs electronically in accordance with this demonstration project. Districts must also electronically resubmit requests for ADHs submitted prior to this demonstration project.

Effective Date of this Demonstration Project

This demonstration project is effective June 1, 2023, and will be in effect for one year unless otherwise cancelled or extended. However, OAH will process all outstanding ADH requests submitted prior to the effective date of this demonstration project first, based on the date the electronically resubmitted ADH request and evidence packet are received. Districts with ADH requests currently in OAH's possession,

need to decide whether to proceed by electronically resubmitting the request and evidence or notify OAH they will not proceed for each distinct ADH request.

OAH will process all electronically resubmitted ADHs before new ADH requests may be submitted. OAH will announce via letter when new ADH requests may be submitted.

Evidentiary Packet Processing

Prior to this demonstration project, Districts assembled documentary evidence they believed was sufficient on its face to support their determination of an intentional program violation and forwarded the documentary evidence to OAH with a request that OAH schedule an ADH. Upon receipt of a District's ADH request and documentary evidence, OAH conducted a pre-hearing review of the documentary evidence to determine if it was sufficient to substantiate that an individual committed one or more intentional program violations in accordance with the standards described in 18 NYCRR Section 359.3. OAH also reviewed the documentary evidence to determine whether it satisfied the provisions of 18 NYCRR Section 359.5(e).

Under this demonstration project, the District must assemble documentary evidence of an intentional program violation and determine whether the documentary evidence is sufficient to substantiate that an individual has committed one or more intentional program violations in accordance with the standards described in 18 NYCRR Section 359.3. The District must also determine that the documentary evidence satisfies the provisions of 18 NYCRR Section 359.5(e). A District staff member, other than the eligibility worker assigned to the Recipient's household, must review the documentary evidence and attest to these determinations.

To request an ADH, Districts must complete the Scheduling Request Form (LDSS-4422) (**Attachment A**) and submit it with an evidentiary packet that includes the assembled documentary evidence referenced above to OAH electronically. The Scheduling Request Form (LDSS-4422) contains an attestation which must be signed by the District staff member who reviewed the evidentiary packet and determined it complies with 18 NYCRR Sections 359.3 and 359.5(e). OAH will no longer conduct pre-hearing reviews of evidentiary packets as described in 18 NYCRR Section 359.5(f).

Submission of Evidentiary Packets and Requests for ADHs

Prior to this demonstration project, Districts mailed three copies of the evidentiary packet for each Recipient along with the Transmittal of Request for Administrative Disqualification Hearing form to OAH.

Under this demonstration project, the District must submit a Scheduling Request Form (LDSS-4422) along with the accompanying evidentiary packet electronically to OAH via secure File Transfer Protocol (FTP). The evidentiary packet must be submitted in .pdf format with the following standardized naming convention: CIN_SubmissionDate_ADHevidence (e.g., AE12345D_20230214_ADHevidence). If the District determines that a Recipient has multiple addresses, the District must submit a Scheduling Request Form (LDSS-4422) and accompanying evidentiary packet electronically for each address. Districts that are unable to submit via FTP must contact OAH via email to otda.sm.ADH@otda.ny.gov.

Districts must use the Scheduling Request Form (LDSS-4422). The former Transmittal of Request for Administrative Disqualification Hearing form will not be accepted.

For ADH requests submitted prior to the effective date of this demonstration project, the District must re-submit the evidentiary packet and the Scheduling Request Form (LDSS-4422) electronically.

Scheduling ADHs and Serving Evidentiary Packets on Recipients

Under this demonstration project, OAH will schedule the ADH after electronically receiving the Scheduling Request Form (LDSS-4422) and evidentiary packet. OAH will send a written Advance Notice of ADH to the Recipient accused of an Intentional Program Violation, any authorized representative, and the District by first class mail or other reliable method. The Advance Notice of ADH will contain the date and time range that the hearing will be conducted and will comply with the provisions of 18 NYCRR Section 359.6(d).

Under this demonstration project, Districts must send their evidentiary packet to the Recipient and any authorized representative by first class mail or other reliable non-electronic methods within two (2) business days of receipt of the Advance Notice of ADH. Districts must have systems in place to meet the deadline for sending evidentiary packets consistent with confidentiality and security requirements. Districts must ensure delivery processes meet these standards.

The Administrative Disqualification Hearing

The Administrative Disqualification Hearing will be conducted by telephone, video, or other means pursuant to OAH Transmittal 23-01 and 18 NYCRR Section 359.7. In accordance with 18 NYCRR Section 359.7(g)(2), an ADH will proceed if the Recipient cannot be reached through the method used for conducting hearings. OAH will reopen an ADH only in accordance with 18 NYCRR Section 359.7(g)(1).

Pursuant to 18 NYCRR Section 359.7(e)(2), Districts bear the burden of proof. Administrative Law Judges will determine whether Districts meet the burden of proof even if the Recipient does not participate in the ADH in accordance with 18 NYCRR Section 359.7(g)(2).

Districts should be prepared to offer evidence about mailing procedures used to serve the evidentiary packet to the Recipient at the ADH.

All other provisions of 18 NYCRR Part 359 will continue to apply. Where there is a conflict between the provisions of 18 NYCRR Part 359 and this Transmittal, the provisions of this Transmittal will control.

Questions about this demonstration project should be directed to: otda.sm.ADH@otda.ny.gov

Attachment:

Attachment A – Scheduling Request Form (LDSS-4422)

Administrative Disqualification Hearing (ADH) Scheduling Request Form

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

To: New York State Office of Temporary and Disability Assistance
Administrative Disqualification Hearing Unit
P.O. Box 1930, Albany, New York 12201-1930

From: (Name of County/NYC Agency Originating Request)

Name of Accused Individual *(Recipient)*: **Language/Dialect:**

Address: **City:**

State: **Zip Code:** **Phone:** **Date of Birth:**

Social Security Number: **Case Number:**

If recipient currently resides in county other than county originating request,
please enter county of residence:

If New York City case, enter JC# / SC#: and check originating office:

☐ Bureau of Fraud Investigation (BFI) ☐ Bureau of Eligibility Verification (BEV)

If any other individual(s) is charged in this IPV, please provide name:

and Social Security Number:

(Note: Joint case must be submitted with a separate Administrative Disqualification Hearing (ADH) Scheduling Request Form and packet per individual.)

Is this case currently active? If no, enter date of case closing:

How was address verified (e.g., postal clearance, home visit, DMV records, etc.):

This Intentional Program Violation is based on the following action: (Please place check mark in the application box(es))

DUPLICATE BENEFITS	UNDECLARED INCOME	UNDECLARED RESOURCES	FALSE APPLICATION INFORMATION	UNREPORTED HOUSEHOLD COMPOSITION CHANGES	OTHER
☐ SNA (180)	☐ SNA (181)	☐ SNA (182)	☐ SNA (183)	☐ SNA (184)	☐ SNA (185)
☐ FA (180)	☐ FA (181)	☐ FA (182)	☐ FA (183)	☐ FA (184)	☐ FA (185)
☐ SNAP (430)	☐ SNAP (431)	☐ SNAP (432)	☐ SNAP (433)	☐ SNAP (434)	☐ SNAP GENERAL (435)
					☐ SNAP TRAFFICKING (467)

Indicate the IPV amount for this case: PA: $ SNAP: $

Period of over issuance: PA: SNAP:

Previous number of PA-IPV's: While receiving FA: SNA:

Previous number of SNAP-IPV's:

Penalty requested: PA: SNAP:

Date(s) Recipient committed IPV: Date Social Services District discovered the IPV:

Telephone number for Recipient/Representative to call to arrange to examine all documents and records to be used at a hearing:

Place where Recipient/Representative can examine all documents and records to be used at a hearing:

Name and Title of County/NYC Agency Referring Staff:

Phone *(Area Code)*:

Name of Agency Representative who will be presenting at the fair hearing:

Phone Number where Agency Representative presenting at the fair hearing can be reached:

Attestation of Review of Administrative Disqualification Hearing Evidentiary Packet

Name of County/NYC Agency:

Name of Recipient:

Case Number:

Date:

By signing below, I attest that:

1. I have reviewed the attached evidentiary packet for recipient named above, and
2. I am not the Eligibility Worker assigned to the recipient's household, and
3. The attached evidentiary packet contains sufficient documentary evidence to substantiate that the recipient above has committed one or more intentional program violations in accordance with the standards described in Section 18 NYCRR 359.3, and
4. The attached evidentiary packet satisfies the provisions of 18 NYCRR 359.5 (e) and OTDA GIS # (the ADH Demonstration Project).

Name:

Title/Position:

Date: