NEW YORK STATE | Office of Temporary and Disability Assistance

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General Information System (GIS) Message

Section 1

Transmittal:	26DC044 Office of Administrative Hearings Transmittal 26-03
Date:	September 9, 2026
To:	Subscribers, Office of Administrative Hearings, State Supplement Program, Social Services Districts, Managed Care and Long-Term Managed Care Organizations, New York State Department of Health, Office of Children and Family Services, Office for People With Developmental Disabilities, and Office of Mental Health
Suggested Distribution:	Fair Hearing Workers
From:	Samuel L. Spitzberg, Associate Deputy Commissioner Office of Administrative Hearings
Subject:	Demonstration Project Expanding Appellant Communication Options
Effective Date:	Immediately
Contact Information:	OAHTransmittals@otda.ny.gov

Section 2

Background:

The Office of Temporary and Disability Assistance (OTDA) Office of Administrative Hearings (OAH) and the New York State Department of Health (DOH) recognize an inconsistency between federal and State regulations regarding appellant requests to withdraw a Medicaid fair hearing request. OAH conducts hearings on behalf of DOH.

42 CFR 431.223 requires the agency to accept fair hearing request withdrawals via any modality available to request a fair hearing. OAH allows telephonic fair hearing requests, amongst other modalities, and must therefore accept telephonic withdrawal requests.

18 NYCRR 358-5.4 limits modalities available to withdraw fair hearing requests. This demonstration project removes restrictions inconsistent with the relevant federal Medicaid regulations.

Section 3

In accordance with Social Services Law § 36-a and 18 NYCRR 300.11, the OTDA OAH in conjunction with DOH, through this transmittal, starts a demonstration project designed to offer appellants and their representatives an additional modality to withdraw Medicaid fair hearing requests. This demonstration project ends one year from its start unless otherwise extended or withdrawn. The demonstration project will evaluate whether telephonic withdrawals ease administrative burdens.

Section 4

For purposes of this demonstration project, the agency is defined as DOH, its employees, and its contractors engaged by DOH to speak with appellants and their authorized representatives about Medicaid fair hearing requests.

Notwithstanding 18 NYCRR 358-5.4(a), fair hearing requests with only Medicaid issues may be withdrawn telephonically by an appellant or the appellant's authorized representative with the agency provided the agency explains the impact of withdrawing a fair hearing request on aid to continue, services, and benefits and records the appellant or the appellant's authorized representative's statement and the appellant or the appellant's authorized representative's telephonic signature. The limitation that such a telephonic withdrawal be before a hearing officer on the record at the hearing is waived.

Notwithstanding 18 NYCRR 358-5.4(b), the agency's acceptance of a telephonic withdrawal and notification to the OAH that an appellant is withdrawing a request for a Medicaid fair hearing is sufficient for the OAH to process a request to withdraw the fair hearing request. The rule stating that oral statements to an agency employee are insufficient is waived when the statement is made to the agency as defined above.

After processing the withdrawal request, the OAH must issue a post-withdrawal notice to the appellant and the appellant's authorized representative.

Consistent with 18 NYCRR 358-5.5, OAH will reopen withdrawn fair hearing requests.

Section 5

Direct questions about Transmittal 26-03 to OAHTransmittals@otda.ny.gov.

Urgent questions can be directed to:

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