

**Administrative Adjudication Plan
of the
New York State Department of Social Services
Division of Legal Affairs
Office of Administrative Hearings**

Pursuant to Executive Order No. 131 issued by Governor Mario Cuomo on December 4, 1989, the New York State Department of Social Services (the Department) has developed this Administrative Adjudication Plan. The Department adheres to the principles of administrative adjudication enunciated in the Order and ensures that its administrative proceedings are "impartial, efficient, timely, expert and fair."

GENERAL PRINCIPLES

The Department strictly enforces the prohibition against hearing officers' communicating about the merits of pending administrative hearings except upon notice and opportunity for all parties to participate. However, a hearing officer may consult on questions of law with supervisors, other hearing officers or Department attorneys who have not been engaged in the investigation or prosecution of the matters giving rise to the administrative hearing under consideration or any factually related administrative hearing. A hearing officer may also consult with supervisors, other hearing officers, support staff or stenographic reporters on ministerial matters such as the scheduling or location of a hearing.

The Department does not consider whether a hearing officer's rulings, decisions or other actions favor any social services district, the Department or the State in establishing the hearing officer's salary, promotion, benefits, working conditions or employment opportunities. Nor does the Department establish quotas or similar expectations on this basis. The work of hearing officers is only evaluated on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

The Department does not order or otherwise direct hearing officers to make any findings of fact, reach any conclusions of law, or make or recommend any specific dispositions of a charge, allegations, questions or issues, except by remand, reversal, or other decision on the record of the proceeding. However, supervisors may give legal advice or guidance to hearing officers when it is appropriate to assure that decisions meet the Department's quality standards and are consistent and legally sound. If a decision includes findings of fact or conclusions of law that conflict with the findings of fact, conclusions of law or recommended decision of the hearing officer, the Commissioner or his designee sets forth in writing the reasons why the conflicting decision was reached.

ORGANIZATION

Statutes and regulations require that the Department provide hearings and render decisions in a variety of areas. These responsibilities are carried out by the Office of Administrative Hearings (OAH) of the Division of Legal Affairs. The OAH is not part of any Department unit with programmatic functions and does not include hearing officers or other attorneys responsible for prosecutions or other adversarial presentations of Department positions, except the defense of hearing decisions in court proceedings. Hearing officers are not assigned responsibilities which conflict with their obligations as hearing officers.

The OAH is supervised by the Associate Commissioner for Administrative Hearings who reports directly to the General Counsel. The OAH is divided into two Bureaus: the Bureau of Fair Hearings and the Bureau of Special Hearings. Each Bureau has distinct hearing responsibilities which are detailed in separate sections of this Plan, and each is supervised by a Deputy Counsel who reports to the Associate Commissioner for Administrative Hearings. An organizational chart is provided as Attachment A.

The Department maintains hearing officer and support staff at locations throughout the State (see Attachment B). In each location OAH staff is situated in discrete space apart from other Department staff.

HEARING OFFICERS: Staffing, Recruitment and Training

The Department does not anticipate employing per diem or contract hearing officers to meet its hearing workload demands or implement the provisions of the Order. New hearing officers are recruited predominately from outside the Department. The Department fills vacant hearing officer positions in accordance with Civil Service procedures using lists from Open-Competitive, Legal Careers and Legal Specialties examinations.

The Department provides an extensive training program for hearing officers. With the City University of New York Law School, introductory and on-going training programs focus on the administrative hearing process as well as substantive law. Each hearing officer participates in training programs which reflect the general principles of administrative adjudication set out in the Executive Order, including the purposes and goals of fair hearings, the need for objectivity and lack of bias in the hearing process, and the importance of the hearing officer's function as the impartial determiner of facts.

INTER-AGENCY CONSULTATION AND RESOURCE SHARING

The Department participates in bi-monthly meetings with managers from many other agencies' hearing offices and also maintains informal contact with other agencies. The Department's present fiscal and staffing limitations preclude it from making its hearing officers available to other agencies. If it becomes necessary or appropriate, the Department will consider using hearing officers from other agencies.

BUREAU OF FAIR HEARINGS**JURISDICTION**

The Bureau of Fair Hearings fulfills the Department's statutory and regulatory responsibility to provide hearings and render decisions in a variety of areas. Hearings are provided to:

- a. Review determinations made by social services districts regarding eligibility for the Aid to Dependent Children, Home Relief and Food Stamp programs;
- b. Review determinations made by social services districts regarding eligibility for Emergency Assistance for Families, and Emergency Assistance for the Aged, Blind and Disabled and Emergency Home Relief;
- c. Review determinations made by social services districts and the Office of Health Systems Management regarding eligibility for Medical Assistance;
- d. Review determinations made by social services districts regarding eligibility for services provided pursuant to Title XX of the Social Security Act;
- e. Review determinations made by social services districts and other authorized agencies regarding eligibility for payments under the Home Energy Assistance Program;
- f. Review determinations made by social services districts regarding the adequacy and level of foster care payments made on behalf of foster children.

PROCEDURAL REQUIREMENTS

Because most appellants are not represented by counsel in fair hearings, the Department does not require formal hearing or discovery requests, pleadings, or motions for recusal or other matters. The scheduling notice for a hearing, as required by 18 NYCRR Section 358-5.1, contains clear and detailed information about the issues to be addressed at the hearing and the procedures to be followed at the hearing. Pursuant to 18 NYCRR Section 358-3.5, requests for hearings may be made in any form by contacting the Bureau of Fair Hearings in writing, by telephone or in person. A case file may be examined at any reasonable time before or at a fair hearing under 18 NYCRR Section 358-3.7. This regulation also requires the social services districts to provide to the appellant copies of all documents it will present at the hearing and any other case file material requested by the appellant. The recusal of a hearing officer may be requested at any time in any manner. The Department will develop regulations establishing a formal procedure for recusal requests.

MANAGEMENT SYSTEM

The Bureau of Fair Hearings adjudicates approximately 75,000 hearings annually. The vast majority of these hearings have federally mandated time-frames which require the Department to take final administrative action, including assuring compliance with the hearing decision, within 60 days for the Food Stamp program or within 90 days for Aid to Dependent Children and Medical Assistance programs [7 CFR 273.15(c) and 18 NYCPR Section 358-6.4 (b); and 205.10(a)(16), 42 CFR 431.244(f) and 18 NYCRR Section 358-6.4(a)]. In order to manage this high volume of hearings within these time-frames, the Bureau of Fair Hearings developed a large data processing system, the Fair Hearings Information System (FHIS), which enables the Bureau to process and schedule requests efficiently. To improve the quality of hearing decisions and expedite their issuance, the Bureau of Fair Hearings developed an automated decision-drafting system, the Fair Hearings Decision Management System (FHDS). The combination of these two systems allows the Bureau to assure timely administrative adjudication when fiscal resources permit appropriate staffing levels to be maintained.

EXISTING SYSTEM AND REQUIRED CHANGES

The fair hearing process is mandated by federal and State statutes [42 U.S.C. Section 602(a)(4) and Social Services Law Section 22]. 18 NYCRR Part 358 provides extensive procedural regulations promulgated in accordance with the relevant federal guidelines at 45 CFR 205.10, 42 CFR 431.205 and 7 CFR 273.15. (18 NYCRR Part 358 is appended as Attachment C and summarized below.)

The only change required by the Executive Order is that in those rare instances when the Commissioner or his designee issues a decision that includes findings of fact or conclusions of law that conflict with the hearing officer's findings of fact, conclusions of law or recommended decision, the Commissioner or his designee will now set forth in writing the reasons why the conflicting decision was reached.

SUMMARY OF RULES

The rules governing the procedures for the administrative hearings conducted by Department of Social Services for public assistance benefits and services are set forth at 18 NYCRR Part 358. (Attachment C)

Subpart 358-3 of the regulations sets forth the rights and obligations of applicants and recipients in the fair hearing process. Where a social services district accepts, denies, discontinues, reduces, suspends or restricts public assistance benefits or services, it is required to send a notice to the applicant or recipient.

The person requesting a hearing (the appellant) can do so to review the propriety of the district's action or to review the adequacy of his or her public assistance benefits or services. A request for a hearing must be made by an appellant within 60 days of the issuance of the social services district's notice or from the district's failure to act except for cases involving food stamps where an appellant has 90 days to make a request for a hearing. Appellant rights in the fair hearing process include the right to

continue to receive benefits in certain circumstances until a hearing decision has been issued and complied with ("aid-continuing"), and to examine the case record and receive copies of documents to be submitted into evidence upon request before the hearing. At hearings, appellants have the right to be represented by attorneys, to bring witnesses and present oral and written evidence and to have interpreters where necessary. Appellants also have the right to request from and have conferences with their social services districts prior to hearings.

Subpart 358-4 of the regulations sets forth the rights and obligations of social services districts in the fair hearing process. Social services districts must provide aid-continuing benefits to appellants when directed by the Department, provide evidentiary documents to appellants upon request and provide conferences to appellants upon request. A representative of a social services district must personally appear at a hearing (unless permission is given to appear by papers only) with a summary of the case and supporting evidence. A social services district must provide for necessary transportation, child care and other verified and related expenses incurred by an appellant to attend a hearing.

Subpart 358-5 of the regulations sets forth the Department's procedures for the fair hearing process. The Department schedules hearings at times and places convenient to appellants as far as practicable and sends notices of the date, time and location of hearings to the parties at least ten days prior to the date of the hearing. Appellants have the right to adjournments in certain circumstances and to withdraw their requests for hearings. Hearings are conducted by hearing officers who preside over the hearings; obtain documents and take testimony; review and evaluate evidence; make findings of fact and conclusions of law; and prepare official reports containing the substance of what transpired at the hearing, including recommended decisions. Persons entitled to appear at hearings include appellants, their representatives, representatives of the social services districts, witnesses and, in limited circumstances where an unqualified waiver of the right to confidentiality has been made by an appellant, the media. At a hearing, technical rules of evidence are not applied. Fair hearing decisions must be supported by substantial evidence.

Subpart 358-6 of the regulations governs fair hearing decisions and compliance with decisions. Recommended decisions of hearing officers are forwarded to Commissioner's designees, who issue the decisions. Decisions are binding upon the social services districts and copies of decisions are sent to each of the parties. In certain cases where there are no issues of fact, at the discretion of a Commissioner's designee, a decision may be issued without a hearing. In all cases, except those involving food stamps, in which a decision favorable in whole or in part to an appellant is issued, the social services district must comply with the decision immediately, but in no event later than 90 days from the date of the request for the hearing. In cases involving food stamps, the social services district must comply with the decision immediately, but in no event later than 60 days from the date of the request for the hearing. Commissioner's designees may review issued fair hearing decisions in order to correct errors and, upon notice to all parties, may reopen previously closed fair hearing records. Appellants may appeal adverse fair hearing decisions pursuant to Article 78 of the Civil Practice Laws and Rules. In very limited circumstances, pursuant to Section 22.9 of the Social Services Law, social services districts may also appeal adverse decisions.

BUREAU OF SPECIAL HEARINGS

JURISDICTION

The Bureau of Special Hearings fulfills the Department's statutory and regulatory responsibility to provide hearings and render decisions in a variety of areas. Hearings are provided to:

- a. Review determinations made by the Department to retain or disclose records relating to individuals in the Central Register of Child Abuse and Maltreatment;
- b. Review determinations made by the Department to sanction providers of Medical Assistance as a result of the commission of unacceptable practices;
- c. Review determinations made by the Department to recover overpayments of reimbursement from providers of Medical Assistance;
- d. Review determinations made by the Department to deny, suspend or revoke the authority to operate, or to impose fines upon, adult care facilities;
- e. Review determinations made by the Department to deny, suspend or revoke the authority to operate, or to impose fines upon, child care facilities;
- f. Review determinations made by social services districts to remove foster children from institutions or foster family boarding homes;
- g. Review determinations made by social services districts to deny applications to adopt children;
- h. Review determinations made by social services districts to deny, discontinue or limit the amount of adoption subsidies;
- i. Review determinations made by the Department to sanction social services districts for failure to comply with requirements relating to the provision of foster care;
- j. Review determinations made by the Department to deny, discontinue or limit services to blind or visually handicapped persons.

PROCEDURAL REQUIREMENTS

Existing regulations governing administrative hearings held by the Bureau of Special Hearings require clear and detailed notices of hearings, and, where applicable, clear and detailed statements of charges. Where appropriate, answers, responsive pleadings and discovery are provided for. Clear and detailed statements of charges are required and provision for responsive pleadings and discovery is made for those hearings involving Department enforcement actions. Sanctioning Medical Assistance providers for the commission of unacceptable practices; recovery of overpayment of Medical Assistance reimbursement made to providers; the denial, suspension or revocation of authority to operate, or the imposition of fines upon, adult care facilities and child care facilities. These hearing procedures are found in 18 NYCRR Parts 515, 517, 519 and 18 NYCRR Part 343.

While the Bureau currently provides clear and detailed notices of hearings in all cases under its jurisdiction, there are no specific regulations which require this in several categories of cases (foster care removal, adoption denial, foster care sanctions, and hearings for the blind and visually handicapped). The Department will develop regulations to set forth the applicable procedures in these areas. The recusal of a hearing officer may be requested at any time in any manner. The Department will develop regulations establishing a formal procedure for recusal requests.

MANAGEMENT SYSTEM

The Bureau of Special Hearings adjudicates approximately 375 cases annually and the caseload is constantly increasing. The Bureau currently uses manual systems to ensure timely disposition of cases. The Bureau is in the process of adapting the existing Fair Hearing Information System (FHIS) maintained by the Bureau of Fair Hearings to meet the needs of the Bureau of Special Hearings. This large data processing system will enable the Bureau to process requests for and to schedule hearings more efficiently. The Bureau of Special Hearings is also planning to adapt and use the Fair Hearing Decision Management System (FHDMS) currently used by the Bureau of Fair Hearings. This will improve the quality of hearing decisions and expedite their issuance. The combination of these two systems will allow the Bureau to assure timely administrative adjudication when fiscal resources permit appropriate staffing levels to be maintained.

EXISTING SYSTEM AND REQUIRED CHANGES

Various statutes and regulations mandate the holding of administrative hearings in diverse areas of the Department's jurisdiction. Child abuse and maltreatment hearings are held pursuant to Social Services Law Sections 422 and 424-a and 18 NYCRR Part 434. Hearings regarding the sanctioning of medical assistance providers and the recovery of medical assistance overpayments are held pursuant to 18 NYCRR Parts 515, 517 and 519. Adult and child care facility hearings are held pursuant to Social Services Law Section 460-d and 18 NYCRR Part 343. Day care licensing hearings are held pursuant to Social Services Law Section 390 and 18 NYCRR 416, 417, 418 and 425. Foster care removal hearings are held pursuant to Social Services Law

Section 400 and 18 NYCRR 443.5. Adoption hearings, including those regarding subsidy issues, are held pursuant to Social Services Law Sections 372-e and 455 and 18 NYCRR 421. Hearings regarding the imposition of foster care fiscal sanctions are held pursuant to Social Services Law Sections 153-d and 398-b and 18 NYCRR Part 430. Hearings regarding services to the blind and visually handicapped are held pursuant to federal requirements set forth at 20 U.S.C. 107d-1 and 34 CFR 361.48.

The only change required by the Executive Order is that in those rare instances when the Commissioner or his designee issues a decision that includes findings of fact or conclusions of law that conflict with the hearing officer's findings, conclusions or recommended decision, the Commissioner or his designee will now set forth in writing the reasons why the conflicting decision was reached.

SUMMARY OF RULES

The rules for the various categories of hearings held by the Bureau of Special Hearings are attached:

- Attachments (D) day care licensing hearings - 18 NYCRR 418.20;
- Attachments (E) adoption subsidy hearings - 18 NYCRR 421.24(f);
- Attachments (F) child abuse and maltreatment hearings, child care application hearings - 18 NYCRR Part 434;
- Attachments (G) adult and child care facility hearings - 18 NYCRR Part 343, Summary of Hearing Procedures - Residential Care Programs for Adults and Children, Summary of Hearing Procedures - Unlicensed Adult Residential Care Facility Hearings;
- Attachments (H) Medicaid fraud and abuse hearings, Medicaid overpayment hearings, Medicaid rate audit hearings - 18 NYCRR Part 519, Summary of Hearing Procedures - Audits and Recovery of Overpayments (Medicaid Rate Audit Hearings)

For most of the administrative hearings held by the Bureau of Special Hearings, a hearing is scheduled upon receipt of a hearing request from an appellant seeking review of an agency action or failure to act. However, in hearings to deny, suspend or revoke the operating certificate of an adult or child care facility or to impose a civil penalty on such facility, a hearing is scheduled when the relevant program Division of the Department notifies the Bureau of Special Hearings that it seeks to impose such a sanction. No hearing request from the operator of the facility is required. Child abuse and maltreatment expungement hearings also are scheduled without a request from an appellant when the State Central Register of Child Abuse and Maltreatment refuses to amend or expunge a case from the Central Register's records or does not act upon a request for amendment or expungement within 90 days.

The notice of hearing is sent to the parties by first class mail for all hearings except adult and child care facility hearings in which certified mail is used. The notice informs the appellant of the subject matter of the hearing, the time, date and place of the hearing and informs the appellant

of his or her rights in the administrative hearing process. These rights include the right to be represented by an attorney or other individual, the right to question agency witnesses, the right to review and challenge the documentary evidence upon which the agency has relied in making its decision and which is to be submitted into evidence at the hearing, and the right to present evidence, whether by testimony or documents, on his or her own behalf. In adult and child care facility hearings, the notice of hearing must be sent at least 30 days before the date of the hearing. In all other hearings, the notice is sent at least two weeks before the date of the hearing.

The Department schedules hearings at times and places convenient to appellants as far as practicable. Appellants have the right to adjournments in certain circumstances and to withdraw their requests for hearings. Hearings are conducted by hearing officers who preside over the hearings; obtain documents and take testimony; review and evaluate evidence; make findings of fact and conclusions of law; and prepare recommended decisions. Persons entitled to appear at hearings include appellants, their representatives, representatives of the Department and social services districts, witnesses and, in limited circumstances where the applicable law permits and there are no confidentiality restrictions, the media. At a hearing, technical rules of evidence are not applied. Hearing decisions must be supported by substantial evidence.

Recommended decisions of hearing officers are forwarded to Commissioner's designees, who issue the decisions. Decisions are binding upon the parties and copies of decisions are sent to each of the parties. Appellants may appeal adverse decisions pursuant to Article 78 of the Civil Practice Law and Rules. In very limited circumstances, pursuant to the Social Services Law, social services districts may also appeal adverse decisions.

