

FAIR HEARINGS

Part 358

Fair hearings: family assistance, safety net assistance, medical assistance, emergency assistance to aged, blind or disabled persons, emergency assistance to needy families with children, food stamps, food assistance, home energy assistance and services.

Subpart 358-1

Scope and Effective Date

Section 358-1.1 General.

These regulations govern the fair hearing process and establish the rights and obligations of applicants, recipients, and social services agencies when an applicant or recipient seeks review of a social services agency action or determination regarding that individual's assistance or benefits under public assistance programs, medical assistance, food stamp, food assistance and the home energy assistance (HEAP) programs, and under various service programs as defined in section 358-2.20 of this Part.

358-1.2 Applicant/Recipient.

For applicants and recipients, these regulations govern the following:

- (a) Notice. These regulations set forth what information you are entitled to receive if you have been accepted for or denied public assistance, medical assistance, HEAP, food stamp benefits or services or if there is to be a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services which you are receiving or if there is an increase in the public assistance, medical assistance or food stamp benefits you are receiving or if there is to be a change in the calculation of such assistance or benefits or if you are involuntarily discharged from a tier II facility as defined in Part 900 of this Title.
- (b) Timing. These regulations set forth the time periods within which you are obligated to request a fair hearing and/or conference if your application for public assistance, medical assistance, HEAP, food stamp benefits or services is not acted upon in a timely manner, or if you have been denied public assistance, medical assistance, food stamp benefits or services or if there is to be a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services you are receiving, or if there is an increase in the public assistance, medical assistance or food stamp benefits you are receiving, or if there is to be a change in the calculation of such assistance or benefits; or if you are told that you have received an overissuance of food stamp benefits.

- (c) Procedures. These regulations set forth what you are required to do to have an action of a social services agency reviewed when you are denied public assistance, medical assistance, food stamp benefits, HEAP or services, or when there is a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services which you are receiving, or when there is an increase in the public assistance, medical assistance or food stamps which you are receiving, or if you are involuntarily discharged from a tier II facility as defined in Part 900 of this Title, or if the social services agency has not acted in a timely manner or if there is a change in the calculation of such assistance or benefits, or if you are told that you have received an overissuance of food stamp benefits; how to ask for a conference and fair hearing; how to exercise your right to have your public assistance, medical assistance, food stamp benefits or services continued until a hearing decision is issued; how to request another hearing date if you are unable to attend the fair hearing on the day it is scheduled to be held; how to get an interpreter if you do not speak English or if you are deaf; and who you may bring to a conference, or fair hearing.
- (d) Decision. These regulations set forth what you should do if your local department of social services does not comply with your fair hearing decision.

358-1.3 Social services agencies.

For social services agencies, these regulations govern the following:

- (a) notices to be sent to applicants and recipients of covered programs or services;
- (b) agency conferences;
- (c) information and documents to be provided to applicants/recipients, or their representatives, who have requested a fair hearing;
- (d) the fair hearing process; and
- (e) compliance with fair hearing decisions.

358-1.4 Effective date.

Repealed, effective September 3, 2003.

Subpart 358-2
Definitions

358-2.0 Introduction.

The terms in Part 358 have the meanings set forth in this Subpart.

358-2.1 Action taken notice.

An action taken notice means a notice from a social services agency advising:

- (a) an applicant for food stamp benefits or a recipient of food stamps at recertification of the social service agency's determination to accept or deny food stamp benefits; or
- (b) a recipient of food stamp benefits, of an increase in benefits.

358-2.2 Adequate notice.

- (a) Except as provided in subdivision (b) of this section, an adequate notice means a notice of action or an adverse action notice or an action taken notice which sets forth all of the following:
 - (1) the action the social services agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services. In addition, in the case of:
 - (i) a reduction of public assistance or food stamp benefits: both the dollar amount of assistance or benefits prior to the reduction and the reduced amount must be specified;
 - (ii) an increase in the amount of a medical assistance spenddown: the amount of the spenddown, if any, prior to the increase and the spenddown amount after the increase must be specified. In addition, such notice must include an explanation of the procedures to be followed for meeting the spenddown;
 - (iii) a recoupment: the total amount to be recouped and the rate of recoupment must be specified. In addition, in the case of a recoupment of a public assistance grant, the right to claim that the rate of recoupment will cause undue hardship must be specified;

- (iv) an acceptance of a food stamp application:
 - (a) the benefit level, including variations based on changes anticipated and at the time of certification, the date when benefits become available and the dates covering the certification/eligibility period must be specified. In addition, if the initial allotment contains benefits for both the month of application and the current month, the notice must explain that the initial allotment includes more than one month's benefits, and must indicate the monthly allotment amount for the remainder of the certification period;
 - (b) when an application is approved on an expedited basis without verification, the notice must explain that the household must provide the verification which was postponed and any special conditions applicable to the household if a normal certification period was assigned to such household;
- (v) a denial of a food stamp application: when a household is potentially categorically eligible for food stamp benefits but is denied food stamp benefits, the notice must ask the applicant to inform the social services agency if the applicant is approved to receive family assistance, federally funded safety net assistance or supplemental security income benefits;
- (vi) a notice of authorization of a public assistance grant: the amount of the grant must be specified;
- (vii) an increase in a public assistance grant or food stamp benefits: the new amount of the grant or benefits must be specified;
- (viii) a restriction of a medical assistance authorization: the date the restriction will begin, the effect and scope of the restriction, the reason for the restriction, the right of the recipient to select a primary care provider within two weeks of the date of the notice of intent to restrict, if the social services agency provides a limited choice of providers to the recipient; the right of the social services agency to select a primary provider for the recipient, if a list of primary care providers is not provided or where the recipient fails to select a primary care provider within two weeks if the recipient is given a choice; and the right of the recipient to change providers every three months, or sooner for good cause shown; the right of the recipient to explain and present documentation, either at a conference or by submission, showing the medical necessity of the services cited in the recipient information packet; the right of the recipient to examine records maintained by the social services agency which identify medical assistance services paid for on behalf of the recipient (i.e., claim detail of recipient profile information), must be specified;

- (ix) an acceptance of an application for services: the type of services to be provided, the duration of services planned, the name of the worker or unit responsible for the case and such person's telephone number, and the right of the applicant and recipient to accept or reject the services shall be specified. In addition, the notice must include a statement regarding the continuing responsibility of the recipient to report any changes in status;
 - (x) a determination that an applicant is eligible for the HEAP program: if Federal funds are available, the amount of benefits must be specified. If Federal funds are unavailable, a statement shall be included that HEAP benefits will be provided if sufficient Federal funds become available;
 - (xi) an acceptance of an application for medical assistance: the extent of coverage, including what care and services are authorized as well as any limitations, must be specified. In addition, if only part of the cost of a particular service will be allowed, such limitation must be specified. If the notice of acceptance indicates a spenddown liability, such notice must include an explanation of the procedures to be followed for meeting the spenddown;
 - (xii) a disqualification of a food stamp household, or a member of such household for failure to comply with food stamp registration or work requirements: the particular act of noncompliance, the proposed period of disqualification and that the household or individual may reapply in order to resume participation in the food stamp program at the end of the disqualification period as well as information about avoiding or ending the disqualification, must be specified;
 - (xiii) a notice of action taken in the food stamp program when a member of the applicant household has without good cause failed to comply with work registration requirements: the particular act of noncompliance, the proposed period of disqualification, that the individual or household may reapply in order to participate at the end of the disqualification period as well as information about ending the disqualification, must be specified; and
 - (xiv) a disqualification of a household from the food stamp program based upon the voluntary termination of employment by the head of household: the proposed period of disqualification, the household's right to reapply in order to resume participation at the end of the disqualification period as well as information about ending the disqualification, must be specified.
- (2) except in the case of a denial, the effective date of the action;
- (3) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;

- (4) the specific laws and/or regulations upon which the action is based;
- (5) the applicant's or recipient's right to request an agency conference and fair hearing;
- (6) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (7) an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made. Furthermore, that a request for a conference does not entitle one to aid continuing, and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- (8) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing;
- (9) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the applicant or recipient to prepare for the fair hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (10) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- (11) the right to present written and oral evidence at the hearing;
- (12) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- (13) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing;

- (14) a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation; and
 - (15) when an action concerning medical assistance is based on a change in law, a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all medical assistance recipients.
- (b) Where an automatic public assistance grant adjustment is required for a class of recipients because of a change in either State or Federal law, the notice provided to a member of such class will be adequate if it includes:
- (1) a statement of the intended action;
 - (2) the reasons for such intended action;
 - (3) a statement of the specific change in the law requiring such action;
 - (4) a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance unless the reason for the appeal is the incorrect computation of the grant; and
 - (5) the liability, if any, to repay continued or reinstated assistance, if the recipient loses the fair hearing.

358-2.3 Adverse action notice.

Adverse action notice means a notice from a social services agency advising a recipient of food stamp benefits of its determination to discontinue, reduce, or suspend such recipient's food stamp benefits, within the food stamp certification period.

358-2.4 Agency conference.

Agency conference means an informal meeting at which an applicant or recipient may have any decision of a social services agency concerning the applicant's or recipient's public assistance, medical assistance, food stamp benefits, HEAP or services reviewed or may have any other aspect of the applicant's or recipient's case reviewed by an employee of that agency who has the authority to change the decision with which the applicant or recipient disagrees.

358-2.5 Aid continuing.

Aid continuing means the right to have public assistance, medical assistance, food stamp benefits or services continued unchanged until the fair hearing decision is issued.

358-2.6 Appellant.

Appellant means the party for whom the fair hearing is requested.

358-2.7 Applicant.

Applicant means a person who has applied for public assistance, medical assistance, HEAP, food stamp benefits, or a service.

358-2.8 Commissioner.

Commissioner means the New York State Commissioner of Temporary and Disability Assistance, or the Commissioner of Health or the Commissioner of the Office of Children and Family Services, depending upon the type of hearing involved as set forth in section 358-2.30 of this Part, or their designees.

358-2.9 Covered programs or services.

Covered programs or services means one or more of the following: family assistance, safety net assistance, medical assistance, emergency assistance to aged, blind or disabled persons, emergency assistance to needy families with children, food stamps, HEAP, and any services funded through the New York State Department of Family Assistance as defined in section 358-2.20 of this Subpart.

358-2.10 Department.

Department means the New York State Department of Family Assistance.

358-2.11 Expiration notice.

Expiration notice means a notice sent by a social services agency which advises a household in receipt of food stamp benefits that its certification period is due to expire. The expiration notice must contain:

- (a) the consequences of failure to comply with the expiration notice;
- (b) the date the current certification period ends;
- (c) the date by which the recipient's household must reapply to receive uninterrupted benefits;
- (d) the date of any scheduled interview, and a statement that the recipient is responsible for rescheduling a missed interview;
- (e) the number of days the recipient has for submitting missing verification after the interview or after the recertification form is received by the local social services district if no interview is required;
- (f) the specific regulation upon which the action is based;
- (g) the household's right to request an application for food stamp benefits and the obligation of the local social services district to accept the application, provided that the application is signed and contains a legible name and address;
- (h) the address where the application must be filed;
- (i) the household's right to apply for food stamp benefits by mail or through an authorized representative;
- (j) information that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at any office of the Social Security Administration (SSA); and

- (k) the household's right to a fair hearing.
- (l) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (m) the right of the recipient to review the recipient's case record. The notice must contain an address and telephone number where the recipient can obtain additional information about the recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (n) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; and
- (o) the right to present written and oral evidence at the hearing;

358-2.12 Fair Hearing.

Fair hearing means a formal procedure provided by OAH upon a request made for an applicant or recipient to determine whether an action taken or failure to act by a social services agency was correct.

358-2.13 Hearing officer.

Hearing officer means an attorney assigned by OAH to preside at hearings.

358-2.14 Mass change in the Food Stamp Program.

Mass change in the Food Stamp program means changes initiated by the Federal government or a social services agency which affect all food stamp households or a significant portion of all food stamp households. Mass changes may include, but are not limited to, adjustments to income eligibility standards, shelter and dependent care deductions; the thrifty food plan and the standard deduction; annual and seasonal adjustments to social security, supplemental security income and other Federal benefits.

358-2.15 Notice of action.

Notice of action means a notice from a social services agency advising an applicant, recipient or resident of a tier II facility of any action the agency intends to take or has taken on any assistance or benefits except food stamp benefits, including the acceptance, denial, discontinuance, suspension, or reduction of public assistance, medical assistance or services, an increase in public assistance or medical assistance, a change in the amount of one of the items used in the calculation of a public assistance grant or medical assistance spenddown although there is no change in the amount of such public assistance grant or medical assistance spenddown, a change in the manner or method or form of payment of a public assistance grant, a determination that an applicant for or a recipient of public assistance is not exempt from work program requirements pursuant to section 385.2 of this Title, a restriction of a medical assistance authorization, and a denial or acceptance of HEAP or a determination to discharge a resident of a tier II facility involuntarily after such resident requests and participates in a hearing held by the facility or the social services district in which the facility is located.

358-2.16 Parties to a fair hearing.

Parties to a fair hearing means the person for whom a fair hearing is requested and the social services agency or agencies whose decision, action or failure to act is subject to review at the fair hearing.

358-2.17 Public Assistance.

Public assistance includes family assistance, safety net assistance, emergency assistance to aged, blind or disabled persons, emergency assistance to needy families including special grants and benefits available pursuant to Part 352 of this Title, and, for the purposes of this Part, refugee cash assistance issued in accordance with Part 373 of this Title.

358-2.18 Recipient.

Recipient means a person who is, or has been, receiving a covered program or service. For the purpose of this Part, recipient includes a former recipient seeking to review a determination of a social services agency and who would have a right to a hearing under section 358-3.1 of this Part if such person were a current recipient.

358-2.19 Restricted payment.

Restricted payment means one of the methods of payment described in Part 381 of this Title, including restricted money payment, indirect or vendor payment and protective payment.

358-2.20 Services funded through the New York State Department of Family Assistance.

Services funded through the New York State Department of Family Assistance means services provided pursuant to the local social services district's consolidated services plan or integrated county plan. Such services may include, but are not limited to child care services, preventive services for children and families and for adults, protective services for children and adults, homemaker services, housekeeper/chore services, and information and referral services.

358-2.21 Social services agency.

Social services agency means the State, county, city, town official or town agency, social services district, HEAP certifying agency or other entity responsible for making the determination or for the failure to act, which is the subject of review at the fair hearing.

358-2.22 Social services district.

Social services district means the county department of social services or the New York City Department of Social Services.

358-2.23 Timely notice.

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

358-2.24 Title.

Title means Title 18 of the New York State Official Compilation of Codes, Rules and Regulations (NYCRR) also referred to as the regulations of the Department of Family Assistance.

358-2.25 Witness.

Witness means a person, other than the applicant, recipient, or the representative thereof, who presents testimony and/or documentary evidence at a fair hearing.

358-2.26 Resident.

Resident of a tier II facility means a family or family member residing in a tier II facility as defined in Part 900 of this Title.

358-2.27 Food Stamps.

Whenever the term "food stamps" is used in this Part it means food stamps under the Food Stamp Program and food assistance under the Food Assistance Program as set forth in Part 388 of this Title.

358-2.28 Notice of missed interview.

Notice of missed interview means a notice sent by a social services district informing an applicant or recipient that they have missed a scheduled food stamp eligibility or recertification interview and advising them that it is their responsibility to reschedule the interview.

358-2.29 Request for contact notice.

Request for contact notice means a notice sent by a social services district advising a household that information needs to be verified or clarified during its food stamp certification period.

358-2.30 Office of Administrative Hearings.

Office of Administrative Hearings (OAH) means the office established in the Office of Temporary and Disability Assistance for the purpose of conducting fair hearings under this Part. The OAH is authorized to conduct hearings under this Part for:

- (a) [Reserved]
- (b) applicants for and recipients of medical assistance on behalf of the Department of Health; and
- (c) applicants for and recipients of services and foster parents challenging rates paid to them for foster care on behalf of the Office of Children and Family Services.

Subpart 358-3
Rights and Obligations of Applicants and Recipients and Sponsors of Aliens

Section 358-3.0 Introduction.

The rights and obligations of applicants and recipients and sponsors of aliens receiving food stamp benefits are governed by this Subpart.

358-3.1 Right to a fair hearing.

- (a) An applicant or recipient has the right to challenge certain determinations or actions of a social services agency or such agency's failure to act with reasonable promptness or within the time periods required by other provisions of this Title, by requesting that the OAH provide a fair hearing. The right to request a fair hearing cannot be limited or interfered with in any way.
- (b) If you are an applicant or a recipient of assistance, benefits or services you have a right to a fair hearing if:
 - (1) your application has been denied by a social services agency, or you have agreed in writing that your application should be withdrawn but you feel that you were given incorrect or incomplete information about your eligibility for the covered program or service; or
 - (2) a social services agency has failed to:
 - (i) determine your eligibility for a covered program or service with reasonable promptness or within the time periods required by other provisions of this Title;
 - (ii) issue or adjust your cash grant;
 - (iii) issue or adjust your food stamp benefits; or
 - (iv) authorize medical care or services for you; or
 - (3) your public assistance, medical assistance, food stamps or services have been discontinued, suspended or reduced, or your public assistance, medical assistance or food stamps have been increased; or
 - (4) the method or manner or form of payment of all or part of your public assistance grant has been changed, a restricted payment is being made or is being continued or a medical assistance authorization is restricted; or

- (5) you object to the payee selected for a restricted payment; or
- (6) your public assistance, medical assistance, HEAP or services are inadequate; or
- (7) although there has been no change in the amount of your public assistance grant, medical assistance spenddown or food stamp benefits, you wish to challenge the social services agency's determination that the amount of one of the items used in the calculation of your public assistance grant, medical assistance spenddown or food stamp benefits has changed; or
- (8) your request for restoration of any food stamp benefits lost less than one year prior to the request for restoration has been denied; or you do not agree with the amount of food stamp benefits restored or any other action taken by the social services agency to restore such benefits; or
- (9) your food stamp benefits have been reduced, suspended or cancelled as a result of an order issued by the United States Food and Nutrition Service to reduce allotments because the requirements of states participating in the Food Stamp Program will exceed appropriations; however, in such case you have the right to a fair hearing only if you believe that your benefit level was computed incorrectly under Federal rules, or that Federal rules were misapplied or misinterpreted; or
- (10) you are aggrieved by a mass change in the Food Stamp Program; or
- (11) within a certification period, the amount of your food stamp benefits is inadequate and you have made the request for a fair hearing within such certification period; or
- (12) your application for food stamp benefits has been denied or your food stamp benefits have been reduced or discontinued due to a determination that you are not exempt from Food Stamp Program work requirements and that you have failed to comply with work registration or employment and training requirements. You may request a fair hearing to review such determination including the determination of exemption status, the type of requirement imposed, or a social services agency's refusal to make a finding of good cause for failure to comply with such requirements if you believe that the finding of failure to comply was improper; or
- (13) you are required to participate in a service, except when required to do so by court order; or
- (14) you are an applicant for or a recipient of public assistance and you object to a social services agency determination that you are not exempt from work program requirements or to the determination that you are not work-limited as provided by section 385.2 of this Title; or

- (15) you object to the amount deducted from your initial payment of supplemental security income as reimbursement of public assistance; or
 - (16) the amount you are being charged for a service has been increased and such increase is not based on a change in the fee or family share schedule; or
 - (17) you disagree with the amount of a claim for the overpayment of public assistance or the over-issuance of food stamp benefits, except if the amount of such claim has already been determined in accordance with Part 359 or 399 of this Title, by an administrative disqualification hearing, a waiver for an administrative disqualification hearing, a court determination or a disqualification consent agreement; or
 - (18) you are a recipient of medical assistance and you have reached a utilization threshold and your application for an exemption from or increase to such threshold has been denied; or
 - (19) you are participating in a work-related program or activity under Part 385 of this Title and you have a complaint regarding the calculation of your hours of participation in work experience or in work experience as part of community service; or
 - (20) you have been denied a waiver of public assistance program requirements under section 351.2(l) of this Title or an extension of such waiver has been denied or such waiver has been terminated or modified.
- (c) As the sponsor of an alien receiving food stamp benefits and for whom there has been an over-issuance of benefits for which you are liable, you have a right to a hearing to contest the following:
- (1) the determination that you were responsible for the incorrect information which was provided and which resulted in the over-issuance; and
 - (2) the amount of the over-issuance for which you are liable.
- (d) As a relative or friend of a deceased person, you have a right to a fair hearing if you have paid for the burial arrangements of such deceased person and your claim for reimbursement made pursuant to section 141 of the Social Services Law is denied by the local social services agency.
- (e) As a recipient of food stamp benefits, you do not have the right to a fair hearing to challenge the following:

- (1) the placement of your household on an alternate issuance system; or
 - (2) the length of time that your household is required to participate in an alternate issuance system; or
 - (3) an adverse decision in an administrative disqualification hearing; or
 - (4) a disqualification penalty imposed after you have waived your rights to an administrative disqualification hearing.
- (f) As an applicant or recipient you do not have the right to a fair hearing in all situations. For example, you do not have a right in the following situations:
- (1) the Department of Health has discontinued payment to the medical facility in which you are or had been residing because the facility has been decertified from participation in the Medical Assistance Program; or
 - (2) your physician has ordered a change in the level of care being provided to you; or
 - (3) a utilization review committee has ordered a higher level of care; or
 - (4) the sole issue involving your receipt of medical assistance is a Federal or State law requiring an automatic change which adversely affects some or all recipients; or
 - (5) you are complaining about the amount of any lien taken by a social services agency; or
 - (6) a local social services agency has demanded restitution, in accordance with the provisions of section 104 or 106-b of the Social Services Law, of public assistance paid, other than by a reduction of the public assistance grant; or
 - (7) you are complaining about the amount of a child support payment which is passed through to you; or
 - (8) your services have been discontinued as a result of a court order, or the court order which required the provision of services has expired; or
 - (9) you are a member of a class of public assistance recipients for whom either State or Federal law requires an automatic grant adjustment, unless the reason for your appeal is the incorrect computation of your grant; or

- (10) you are a foster family care services recipient, a foster family caregiver, or a respite caregiver pursuant to section 505.29 of this Title, and a sponsoring agency terminates the foster family caregiver's or the respite caregiver's authority to provide foster family care services or a social services district or the Office of Children and Family Services or the Department of Health terminates its contract with a sponsoring agency; or
 - (11) you have been sent a request for contact notice in order to verify or clarify information during your food stamp certification period; or
 - (12) you have been sent a notice of missed interview informing you that you have missed a scheduled food stamp eligibility or recertification interview and advising you that it is your responsibility to reschedule the interview.
- (g) If you are an institutionalized spouse or a community spouse, as defined in section 360-4.10 of this Title, and a determination has been made on an application for medical assistance for the institutionalized spouse, you have a right to a fair hearing to challenge:
- (1) the amount of the community spouse monthly income allowance; and/or
 - (2) the amount of monthly income determined to be otherwise available to the community spouse; and/or
 - (3) the amount of resources attributed to the community spouse or to the institutionalized spouse; and/or
 - (4) the amount of the community spouse resource allowance.
- (h) You have a right to a fair hearing if you are a resident of a tier II facility and you have been involuntarily discharged from the shelter after having requested and participated in a hearing, held by the facility or by the social services district in which the facility is located, to determine whether you should be involuntarily discharged. If you do not request and participate in such a hearing you do not have a right to a fair hearing. You also do not have a right to a hearing under this Part if the basis for the discharge is that you are or a family member is not longer medically appropriate to reside in the facility, as determined by qualified medical personnel, you or a family member's temporary housing assistance has been discontinued pursuant to the provisions of section 352.35 of this Title or, you have or a family member has been absent from the facility for more than 48 hours without having complied with the facility's rules concerning absence and you have not or the family member has not been readmitted to the facility.

358-3.2 Right to priority in hearing and determination.

Priority in scheduling of your hearing and determination will be provided when:

- (a) you are an applicant for emergency assistance to needy families with children, emergency assistance to aged, blind or disabled persons or emergency safety net assistance and you are appealing the denial of such benefits; or
- (b) your circumstances warrant priority in scheduling and your hearing is being scheduled because you have:
 - (1) no food; or
 - (2) no shelter, or your shelter is imminently about to be lost or terminated; or
 - (3) an inadequate or inappropriate emergency shelter placement; or
 - (4) an eviction/dispossess notice; or
 - (5) no fuel for heat during the cold weather period; or
 - (6) a utility disconnect scheduled for a specific date; or
 - (7) a utility shut-off; or
 - (8) need for rental security deposit, broker's fee and/or first month's rent, if necessary to obtain permanent housing, and failure to expedite processing will lead to loss of such housing; or
 - (9) urgent need for medical care, services or supplies; or
 - (10) a denial or discontinuance of or inadequate personal care services; or
 - (11) a denial or discontinuance of or inadequate adult protective services; or
 - (12) been involuntarily discharged from a tier II facility as defined in Part 900 of this Title and you requested and participated in a hearing, held by the facility or by the social services district in which the facility is located, to determine whether you should be involuntarily discharged; or

- (13) any other problem which is determined, in the department's discretion, to be an appropriate subject for priority processing and which presents a crisis situation or a threat to your health and safety or that of your family.
- (c) you are requesting a fair hearing concerning your food stamp benefits and your household is planning to move away from the local social services district before the fair hearing decision would normally be issued; or
- (d) you have been denied assistance under the family assistance program for yourself or your dependent child because:
- (1) you are under the age of 18;
 - (2) you have never married;
 - (3) you either reside with and provide care for your dependent child or are pregnant;
 - (4) you are not residing in a place of residence maintained as a home by your parent, legal guardian or other adult relative or in an adult-supervised supportive living arrangement; and
 - (5) you have alleged that your physical or emotional health or safety or that your dependent child would be jeopardized if you or such child lived in the same residence with your parent or legal guardian and an investigation conducted in accordance with section 424 of the Social Services Law did not support your allegation.

358-3.3 Notice requirements.

- (a) Public assistance, medical assistance and services: notice of action.
- (1) Action to discontinue, suspend, reduce, restrict; changes in the manner of payment for child care services; denial of an extension of a waiver of public assistance program requirements or termination or modification of such waiver. Except as set forth in subdivision (d) of this section, you have a right to timely and adequate notice when a social services agency proposes to:
 - (i) take any action to discontinue, suspend, or reduce your public assistance grant, medical assistance authorization or services; or
 - (ii) change the manner or method or form of payment of your public assistance grant; or

- (iii) restrict your medical assistance authorization; or
 - (iv) make changes in the manner of payment for your child care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces you to make changes in child care arrangements; or
 - (v) make changes in the manner of payment for your supportive services provided to enable you as a recipient of public assistance to participate in work activities pursuant to Part 385 of this Title and such changes result in the discontinuance, suspension, reduction or termination of benefits, or force you to change child care arrangements; or
 - (vi) deny an extension of a waiver of public assistance program requirements under section 351.2(l) of this Title or such waiver has been terminated or modified.
- (2) Action to accept, deny, increase or make change in calculation; denial of utilization threshold exemption or increase application; employability determination changes in the manner of payment for denial of a waiver of public assistance program requirements. You have a right to adequate notice when a social services agency:
- (i) accepts or denies your application for public assistance, medical assistance or services; or
 - (ii) increases your public assistance grant; or
 - (iii) determines to change the amount of one of the items used in the calculation of your public assistance grant or medical assistance spenddown although there is no change in the amount of your public assistance grant or medical assistance spenddown; or
 - (iv) denies an application for an exemption from or an increase of a medical assistance utilization threshold and you have reached the utilization threshold; or
 - (v) changes the manner of payment for your child care services except as provided in subparagraph (1)(iv) of this subdivision; or
 - (vi) determines that you are not eligible for an exemption requested from work requirements as described in Part 385 of this Title and you are an applicant for or recipient of public assistance; or
 - (vii) denies a waiver of public assistance program requirements under section 351.2(l) of this Title.

- (3) Action based on a change in State or Federal law requiring automatic public assistance grant adjustments for classes of recipients. When you are a member of a class of public assistance recipients for whom changes in either State or Federal law require automatic grant adjustments, you are entitled to timely notice of such grant adjustment. This notice will be adequate if it includes those items listed in section 385-2.2(b) of this Part.

(b) Food stamps.

- (1) Action to discontinue, reduce or recoup: action notice. Except as set forth in subdivision (e) of this section, when a social services agency proposes to take any action to discontinue or reduce your food stamp benefits you have the right to timely and adequate notice.
- (2) Action to accept, deny, increase, change in calculation: adverse action taken notice. When a social services agency accepts or denies your application for food stamp benefits or increases your food stamp benefits, or changes the amount of one of the items used in the calculation of your food stamp benefits although there is no change in the amount of your food stamp benefits, you have the right to adequate notice.

(3) Expiration notice.

- (i) Before or at the beginning of the last month of your household's current certification period for food stamp benefits, you have a right to an expiration notice as defined in section 358-2.11 of this Part; however, if your household was recertified for both public assistance and food stamps prior to the last month of the food stamp certification period, an expiration notice is not required.
- (ii) For households with certification periods longer than one or two months the notice of expiration must be sent by the social services agency so that your household receives it no earlier than the first day of the second to the last month of the certification period and no later than one day before the last month of the certification period.
- (iii) Households certified for one month only, or initially certified for two months during the month following the month of application, must be sent the expiration notice at the time of certification.

- (c) Home Energy Assistance Program (HEAP). When a social services agency accepts or denies your application for HEAP benefits or determines that you are eligible for HEAP benefits but Federal funds are unavailable, you have a right to adequate notice.

(d) Public assistance and medical assistance programs: exceptions to timely notice requirements.

(1) As a recipient of either public assistance or medical assistance you have the right to adequate notice sent no later than the effective date of the proposed action when:

- (i) the social services agency has factual information confirming the death of a recipient or the payee of a family assistance case, and there is reliable information that no relative is available to serve as a new payee; or
- (ii) the social services agency has received a clear written statement signed by you which includes information that requires the social services agency to discontinue or reduce your public assistance or medical assistance and you have indicated in such statement that you understand that such action will be taken as a result of supplying such information; or
- (iii) the social services agency has received a clear written statement from you indicating that you no longer wish to receive public assistance or medical assistance; or
- (iv) the agency has reliable information that you have been admitted or committed to an institution or prison which renders you ineligible for assistance or services under the Social Services Law; or
- (v) your whereabouts are unknown and mail addressed to you by the social services agency has been returned by the post office with an indication that there is no known forwarding address. However, public assistance or medical assistance will be given to you if the social services agency is made aware of your whereabouts during the period covered by the returned public assistance check or medical assistance authorization; or
- (vi) you have been accepted for public assistance or medical assistance in another local social services district, state, territory or commonwealth, and that acceptance as been verified by the social services district previously providing you with such assistance.

(2) As a recipient of public assistance, you have the right to adequate notice sent no later than the date of the proposed action when the following actions affect your public assistance grant:

- (i) you have been placed for long-term care in a skilled nursing facility, intermediate care facility or hospital; or

- (ii) a child has been removed from your home as a result of a judicial determination, or voluntarily placed in foster care by the child's legal guardian; or
 - (iii) a special allowance granted for a specific period has been terminated and you had been informed in writing at the time that you were first granted the special allowance that the allowance would automatically terminate at the end of the specified period; or
 - (iv) the social services agency has determined to accept your application for public assistance or has determined to increase your assistance;
 - (v) the social services agency action results from information you furnished in a quarterly report required by section 351.24 of this Title;
 - (vi) you are a recipient of public assistance and you have been determined eligible for supplemental security income and the social services agency has made a determination that the amount of supplemental security income makes you no longer eligible for public assistance.
- (3) As a recipient of medical assistance, you have the right to adequate notice if you are in a general hospital, not receiving chronic care services and a utilization review committee has determined that your medical assistance payment should be reduced or discontinued.
- (e) Food Stamp Program: exemption from notice requirements or timely notice requirements.
- (1) You are not entitled to an individual adverse action notice when:
- (i) a mass change is initiated which affects all food stamp households or significant portions thereof; or
 - (ii) based on reliable information, the social services agency determines that all members of your household have died or that the household has moved from the social services district or will not be residing in the social services district and will be unable therefore to obtain its next food stamp allotment from such district; or
 - (iii) your certification period has expired, you were previously informed of the expiration, and you have not reapplied for benefits; or

(iv) your household has been receiving an increased food stamp allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of the date when the increased food stamp allotment would terminate; or

(v) your household's allotment of food stamp benefits varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was notified that the food stamp allotment would vary at the time of certification; or

(vi) your household applied jointly for public assistance and food stamp benefits and has been receiving food stamp benefits pending the approval of the public assistance grant and was notified at the time of food stamp certification that food stamp benefits would be reduced upon approval of the public assistance grant; or

(vii) a household member is disqualified from the Food Stamp Program for an intentional program violation in accordance with Part 359 or Part 399 of this Title or the food stamp benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member; or

(viii) the social services agency has elected to assign a longer certification period to your household which was certified on an expedited basis and for which verification was postponed. The household must have received written notice that in order to receive benefits past the month of application the household must provide the verification which was initially postponed and the social services agency may act on the verified information without further notice; or

(ix) a social services agency has converted your household from cash repayment of an intentional program violation claim or an inadvertent household error to benefit reduction, as a result of the household's failure to make an agreed upon cash repayment; or

(x) you are a resident of a treatment center or group living arrangement which is determined to be ineligible for food stamp benefits because the facility has either lost its certification from the appropriate State agency/agencies or lost its status as an authorized representative due to its disqualification by the Federal Food and Nutrition Service as a retailer. However, residents of group living arrangements applying on their own behalf may remain eligible to participate in the Food Stamp Program; or

(xi) your household voluntarily requests, in writing or in the presence of an agency employee, that its food stamp benefits be terminated. If the household does not provide a written request, the social services agency must send the household a letter confirming the voluntary withdrawal.

(2) Mass changes.

(i) When the Federal government initiates an adjustment to eligibility standards, allotments or deductions and the State initiates adjustments to utility standards, you are not entitled to a notice of adverse action.

(ii) When OTDA initiates a mass change in food stamp eligibility or benefit levels simultaneously for the entire caseload or that portion of the caseload that is affected, or by conducting individual desk reviews in place of the mass change, no later than the date your household is scheduled to receive the benefits which have been changed, you shall be informed of the following:

(a) the general nature of the change;

(b) examples of the effect the changes will have on household allotments;

(c) the month in which the change will take effect;

(d) the right to a fair hearing;

(e) the right to continued benefits and under what circumstances benefits will be continued, pending issuance of the fair hearing decision. You will be informed that at the hearing, the hearing officer may determine to end your continuation of benefits if it is determined that the issue being contested is not based on improper computation of benefits or misapplication or misinterpretation of Federal law or regulation;

(f) general information on whom to contact for additional information; and

(g) the liability the household will incur for any over-issued benefits if the fair hearing decision is adverse.

(3) As a recipient of food stamp benefits you have the right to an adequate notice sent no later than the date of the proposed action when the social services agency action results from information you furnished on a periodic report. As a recipient of food stamp benefits, you have the right to an adequate and timely notice because you failed to return a periodic report required by section 387.17(d) of this Title.

- (f) Involuntary discharges from tier II facilities. As a resident of a tier II facility you have a right to adequate notice when you have been involuntarily discharged from a tier II facility as set forth in section 900.8 of this Title and you have requested and participated in a hearing, held by the facility or by the social services district in which the facility is located, to determine whether you should be involuntarily discharged. Such notice must be on a form mandated by OTDA, which meets the requirements for adequate notice as set forth in section 358-2.2 of this Part.
- (g) Concurrent benefits. For the purposes of this subdivision, the term benefits has the same meaning as that used in section 351.9 of this Title and concurrent benefits has the same meaning as that used in section 351.9 of this Title.
- (1) Denial of benefits. You have the right to an adequate notice when a social services official determines to deny you benefits on the grounds that you are receiving or have been accepted to receive a concurrent benefit in that social services district or in another social services district, state, territory or commonwealth.
 - (2) Discontinuance of benefits--timely and adequate notice. You have the right to timely and adequate notice when:
 - (i) a social services official determines to discontinue your benefits because you are receiving concurrent benefits in that social services district and in another state, territory or commonwealth, but you are not receiving concurrent benefits from social services districts solely within the State; or
 - (ii) a social services official determines to discontinue your benefits because you are receiving benefits in that social services district and all concurrent benefits in that district and in any other social services district in the State have been discontinued and no aid continuing has been granted under section 358-3.6 of this Subpart for any such discontinuances.
 - (3) Discontinuance of benefits--exception to timely notice. Notwithstanding any other provision of this section, you have a right to adequate notice sent no later than the effective date of the proposed action when a social services official determines to discontinue your benefits because you are receiving concurrent benefits in the same social services district or in another social services district within the State.

358-3.4 Rights in the fair hearing process.

As an appellant you have the right:

- (a) to the continuation or reinstatement of your public assistance, medical assistance authorization, food stamp benefits or services until the issuance of a decision in your fair hearing, to the extent authorized by section 358-3.6 of this Subpart. You have the right to request that your assistance, benefits or services not be continued or reinstated until the fair hearing decision is issued;
- (b) to examine your case record and to receive copies of documents in your case record which you need to prepare for the fair hearing, upon your request, to the extent authorized by and within the time periods set forth in section 358- 3.7 of this Subpart;
- (c) to examine and receive copies of all documents and records which will be submitted into evidence at the fair hearing by a social services agency, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;
- (d) to the rescheduling (adjournment) of your hearing, to the extent authorized by section 358-5.3 of this Part;
- (e) to be represented by an attorney or other representative at any conference and hearing, or to represent yourself;
- (f) to have an interpreter at any fair hearing, at no charge to you, if you do not speak English or if you are deaf. You should advise OAH prior to the date of the fair hearing if you will need an interpreter;

- (g) to appear and participate at your conference and fair hearing, to explain your situation, to offer documents, to ask questions of witnesses, to offer evidence in opposition to the evidence presented by the social services agency and to examine any documents offered by the social services agency;
- (h) to bring witnesses to present written and oral evidence at any conference or fair hearing;
- (i) at your request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for yourself and your representatives and witnesses and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing;
- (j) to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location;
- (k) to request removal of a hearing officer in accordance with section 358-5.6 of this Part; and
- (l) to seek review by a court if the decision is not in your favor.

358-3.5 Requests for a fair hearing.

- (a) A fair hearing may be requested in writing, by telephone, by electronic means, or facsimile or in person.
- (b)(1) A request for a fair hearing must be made within 60 days after the social services agency's determination, action, or failure to act about which you are complaining except as provided in paragraphs (2) and (3) of this subdivision for fair hearings relating to food stamp benefits, and paragraph (4) relating to HEAP benefits and paragraph (5) relating to involuntary discharges from tier II facilities, and paragraph (6) relating to determinations of exemptions from work activities due to disability. Where the social services agency's action is based on a change in State or Federal law requiring automatic public assistance grant adjustments for classes of recipients, a request for a fair hearing must be made within 60 days after the changed grant becomes available to you.

- (2) A request for a fair hearing to complain about any action by the social services agency affecting your food stamp benefits, including a loss of food stamp benefits, must be made within 90 days after the determination, action or failure to act about which you are complaining. Action includes a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for restoration. Where the social services agency's action is the result of a mass change, a request for a fair hearing must be made within 90 days after the changed level of benefits become available to you.
- (3) A request for a fair hearing to dispute the current level of food stamp benefits granted to your household must be made during the food stamp certification period.
- (4) A request for a fair hearing to review the denial of, the failure to act on an application for, or the adequacy of a HEAP benefit must be made no later than 60 days after the mailing of the notice. Notwithstanding the provisions of this Part and Part 393 of this Title, no person shall be certified as eligible to receive a HEAP benefit as a result of a fair hearing if no Federal funds are available for such purpose. Federal funds are available for the provision of a HEAP benefit until the end of the Federal fiscal year succeeding the end of the HEAP program year for which such benefit is claimed. The issuance of a HEAP benefit in compliance with a fair hearing decision can only be provided if the hearing request is made during the period of time when Federal funds are available.
- (5) A request for a fair hearing to review the involuntary discharge of a resident from a tier II facility after the resident has requested and participated in a hearing, held by the facility or social services district in which the facility is located, must be made no later than 30 days after the decision of the facility or social services district is rendered.
- (6) A request for a fair hearing relating to determinations of exemptions from work activities due to disabilities must be made with 10 days of the agency's notice of determination pursuant to section 385.2(d)(7)(i) of this Title.
- (7) If the last day for requesting a fair hearing falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered as timely received

358-3.6 Right to aid continuing.

In certain situations, you have the right to have your public assistance, medical assistance, food stamp benefits, and services continued unchanged until your fair hearing decision is issued. OAH will determine whether you are entitled to aid continuing and advise the appropriate social services agency and you of its decision.

(a) Public assistance, medical assistance and services. For public assistance, medical assistance and services, the right to aid continuing exists as follows:

- (1)(i) Except as provided in paragraph (2) of this subdivision, where the social services agency is required to give you timely notice before it can take any action in your case, you have the right to aid continuing for your public assistance and medical assistance and services until the fair hearing decision is issued if you request a fair hearing before the effective date of a proposed action as contained in the notice of action. In the Medical Assistance Program, if you have been receiving assistance based on a spenddown of excess income, the right to aid continuing includes the right to have your spenddown liability continue unchanged.
- (ii) If your assistance or services have been reduced or discontinued, restricted or suspended by the social services agency and you requested a hearing before the effective date contained in the notice, your assistance or services must be restored by the social services agency as soon as possible but no later than five business days after notification from OAH that you were entitled to have your public assistance, medical assistance or services continue uninterrupted pursuant to this paragraph.
- (iii) In cases where the action is an automatic public assistance grant adjustment based on a change in State or Federal law, the effective date for determining the right to continued public assistance, medical assistance and food stamps will be deemed to be 10 days after the date the changed grant becomes available to you.
- (iv) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of aid continuing.

- (2) There is no right to aid continuing of:
- (i) public assistance where OAH has determined that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation; or
 - (ii) medical assistance or services where OAH has determined that the sole issue is one of State or Federal law or policy; or
 - (iii) medical assistance when you have been determined presumptively eligible for medical assistance and have subsequently been denied eligibility for medical assistance; or
 - (iv) medical assistance if you are a recipient in a general hospital, not receiving chronic care services, and you are in short-term hospitalization and a utilization review committee determines that such level of care is no longer required; or
 - (v) public assistance, medical assistance or services when the social services official determines to discontinue your benefits because you are receiving concurrent benefits as described in section 351.9 of this Title in the same social services district or in another social services district within the State.
- (3) (i) Where the social services agency is required only to give you adequate notice but not timely notice and has discontinued, reduced, restricted or suspended your public assistance, medical assistance or services, you have the right to have your public assistance, medical assistance or services reinstated and continued until a fair hearing decision is issued only if you request a fair hearing within 10 days of the mailing of the agency's notice of the action and if OAH determines that the action on your public assistance or medical assistance benefits or services did not result from the application of or change in State or Federal law or policy. If OAH determines that you are entitled to have your public assistance, medical assistance or services reinstated and continued in accordance with this paragraph, the social services agency must restore your public assistance, medical assistance or services as soon as possible but not later than five business days after being advised by OAH of such determination. With the exception of child care services, there is no right to reinstatement for supportive services provided to enable you to participate in work activities pursuant to Part 385 of this Title.
- (ii) If the 10th day of the mailing of the agency's notice of the action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of reinstatement pursuant to subparagraph (i) of this paragraph.

- (4) (i) Where an applicant for or a recipient of public assistance has claimed to be exempt from work requirements under the disability program pursuant to section 385.2(d) of this Title and has been determined not to be exempt or to be work limited and a hearing is requested to contest such determination within 10 days of the date of the agency's notice, any failure to comply with employment requirements within the 10-day period or thereafter until a fair hearing decision is issued will not be considered noncompliance regardless of the outcome of the fair hearing.
- (ii) If the 10th day after effective date of the agency's notice of the action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered to be received within 10 days of the effective date of the agency notice for purposes of subparagraph (i) of this paragraph.
- (b) Public assistance, medical assistance, and services will not be continued pending the issuance of a fair hearing decision when:
- (1) you have voluntarily waived your right to the continuation of such assistance, benefits or services in writing; or
- (2) you do not appear at the fair hearing and do not have a good reason for not appearing; or
- (3) prior to the issuance of your fair hearing decision, a social services agency proposes to take or takes an action which affects your entitlement to public assistance, medical assistance, or services, and you do not make a request for a fair hearing regarding the subsequent notice.
- (c) Food stamp benefits. For food stamp households, including households in receipt of both food stamps and public assistance, the right to aid continuing exists as follows:
- (1) (i) You have the right to have your food stamp benefits continue at the same level as you have been receiving until the fair hearing decision is issued only where the proposed adverse action is to take place during the certification period of your food stamp authorization and your request for a hearing is made prior to the effective date contained in a timely notice for your case closing or authorization reduction.
- (ii) If your food stamp benefits have been reduced or discontinued by the social services agency and you have made a timely hearing request by the effective date contained in the notice, your food stamp benefits must be restored by the

social services agency as soon as possible but no later than five business days after notification from OAH that you are entitled to have your benefits continue unchanged pursuant to this paragraph.

(iii) Where the action being taken is the result of a mass change, the effective date of the action is deemed to be 10 days after the date the changed level of benefits become available to you.

(iv) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of this paragraph.

(2) There is no right to aid continuing where:

(i) OAH has determined that the sole issue is one of Federal law or regulation and your claim that your benefits were improperly computed or the law or regulation was misapplied or misinterpreted is invalid; or

(ii) your food stamp benefits have been reduced, suspended or cancelled as a result of an order to reduce allotments issued by the Food and Nutrition Service because the requirements of states participating in the Food Stamp Program will exceed appropriations; or

(iii) a social services official determines to discontinue your benefits because you are receiving concurrent benefits as described in section 351.9 of this Title in the same social services district or in another social services district within the State.

(3) When food stamp benefits are reduced or terminated because you fail to make the request for a hearing within the required period stated in the notice, upon your request for a fair hearing your food stamp benefits will be reinstated if you establish that your failure to request a hearing in a timely manner was for good cause. If OAH determines that you have the right to have your food stamp benefits reinstated in accordance with this paragraph, the social services agency must reinstate your food stamp benefits as soon as possible but no later than five business days after being advised by OAH of such determination.

(4) When benefits are reduced or terminated due to a mass change, your benefits will be reinstated only if the issue being contested is that:

(i) food stamp eligibility or benefits were improperly computed; or

- (ii) Federal law or regulation is being misapplied or misinterpreted by a State agency or by a social services agency. If OAH determines that you have the right to have your food stamp benefits reinstated in accordance with this paragraph, the social services agency must reinstate your food stamp benefits as soon as possible but no later than five business days after being advised by OAH of such determination.
- (5) If the action proposed in the notice results from a regularly scheduled recertification of your food stamp authorization, your level of participation in the Food Stamp Program will be continued at the level determined at your recertification. You do not have the right to have your level of benefits continued at the prior benefits level unless and until the fair hearing decision is issued requiring such benefit level.
- (6) Once your benefits are continued or reinstated, your benefits should continue without change until you receive your hearing decision unless:
- (i) your certification period expires, in which case you may reapply and may be determined eligible for a new certification period; or
 - (ii) a change affecting your household's eligibility for food stamps or the basis of issuance of food stamp benefits occurs before your hearing decision is issued and you fail to make a request for a fair hearing regarding a subsequent notice of adverse action; or
 - (iii) before the hearing decision is issued a mass change occurs which affects your household's eligibility for food stamps or basis of issuance.
- (d) If your public assistance grant, child care services, or food stamp benefits are continued until a fair hearing decision is issued and you lose the fair hearing, the social services agency may recover the benefits or services which you should not have received. This subdivision does not apply to fair hearings to review the imposition of a work sanction under sections 351.2(i)(2), 385.12 and 385.13 of this Title.
- (e) If you are involuntarily discharged from a tier II facility after requesting and participating in a hearing, held by the facility or the social services district in which the facility is located, and you request a fair hearing to review this determination, you do not have the right to remain at the facility pending the outcome of your fair hearing

358-3.7 Examination of case record before the fair hearing.

- (a) (1) At any reasonable time before the date of your fair hearing and also at the fair hearing, you or your authorized representative have the right to examine the contents of your case record and all documents and records to be used by the social services agency at your fair hearing.
- (2) Except as provided in paragraph (3) of this subdivision, the only exceptions to access to your case record are:
- (i) those materials to which access is governed by separate statutes, such as records regarding child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purposes of the Child Care Review Service; and
 - (ii) those materials being maintained separately from public assistance files for the purposes of criminal prosecution and referral to the district attorney's office. This exception applies only to records which are part of an active and ongoing investigatory action; and
 - (iii) the county attorney or county welfare attorney's files.
- (3) Case records secured by the Commission for the Visually Handicapped or by a local rehabilitation agency acting on behalf of such commission will not ordinarily be made available for examination since they contain information secured from outside sources; however, particular extracts will be furnished to you or your authorized representative when provision of such information will be beneficial to you. The case record, or any part thereof, admitted as evidence in a fair hearing shall be available for review by you or your authorized representative.
- (b) (1) Upon request, you have a right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;

- (2) Upon request, you have the right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of any additional documents which you identify and request for purposes of preparing for your fair hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;
- (3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone.
- (4) If the social services agency fails to comply with the requirements of this subdivision the hearing officer may adjourn the case, allow a brief recess for the appellant to review the documents, preclude the introduction of the documents where a delay would be prejudicial to the appellant, or take other appropriate action to ensure that the appellant is not harmed by the agency's failure to comply with these requirements.

358-3.8 Agency conference.

- (a) At any reasonable time before the date of your fair hearing, you may request that the agency schedule an agency conference before your fair hearing to review the agency decision for which you have requested the fair hearing except as provided for in subdivision (c) of this section.
- (b) Even though you have not requested a fair hearing, you may request an agency conference to review any action on your case.
- (c) No agency conference is required for actions involving the involuntary discharge of residents of tier II facilities.

358-3.9 Authorization of representative.

- (a) Except where impracticable to execute a written authorization, an individual or organization seeking to represent you, other than an attorney or an employee of an attorney, must have your written authorization to represent you at any conference or fair hearing and to review your case record. An employee of your attorney will be considered an authorized representative if such employee presents written authorization from your attorney or if such attorney advises the social services agency by telephone of such employee's authorization.

- (b) Once a social services agency and the OAH have been notified that a person or organization has been authorized to represent you at your fair hearing, such representative will receive copies of all correspondence to you from the social services agency and OAH relating to the conference and fair hearing.

Subpart 358-4
Rights and Obligations of Social Services Agencies

358-4.0 Introduction.

The rights and obligations of social services agencies are governed by this Subpart.

358-4.1 Proposed actions.

- (a) A social services agency must review or cause to be reviewed any of the following intended actions to determine whether the action is correct based upon available evidence included in the applicant's or recipient's case record.
- (1) proposed approval, denial, discontinuance, suspension or reduction of a public assistance grant, medical assistance authorization, food stamp benefits or services;
 - (2) proposed increase in a public assistance grant, food stamp benefits, or a medical assistance spenddown;
 - (3) proposed change in the amount of one of the items used to calculate a public assistance grant, food stamp benefits, or a medical assistance spenddown;
 - (4) proposed acceptance or denial of an application for HEAP benefits;
 - (5) proposed involuntary discharge of a resident from a tier II facility as defined in Part 900 of this Title; or
 - (6) proposed denial of an exemption from work requirements pursuant to section 385.2 of this Title.
- (b) Where it is determined that the intended action is correct after review, the social services agency must send to the applicant/recipient a notice which meets the requirements of section 358-3.3 of this Part.

358-4.2 Pre-hearing responsibilities.

(a) When requested, the social services agency must provide assistance to applicants and recipients in making a request for a fair hearing.

(b) (1) Upon notification by OAH that a fair hearing has been requested and that the appellant's public assistance, medical assistance, food stamp benefits, or services must be continued or reinstated in accordance with section 358-3.6 of this Part until

the fair hearing decision is issued, the social services agency, except as provided in section 358-3.6(b) and (c)(6) of this Part, must take immediate action to assure that the appellant's public assistance, medical assistance, food stamp benefits and services continue unchanged until the fair hearing decision is issued.

(2) Upon receipt of such notification, if public assistance, medical assistance, food stamp benefits or services already have been discontinued, reduced, restricted or suspended, the social services agency must take whatever action is necessary to restore the appellant's public assistance, medical assistance, food stamp benefits or services to their previous level. Such action must be taken as soon as possible but no later than five business days from notification that appellant's public assistance, medical assistance, food stamp benefits or services must continue or be reinstated.

(c) Upon oral or written request, including request by telephone, the social services agency must provide to the appellant and the appellant's authorized representative copies of the documents to be presented at the fair hearing. Such copies must be provided at a reasonable time before the date of the hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide the appellant and the appellant's authorized representative such copies no later than at the time of the hearing. Such documents must be provided without charge and must be provided to the appellant and the appellant's authorized representative by mail within a reasonable time from the date of the request if the appellant or the appellant's authorized representative request that such documents be mailed; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed.

(d) Upon oral or written request, including request by telephone, the social services agency must provide to the appellant and the appellant's authorized representative copies of any documents from appellant's case file which the appellant or the appellant's authorized representative identifies and requests for purposes of hearing preparation. Such copies must be provided at a reasonable time before the date of the

hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide the appellant and the appellant's authorized representative such copies no later than at the time of the hearing. Such documents must be provided without charge and must be provided to the appellant and the appellant's authorized representative by mail within a reasonable time from the date of the request if the appellant or the appellant's authorized representative request that such documents be mailed; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed.

- (e) The social services agency must encourage the use of agency conferences to settle disputes and complaints concerning actions regarding an applicant's or recipient's public assistance, medical assistance, food stamp benefits, request for an exemption from work requirements, HEAP benefits or services so as to eliminate the need to hold fair hearings wherever the dispute can be resolved by scrutiny of documents and/or thorough investigation.
- (f) The social services agency must hold agency conferences when such conference is requested as provided for in section 358-3.8 of this Part. The conference may not be used to inhibit the appellant's right to a fair hearing. Agency conferences must be scheduled before the date of the fair hearing. If the appellant is contesting a denial of expedited participation in the Food Stamp Program, the conference must be scheduled within two business days of the conference request, unless the appellant requests a later date.
- (g) The social services agency must bring the necessary information and documentation to any agency conference, including a telephone conference, to explain the reason for the agency determination and to provide a meaningful opportunity to resolve the problem.
- (h) Except for telephone agency conferences approved pursuant to subdivision (i) of this section, a representative of the social services agency must appear with the case record at the agency conference. Such representative must have reviewed the case and must have the authority to make binding decisions on behalf of the social services agency, including the authority to withdraw the intended action.
- (i) Social services agencies may provide telephone conferences upon prior approval of the Office of Administrative Hearings of the OAH. The OAH may approve such requests in its discretion, where holding an in-person conference is not feasible.
- (j) The social services agency must send copies of all correspondence relating to the conference and fair hearing to the authorized representative of the appellant.

358-4.3 Responsibilities and rights in the fair hearing process.

- (a) The social services agency must provide complete copies of its documentary evidence to the hearing officer at the fair hearing and also to the appellant or appellant's authorized representative, where such documents were not provided previously to the appellant or appellant's authorized representative in accordance with sections 358-3.7 and 358-4.2(c) of this Part. Such documents must be provided without charge.
- (b) Except as provided in subdivision (c) of this section, a representative of the social services agency must appear at the hearing along with the case record and a written summary of the case. Such representative must:
 - (1) have reviewed the case; and
 - (2) be prepared to present evidence in support of the action, including:
 - (i) the case number;
 - (ii) the applicable category or categories or type of public assistance or care, medical assistance, food stamp benefits or services involved;
 - (iii) the names, addresses, relationships and ages of persons affected;
 - (iv) the determination regarding which the hearing request was made;
 - (v) a brief description of the facts, evidence and reasons supporting such determination, including identification of the specific provisions of law, department regulations and approved local policies which support the action;
 - (vi) the relevant budget or budgets prepared by the social services agency for the appellant or the household of such appellant, including printouts of relevant budgets produced on the Welfare Management System (WMS); and
 - (vii) a copy of the applicable action taken notice, adverse action notice, expiration notice or notice of action, including any notices produced on the client notices system.
 - (3) have the authority to make binding decisions at the hearing on behalf of the social services agency, including the authority to withdraw the action or otherwise settle the case.

- (c) (1) No later than five calendar days before the hearing date, the social services agency may make application to the OAH to appear at a hearing on papers only. The OAH may approve such application in its discretion where the rights of the appellant can be protected and the personal appearance of the agency is neither feasible nor necessary.
- (2) Notwithstanding paragraph (1) of this subdivision, a hearing officer may require the appearance of a representative of a social services agency where such appearance is necessary to protect the due process rights of the appellant.
- (d) Upon request of the appellant, the social services agency must provide necessary transportation and transportation expenses to and from the fair hearing for the appellant and appellant's representatives and witnesses and payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing.
- (e) Social services agencies have those hearing rights which appellants have as set forth in sections 358-3.4(d) (adjournment), 358-3.4(e) (representation), 358-3.4(g) (present evidence, question witnesses, examine documents), and 358- 3.4(h) (bring witnesses) and 358-3.4(k) (removal of hearing officer) of this Part.

358-4.4 Compliance with fair hearing decision.

A social services agency must comply with fair hearing decisions in accordance with section 358-6.4 of this Part.

Subpart 358-5 **The Fair Hearing Process**

358-5.0 Introduction.

The fair hearing process is governed by this Subpart.

358-5.1 Notice of fair hearing.

- (a) Except for hearings which are given priority in scheduling in accordance with section 358-5.2 of this Subpart, at least 10 calendar days prior to the date of the fair hearing, a written notice of the fair hearing will be sent by OAH to the appellant, appellant's authorized representative and to the social services agency.
- (b) The fair hearing notice will state the following:

- (1) the date, time and place of the fair hearing and an explanation of how and when a change in the date and place of the fair hearing may be requested, and under what circumstances a hearing will be rescheduled if neither the appellant nor the appellant's representative appears at the hearing
- (2) whether public assistance, medical assistance, food stamp benefits or services must be continued unchanged; and
- (3) the appellant's right upon request to necessary transportation or to transportation expenses to and from the fair hearing for the appellant and the appellant's authorized representatives and witnesses and for payment of the appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing
- (4) the appellant's right to be represented at the fair hearing by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; and
- (5) the right to present written and oral evidence at the hearing; and
- (6) that the appellant should bring the notice of fair hearing to the hearing as well as all evidence that has a bearing on the case such as books, records and other forms of written evidence, and witnesses, if any; and
- (7) the appellant's right to review appellant's case record prior to and at the fair hearing; and
- (8) the appellant's right upon request to obtain copies of documents which the social services agency will present at the fair hearing and copies of other additional documents for the purpose of preparing for the fair hearing; and
- (9) the right of a deaf or non-English speaking appellant to interpreter services at the fair hearing at no charge; and
- (10) The issues which are to be the subject of the hearing.

358-5.2 Scheduling.

- (a) The fair hearing will be held at a time and place convenient to the appellant as far as practicable. In scheduling the hearing, OAH will consider such things as the physical inability of the appellant to travel to the regular hearing location.

(b) Priority scheduling.

- (1) Except as set forth in paragraph (4) of this subdivision, a fair hearing which is subject to priority processing pursuant to section 358-3.2 of this Part must be scheduled as soon as practicable after the request therefore is made. In determining the date for which the hearing will be scheduled, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review.
 - (2) When a hearing is requested concerning food stamp benefits and the food stamp household intends to move from the local social services district before the decision normally would be issued, priority will be given to the scheduling of the hearing, taking into account any date before which the hearing must be scheduled to allow for the appellant to receive the decision while still in the district.
 - (3) Except as set forth in paragraph (4) of this subdivision, after a hearing which was scheduled on a priority basis as set forth above, the decision must be issued as soon as practicable. In determining the date by which the decision will be issued, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review. If, at the conclusion of a hearing which was scheduled on a priority basis, the hearing officer determines that the issues do not warrant continued priority processing, the hearing officer will inform the parties that the issuance of the decision will not receive priority processing.
 - (4) When a fair hearing is requested concerning the involuntary discharge of a resident of a tier II facility after such resident requests and participates in a hearing, held by the facility or the social services district in which the facility is located, such fair hearing must be scheduled within seven working days of the request. The decision after the fair hearing must be issued within seven working days of the date of the fair hearing.
- (c) When a hearing is requested pursuant to section 358-3.1(g) of this Part or has been given priority in accordance with section 358-3.2(d) of this Part, the hearing will be held within 30 days of the request, unless delayed by, or adjourned at the request of, the appellant.

358-5.3 Adjourning the fair hearing.

- (a) Upon request of either the appellant or a social services agency, the fair hearing may be rescheduled, upon a showing of good cause for requesting the delay.

- (b) When in the judgment of OAH or the hearing officer the parties' due process rights would best be served by adjourning the fair hearing, or if there are special circumstances which make proceeding with the case fundamentally unfair, OAH or the hearing officer may reschedule the fair hearing.
- (c) Requests to adjourn a fair hearing must be made in accordance with the instructions in the notice of fair hearing.
- (d) If a fair hearing is adjourned based upon a request by the appellant, the time limit set forth in section 358-6.4 of this Part will be extended by the number of days the fair hearing has been postponed.
- (e) If public assistance, medical assistance, food stamp benefits or services are continued in accordance with section 358-3.6 of this Part and the fair hearing is rescheduled for the reasons set forth in subdivision (a) or (b) of this section, an appellant has the right to have public assistance, medical assistance, food stamp benefits or services continued until the fair hearing decision is issued.

358-5.4 Withdrawal of a request for a fair hearing.

- (a) OAH will consider a hearing request to be withdrawn under the following circumstances:
 - (1) OAH has received a written statement from the appellant or appellant's authorized representative stating that the request for a fair hearing is withdrawn; or
 - (2) the appellant or appellant's authorized representative has made a statement withdrawing the request to the hearing officer on the record at the hearing.
- (b) An oral statement by telephone or in person to a social services agency employee that an appellant is withdrawing a request for a fair hearing is insufficient to withdraw a fair hearing request.

358-5.5 Abandonment of a request for a fair hearing.

- (a) OAH will consider a fair hearing request abandoned if neither the appellant nor appellant's authorized representative appears at the fair hearing unless either the appellant or appellant's authorized representative has:
 - (1) contacted OAH to request that the fair hearing be rescheduled; and

- (2) provided OAH with a good cause reason for failing to appear at the fair hearing on the scheduled date.
- (b) OAH will restore a fair hearing to the calendar if the appellant or appellant's authorized representative has met the requirements of subdivision (a) of this section.
- (c) If the appellant defaults a fair hearing that is subject to aid-continuing, the right to aid-continuing ends upon default.
 - (1) If the fair hearing is restored to the calendar based upon a request to do so made within 60 days from the date of the default, aid-continuing will be restored retroactively.
 - (2) If the fair hearing is restored to the calendar based upon a request to do so made 60 days or more from the date of the default, aid-continuing will be restored prospectively only from the date of the request to restore the fair hearing to the calendar.
- (d) In no event will a defaulted fair hearing be restored to the calendar if the request to do so is made one year or more from the date of the defaulted fair hearing.

358-5.6 Hearing officer.

- (a) The hearing shall be conducted by an impartial hearing officer assigned by OAH to conduct the hearing, who has not been involved in any way with the action in question.
- (b) To ensure a complete record at the hearing, the hearing officer must:
 - (1) preside over the fair hearing and regulate the conduct and course of the fair hearing, including at the hearing officer's discretion, requiring sworn testimony, and administering the necessary oaths; and
 - (2) make an opening statement explaining the nature of the proceeding, the issues to be heard and the manner in which the fair hearing will be conducted; and
 - (3) elicit documents and testimony, including questioning the parties and witnesses, if necessary, particularly where the appellant demonstrates difficulty or inability to

question a witness; however, the hearing officer will not act as a party's representative; and

- (4) where the hearing officer considers independent medical assessment necessary, require that an independent medical assessment be made part of the record when the fair hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and
 - (5) adjourn the fair hearing to another time on the hearing officer's own motion or on the request of either party, to the extent allowable by section 358-5.3 of this Part; and
 - (6) adjourn the fair hearing when in the judgment of the hearing officer it would be prejudicial to the due process rights of the parties to go forward with the hearing on the scheduled hearing date; and
 - (7) review and evaluate the evidence, rule on the admissibility of evidence, determine the credibility of witnesses, make findings of fact relevant to the issues of the hearing which will be binding upon the Commissioner unless such person has read a complete transcript of the hearing or has listened to the electronic recording of the fair hearing; and
 - (8) at the hearing officer's discretion, where necessary to develop a complete evidentiary record, issue subpoenas, and/or require the attendance of witnesses and the production of books and records; and
 - (9) prepare an official report containing the substance of what transpired at the fair hearing and including a recommended decision to the Commissioner.
- (c) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.
- (1) The grounds for removing a hearing officer are that such hearing officer has:
 - (i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or
 - (ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or
 - (iii) displayed bias or partiality to any party to the hearing.

- (2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.
- (3) The request for removal made by a party must:
 - (i) be made in good faith; and
 - (ii) be made at the hearing in writing or orally on the record; and
 - (iii) describe in detail the grounds for requesting that the hearing officer be removed.
- (4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.
- (5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel or the general counsel's designee.
- (6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.
- (7) The general counsel or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.
- (8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

358-5.7 Who may be present at the fair hearing.

The following persons may be present at a fair hearing:

- (a) the appellant who has requested the fair hearing; and
- (b) the appellant's representative; and
- (c) counsel or other representatives of the social services agency; and
- (d) witnesses of either party and any who may be called by the hearing officer; and

- (e) an interpreter; and
- (f) any other person admitted at the hearing officer's discretion, with the consent of the appellant.

358-5.8 Media admission to fair hearing.

- (a) The media may be admitted to a fair hearing where the appellant has made a specific waiver of appellant's right to confidentiality both in writing and on the record and has clearly and unequivocally confirmed on the record that the appellant desires and consents to the presence of the media. The waiver must be unqualified, complete, and made with full knowledge of the ramifications of the waiver, including that the waiver is irrevocable.
- (b) Where a waiver has been secured in accordance with subdivision (a) of this section, the extent of any access to be granted to the media is to be determined at the discretion of the hearing officer. In determining the extent of such access, the hearing officer will consider the following:
 - (1) maintenance of proper hearing decorum; and
 - (2) potential disruption to the proceedings; and
 - (3) adverse effect on witnesses; and
 - (4) impediments to the making of a proper and accurate record; and
 - (5) the physical space and conditions of the hearing room; and
 - (6) potential disruption to the hearing officer, including impediments to the hearing officer's ability to discharge responsibilities; and
 - (7) any other factor which, in the discretion of the hearing officer, is necessary to ensure the orderly and proper conduct of the hearing and the creation of a complete and accurate hearing record or which is necessary in order to protect confidential information where confidentiality cannot be waived by the appellant.

358-5.9 Fair hearing procedures.

- (a) At a fair hearing concerning the denial of an application for or the adequacy of public assistance, medical assistance, HEAP, food stamp benefits or services; or an exemption from work activity requirements the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or benefits or is exempt from work requirements pursuant to Part 385 of this Title. Except, where otherwise established by law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of public assistance, medical assistance, food stamp benefits or services, the social services agency must establish that its actions were correct.
- (b) The fair hearing decision must be supported by and in accordance with substantial evidence.
- (c) Technical rules of evidence followed by a court of law need not be applied. Irrelevant or unduly repetitious evidence and/or cross-examination may be excluded at the discretion of the hearing officer. Privileges recognized by law will be given effect.
- (d) Any written record or document or part thereof to be offered as evidence may be offered in the form of a reproduction or copy where such reproduction or copy is identified satisfactorily as a complete and accurate reproduction or copy of the original material.
- (e) In addition to subpoenas issued at the discretion of the fair hearing officer as allowed by section 358-5.6(b)(8) of this Subpart, attorneys for parties in fair hearings shall have the same authority to issue subpoenas as is possessed by attorneys under section 2302 of the Civil Practice Law and Rules

358-5.10 Consolidated fair hearings.

- (a) OAH may consolidate fair hearings where two or more persons request fair hearings in which the individual issues of fact are not disputed and the sole issue in each request is an objection to:
 - (1) Federal or State law or regulation, or local policy; or
 - (2) a change in Federal or State law.
- (b) Each person whose case has been consolidated with another person's case has the right to:

- (1) present one's own case or have one's case presented by a representative; and
- (2) withdraw from the consolidated fair hearing and have an individual fair hearing.

358-5.11 The hearing record.

- (a) Fair hearing record. Only the OAH may record the fair hearing. A written transcript or recording of the fair hearing testimony and exhibits, or the hearing officer's official report together with the recommended decision of the hearing officer, all papers and requests filed in the proceeding prior to the close of the fair hearing and the fair hearing decision, constitute the complete and exclusive record of the fair hearing. Where a decision without hearing is issued in accordance with section 358-6.2 of this Part, the documents submitted by the appellant and the social services agency constitute the complete and exclusive record of the fair hearing.
- (b) Review of record. The exclusive record of the fair hearing is confidential; however, the exclusive record may be examined by either party or their authorized representative at the OAH, or upon request at some other location subject to the approval of the OAH.

Subpart 358-6
Decision and Compliance

358-6.0 Introduction.

All decisions of the commissioner issued after a request for fair hearing are governed by this Subpart.

358-6.1 All decisions.

- (a) The fair hearing decision issued by the commissioner must be based exclusively on the fair hearing record, or in the case of a decision without hearing, on the documents submitted by the appellant and the social services agency. The decision must be in writing and must set forth the fair hearing issues, the relevant facts, and the applicable law, regulations, and approved policy, if any, upon which the decision is based. The decision must make findings of fact, determine the issues and state reasons for the determinations and when appropriate, direct specific action to be taken by the social services agency. In addition, the decision may address the violation of any provision of this Part or Part 385 of this Title by the social services agency, including but not limited to violations of regulations concerning notice, aid continuing and provision of documents and records and set forth appropriate relief for such violations.
- (b) Upon issuance, the decision is final and binding upon social services agencies and must be complied with in accordance with section 358-6.4 of this Subpart.
- (c) A copy of the decision, accompanied by written notice to the appellant of the right to judicial review will be sent to each of the parties and to their representatives, if any. In addition, such notice will advise the appellant that the appellant or the appellant's authorized representative may request OAH's assistance in obtaining compliance with the decision.

358-6.2 Decision without hearing.

- (a) Upon the commissioner's own motion or upon request of an appellant in cases in which there is no material issue of fact to be resolved, a decision may be issued without a hearing. The determination to issue a decision without a hearing rests solely within the discretion of the commissioner.
- (b) A request for a decision without a hearing must be accompanied by sufficient information to enable the commissioner to ascertain whether any unresolved material issue of fact exists, and should contain a full and clear statement of the issues and of the appellant's position on these issues.
- (c) When the commissioner determines that a decision without hearing is appropriate, the OAH will send the request for a decision without hearing, or the request for a hearing, along with any supporting documents to the social services agency involved. Within 10 business days of receipt of these documents, the social services agency must forward to OAH, the appellant, and the appellant's representative, a response containing sufficient information to ensure resolution of the dispute.
- (d) Within 10 business days of the receipt of the documents submitted by the social services agency, the appellant or authorized representative may submit comments or rebuttal to the OAH with copies to the other parties.
- (e) At any point after a request for a decision without a hearing has been made, if it appears that there is a material and unresolved issue of fact relating to the issue or issues upon which the hearing was requested, the appellant and the social services agency will be informed that a fair hearing will be scheduled upon notice to all parties.
- (f) A decision without a hearing will be issued by the commissioner based upon the papers submitted in accordance with this section.

358-6.3 Direction relative to similar cases.

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, regulations, or such agency's own State-approved policy, OAH's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision.

358-6.4 Compliance.

- (a) For all decisions, except those involving food stamp issues only, definitive and final administrative action must be taken promptly, but in no event more than 90 days from the date of the request for a fair hearing.
- (b) (1) For all cases involving food stamp issues only the decision must be issued and the parties notified of the decision within 60 days of receipt of the request for the fair hearing by OAH.

(2) If the decision will result in an increase in household food stamp benefits, social services agencies must reflect such increase in the coupon allotment within 10 days of the receipt of the hearing decision; however, the increase may occur later than 10 days after the decision if the social services agency decides to make the decision effective in the household's normal issuance cycle and the issuance will occur within 60 days from the household's request for a hearing. Decisions which result in a decrease in household benefits must be reflected on the next scheduled issuance following receipt of the fair hearing decision.
- (c) Upon receipt of a complaint that a social services agency has not complied with the fair hearing decision, the commissioner, through action coordinated by OAH, will secure compliance by whatever means is deemed necessary and appropriate under the circumstances of the case.

358-6.5 Compliance with direction relative to similar cases.

When a direction has been given to a social services agency to correct a misapplication of law, regulations or such agency's own State-approved policy in all cases similar to the one in which a decision has been issued, such social services agency must report the actions it has taken to comply with such direction to the commissioner or OAH within 30 days after receipt of the direction. The social services agency must make such additional reports as the commissioner may require.

358-6.6 Corrected decisions and reopened hearings.

- (a) Corrected decisions.
 - (1) The commissioner may review an issued fair hearing decision for purposes of correcting any error found in such decision.
 - (2) After review, the commissioner may correct any error occurring in the production of an issued fair hearing decision including, but not limited to, typographical and spelling errors.

- (3) After review, on notice to the parties, the commissioner may correct any error of law or fact which is substantiated by the fair hearing record.
 - (4) During the pendency of any review of an issued fair hearing decision, the original decision is binding and must be complied with by the social services agency in accordance with the provisions of section 358-6.4 of this Subpart.
- (b) Reopened hearings. On notice to all parties, the OAH may reopen a previously closed fair hearing record for purposes of completing such record. If such reopening occurs subsequent to the issuance of a fair hearing decision, the provisions of paragraph (a)(4) of this section apply.