



STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

FELIX INFAUSTO
DEPUTY COMMISSIONER
DIVISION FOR LEGAL AFFAIRS

April 21, 1972

STATE OF NEW YORK
DEPARTMENT OF STATE
FILE APR 21 1972

Mrs. Emmazine Lindsay
Bureau of Miscellaneous Records
Department of State
162 Washington Avenue
Albany, New York

[Signature]
Secretary of State

Dear Mrs. Lindsay:

Enclosed herewith for filing is the original and three conformed copies of the following changes in the Official Regulations of the State Department of Social Services:

- Part 84 - Complaints, Appeals and Fair Hearings
(Repealed)
- 351.26 - Proposed discontinuance, suspension or reduction of grant;
(Repealed) prior notice to recipient; additional local review and
subsequent determination
- Part 358 - Fair Hearings
(Repealed & New)

Very truly yours,

[Signature: Felix Infausto]

FELIX INFAUSTO
Deputy Commissioner
for Legal Affairs

Encs.

*Copy of letter + copy of rule returned
in hand + N-21-72
[Signature]*

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of sections 20 and 34 of the Social Services Law, and section 83 of Chapter 110 of the Laws of 1971, I, Barry L. Van Lare, Acting Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Chapter I and Chapter II of the Official Regulations of the State Department of Social Services, effective April 22, 1972.

Parts 84 and 358 and section 351.26 are hereby REPEALED.

Subchapter B of Chapter II is hereby amended by adding thereto a new Part to be numbered Part 358 thereof to read as follows:

PART 358

FAIR HEARINGS

Section 358.1 Federal categories; home relief. The State Department of Social Services will consider all complaints and appeals and requests for fair hearings on the basis of the eligibility requirements as set forth in the Social Services Law, the rules of the State Board of Social Welfare and the regulations of the department [see Chapter II of this Title], the policies governing the administration of public assistance in the districts involved and the reasonable application of discretionary judgments properly exercised by social services officials.

Definitions.

358.2/(a) Appellant. An applicant or recipient who requests a fair hearing shall be termed an appellant.

(b) Board. Board means the State Board of Social Welfare.

(c) Commissioner. Commissioner means the State Commissioner of Social Services.

(d) Department. Department means the State Department of Social Services.

(e) Fair hearing. Fair hearing is the procedure by which an applicant for or recipient of public assistance and care or services may appeal to the Commissioner from certain decisions or actions of a social services official and have a hearing thereon.

(f) Hearing officer. Hearing officer means an attorney who is employed by the department exclusively to conduct hearings for the commissioner.

(g) Parties. The parties to a fair hearing shall be the appellant and the social services official whose decision or action is being reviewed.

(h) Social services official. Social services official means the county, city or town official responsible for the administration of public assistance and care. The term shall also include the Director of the Bureau of Mental Health Affairs or the head of any other bureau of the department to which is assigned responsibility for furnishing public assistance and care to persons in family care on conditional release from an institution in the State Department of Mental Hygiene in accordance with the provisions of section 138-a of the Social Services Law and responsibility for furnishing medical assistance for the needy to eligible persons who are 65 years of age or older who are patients in State hospitals for the mentally disabled or for the treatment of tuberculosis in accordance with the provisions of subdivision 2 of section 365 of the Social Services Law.

358.3 Informing applicants and recipients of right to fair hearing. Every applicant and recipient shall be informed in writing at the time of application and at the time of any action affecting his receipt of assistance or services: (a) Of his right to a fair hearing;

(b) Of the method by which he may obtain a hearing;

(c) That he may be represented by legal counsel, or by a relative, friend, or other spokesman, or he may represent himself; and

(d) Of the availability of the community legal services available to assist him in the fair hearing.

358.4 Right to a fair hearing. The following persons shall be entitled to a fair hearing: (a) Applicants for or recipients of aid to dependent children, aid to the aged, blind or disabled, medical assistance for needy persons, home relief or veterans assistance on the following grounds:

(1) denial of assistance;

(2) failure to determine the applicant's eligibility and, if found eligible, to issue a cash grant or authorize medical assistance within 30 days from the date his application therefor was made;

(3) inadequacy in amount or manner of payment of assistance;

(4) discontinuance or suspension of assistance, in whole or in part;

(5) objections to department policy as it affects the applicant or recipient's situation; and

(6) any other grounds affecting the applicant or recipient's entitlement to assistance or the amount thereof or the time of payment thereof, including, but not limited to, determinations of employability where assistance has not been discontinued or reduced.

(b) Applicants for or recipients of aid to dependent children, aid to the aged, blind or disabled, home relief or veterans assistance, and applicants for or recipients of child welfare services, on the following grounds:

(1) denial of an application for any service required to be provided by a social services official in accordance with applicable provisions of law, rules of the board or regulations of the department;

(2) discontinuance of any such service;

(3) a determination that an applicant or recipient must participate in a service program, or

(4) a determination which failed to take account of a recipient's choice of service program.

(c) Applicants for or participants in the food stamp program on the following grounds:

(1) denial of authorization for participation;

(2) failure to determine the applicant's eligibility and, if found eligible, to authorize participation within 30 days from the date of application therefor was made;

(3) inadequacy in the extent or manner of authorization for participation;

(4) discontinuance or suspension of authorization, in whole or in part.

358.5 How request for a fair hearing is made, withdrawn or abandoned. (a) Any clear written or oral communication to the department by or on behalf of an applicant or recipient requesting review of a social services official's decision, action or failure to act shall constitute a request for a fair hearing if made within 60 days after the action or failure to act complained of.

(b) The freedom to make such a request must not be limited or interfered with in any way, and emphasis must be on helping the appellant to submit and process his request and in preparing his case, if needed.

(c) A request for a fair hearing shall not be denied or dismissed except where it has been withdrawn by the applicant or recipient in writing, or abandoned.

(1) A request for a hearing shall be considered as withdrawn only upon receipt of a written statement from the appellant or his representative, or upon a statement on the record at the hearing.

(2) A request for a hearing may be considered abandoned if neither the appellant nor his representative appears at the time and place agreed upon for the hearing, and if, within 10 calendar days after the mailing of an inquiry by the department as to whether the appellant or his representative wishes any further action taken on his request for a hearing, no reply is received by the department.

(3) In the event the appellant informs the social services official that he is satisfied and no longer wishes to pursue his request for a fair hearing, he shall be advised that he must address a written withdrawal to the department in Albany.

358.6 Group hearings. Where two or more appellants request fair hearings and the sole issue is one of objection to department policy, such cases shall be consolidated and decided by a group hearing at the request of the appellants or they may be consolidated by the department without such a request. Each appellant has the right to withdraw from the group hearing and have an individual hearing.

358.7 Referral of request to social services official. The department shall send promptly a copy of the request for a fair hearing to the social services official of the appropriate county, city or town.

358.8 Continuation of assistance payments and medical assistance authorization when fair hearing is requested. (a) In cases of any proposed action to terminate, suspend or reduce assistance payments or medical assistance authorization, timely and adequate advance notice thereof detailing the reasons for the proposed action shall be sent to the recipients. Under this requirement:

(1) "Timely" means that the notice is mailed at least 15 days before the action is to be taken.

(2) "Adequate advance notice" means a written notice that includes details of reasons for the proposed action, explanation of the individual's right to conference, his right to request a fair hearing and the circumstances under which assistance payments or medical assistance authorization is continued if a fair hearing is requested.

(b) If, within the advance notice period, the recipient responds by indicating his wish for a conference with local agency staff, an opportunity shall be provided for the recipient (or his representative) to discuss his situation with appropriate local agency staff, obtain an explanation of the reasons for the proposed action, and present information to show that the proposed action is incorrect. Under this requirement:

(1) During the conference, the recipient shall be given the opportunity to speak for himself or be represented by legal counsel or by a friend or other spokesman.

(2) The opportunity for a conference shall not in any way diminish the recipient's right to a fair hearing.

(c) In cases in which there is a request for a fair hearing within the advance notice period.

(1) Assistance shall be continued until the fair hearing decision is rendered and through a period consistent with the established policies for issuance of payments except when the recipient requests an adjournment of or fails to appear for the hearing without good cause.

(2) The department shall promptly notify the appropriate social services official and the recipient when a request for a fair hearing has been made which requires that assistance be continued.

358.9 Responsibility of the social services official in cases of proposed discontinuance, suspension or reduction of assistance. When a social services official proposes to discontinue, suspend or reduce a grant of assistance, he or his designee who has the appropriate authority, shall: (a) review, or cause to be reviewed, the proposed action and determine its correctness;

(b) if, after the review, it is decided that the proposed action would be correct, send, or cause to be sent, a notice of the proposed action, as defined in Section 358.8(a)(2) of this Part, to the recipient at least 15 days before the date the action is to be taken, on forms required by the department;

(c) send a copy of such notice to the department at the same time the notice is sent to the recipient;

(d) within 48 hours after receipt of notification from the department of a request for a fair hearing, send to the appellant, his representative and to the department copies of all documents to be submitted into evidence at the hearing in support of the proposed action;

(e) immediately upon notification from the department that assistance must be continued until the fair hearing decision is issued, take such action to assure that such assistance shall not continue for more than one payment period after the fair hearing decision is issued;

(f) take such action as is necessary to assure that an appropriate representative of the agency will appear at the hearing with the case record and a brief written summary of the agency's case and be prepared to present evidence in support of the proposed action, including: the appropriate case number and the applicable category or categories of public assistance or care; the names, addresses, relationships and ages of persons affected; the decision or action which prompted the request for the fair hearing; a brief description of the facts, evidence and reasons allegedly supporting such decision or action, including identification of the specific provisions of law, department regulations and approved local policies which allegedly support the proposed action; the relevant budget or budgets prepared by the social services district for the person or family.

(g) take such action to assure that the person who made the determination to discontinue, suspend or reduce assistance, or who is responsible therefor, shall appear at the hearing.

358.10 Time and place of hearing. The hearing shall be held at a time and place convenient to the appellant as far as practicable, taking into account circumstances such as the physical inability of the appellant to travel to the regular hearing location. If requested, necessary transportation for the appellant and his representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.

358.11 Notice of Hearing. At least six working days prior to the date of the hearing, written notice thereof shall be sent to the parties and their representatives. The notice to the parties shall inform them: (a) of the date and place of the hearing and the appellant's right to a change in the date and place of the hearing where necessary;

(b) of the appellant's rights with respect to transportation and other costs and expenditures;

(c) of the circumstances under which assistance may continue until the fair hearing decision is issued where the recipient requests an adjournment or fails to appear for his hearing;

(d) of the manner in and means by which adjournments may be requested and granted;

(e) of the issues which are to be the subject of the hearing;

(f) of the manner in which the hearing will be conducted;

(g) of the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence.

358.12 Examination of documents before hearing, examination of case record before the hearing. (a) If copies of the documentary evidence which the social services official plans to use at the hearing have not already been provided to the appellant and his representative, an opportunity to examine such documents, if requested, shall be afforded the appellant or his representative, who shall have appropriate written authorization, at a reasonable time before the date of the hearing.

(b) The recipient or his representative, who shall have appropriate written authorization, shall be afforded an opportunity to examine the case record at a reasonable time before the hearing in accordance with and to the extent permitted by Section 357.3(c) of these regulations.

358.13 Hearing Officer. The hearing shall be conducted by an impartial hearing officer of the department, who has not been involved in any way with the action in question.

358.14 Powers of Hearing Officer. The hearing officer shall have all the powers conferred by law and regulations of the department to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

358.15 Who may be present at hearing, authorization of representative. (a) The appellant, his representative or representatives (who may be attorneys or other persons representing him), counsel or other representatives of the social services official, witnesses of both parties and any who may be called by the hearing officer and representatives of the department may be present at the hearing, together with such other persons as may be admitted by the hearing officer in his discretion with the consent of the appellant.

(b) An individual or organization, other than an attorney, representing an appellant shall have an appropriate written authorization, unless the condition of the appellant makes it impracticable for him to execute such authorization.

358.16 Conduct of hearing - rights of parties. (a) The hearing officer shall preside. He shall make an opening statement describing the nature of the proceeding, the issues and the manner in which the hearing will be conducted.

(b) Technical rules of evidence followed in a court of law shall not apply, but evidence must be relevant and material.

(c) Each party has a right to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party.

(d) The recipient or his representative shall have the right to examine the case record in accordance with and to the extent permitted by Section 357.3(c) of these regulations.

(e) When the hearing involves medical issues, provision shall be made to obtain a medical assessment other than that of the person(s) involved in making the original decision from a source satisfactory to the appellant and made part of the record, if the hearing officer or the appellant deems it necessary.

(f) The hearing may be adjourned by the hearing officer for good cause on his own motion or at the request of either party.

(g) A verbatim record of the hearing shall be made.

358.17 Examination of record after hearing. The record of the hearing, including the recommendations of the hearing officer, shall be confidential, but it may be examined by either party or their representatives at a place accessible to them and at a reasonable time.

358.18 Decision after hearing. (a) The fair hearing decision shall be made and issued by the commissioner on the basis of the hearing record including the recommendations of the hearing officer which recommendations shall be based exclusively on evidence and other material introduced at the hearing. It shall be issued

as promptly as feasible and within 60 days from the date the request for a fair hearing is received by the department. However, such time may be extended when the appellant requests a delay in his hearing. The decision shall describe the issues, recite the relevant facts, the pertinent provisions of law, board rule, department regulation and State approved local policy provisions, make appropriate findings, determine the issues, state the reasons for the determinations, and, when appropriate, direct specific action by the social services official. The decision shall be binding upon the social services officials.

(b) A copy of the decision shall be sent to each of the parties and their representatives, if any.

(c) In the letter transmitting the decision, clear reference shall be made to availability of judicial review.

358.19 Decision without hearing. (a) The appellant shall have the option to request that his appeal from a social services official's determination, action, or failure to act be decided by the commissioner without a hearing. In such cases, opportunity shall be afforded each party to submit written evidence and to review and comment on the evidence submitted by the other party.

(b) If at any stage of an appeal from a social services official's action or failure to act, it clearly appears to the commissioner that the social services official's action or failure to act is contrary to law, board rule, department regulation or the social services official's own State approved policy, he may issue a decision directing the social services official to perform specific actions for the benefit of the appellant.

(c) When an appellant elects that his appeal be decided by the commissioner without a hearing, the department's area office shall:

(1) notify the appellant and responsible social services official of the county, city or town to submit in writing to the area office all pertinent information relating to the appeal within 10 working days and shall inform each that such material is subject to the review and comment of the other party;

(2) on receipt of such information, furnish copies of the information furnished by each party to the other and shall invite comment thereon within 10 working days.

(d) When the appellant has emergency needs resulting from a county, city or town social services official's actions or failure to act, the department's area director shall recommend to the commissioner that a decision be issued for the benefit of the appellant.

358.20 Correction of error.

When a fair hearing decision has ordered the correction of a discontinuance, the correction of a denial of an application for assistance, or the correction of the amount of assistance, a grant shall be made to cover the full amount to which the applicant or recipient was entitled in accordance with the decision for the entire period from the date the incorrect action was taken.

358.21 Direction relative to similar cases. When a fair hearing decision indicates that the social services official has misapplied provisions of law, board rule, department regulation, or such official's own State approved policy, the commissioner's letter transmitting such decision to such official may contain a direction to such official to review other cases with similar facts for conformity with the principles and findings in the decision.

358.22 Compliance with decision. When a decision of the commissioner (whether made after or without a hearing) directs a social services official to perform specific actions, such official shall comply promptly with such directions and make a report thereof to the department within 30 days after receipt of the decision.

358.23 Compliance with direction relative to similar cases. When a direction has been given to a social services official to correct misapplication of law, board rule, department regulation or such official's own State approved policy in all cases similar to the one in which a decision has been issued, such official shall report the actions he has taken to comply with such direction to the department within 30 days after receipt of the direction. The social services official shall make such additional reports as the department may require.

358.24 Promulgation of decisions. Copies of all fair hearing decisions, complete or in summary form, shall be furnished all social services officials who shall cause them to be accessible to the public, subject to the requirements for safeguarding the confidentiality of public assistance information.

358.25 Need for revision of board rule and department regulation indicated by appeals and fair hearings. When, as a result of appeals and fair hearings, there are indications that provisions of board rule or department regulation or both may be inadequate, review of such provisions shall be promptly initiated by the department.

358.26 Required local procedure for consideration of complaints. Effective complaint and adjustment procedures, by means of which corrective action may be obtained within the local department of social services without the need for a fair hearing, are essential and shall be established by each social services official, provided that such procedures shall not be conducted or used so as to inhibit the exercise of any of the rights to a fair hearing granted under these regulations.

358.27 Application of regulations to cases for which department is responsible. These regulations shall apply to cases for which the department is responsible for furnishing public assistance and care pursuant to the provisions of section 138-a and subdivision 2 of section 365 of the social services law. In such cases, the reports required to be made to the department by sections 358.22 and 358.23 of these regulations shall be made to the commissioner or any deputy commissioner designated by him.

Dated: April 21, 1972

Signed: Barry L. Van Lare
ACTING COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on April 21, 1972, amending in part, Chapter I and Chapter II of the Official Regulations of the State Department of Social Services, as contained in Title 18 NYCRR.

Dated: April 21, 1972

Signed: Barry L. Van Lare

STATE OF NEW YORK
DEPARTMENT OF STATE
MISC. RECORDS
RECORDED - EXAMINED
APR 2 1 1972
FILED: 4-21-72
BY: S. L. R. B. J. K.