

State of New York

Department of Social Services

M E M O R A N D U M  
DSS-524EL

TO: All Supervising ALJ's  
All ALJ's

DATE: January 24, 1995

FROM: Henry Pedicone  
HP

SUBJECT: Issue Code 997  
Represented Homebound  
Appellants

---

In order to comply with yet another portion of the preliminary injunction in the matter of Varshavsky, et al v. Perales, it has become necessary to assign a new issue code (997) to track cases involving homebound appellants who appear at fair hearings only by a representative. These cases also are subject to the same restraints on the issuance of affirmances which apply to telephone hearings.

The details of this process are set forth at length in OAH Procedures Transmittal 95-01, which you have received today.

It is important that you read this transmittal, taking particular note of the last page, which details the duties of ALJ's in the process.

Office of Administrative Hearings (OAH)	Transmittal Number: 95-01
Procedures Transmittal	Date: January 24, 1995
Distribution:	Subject: <u>Varshavsky</u> Litigation
ALB OAH Staff [X]    UPS ALJs/ [X]    Upstate LDSS [ ] SUP ALJs [X]	Issue Code 997 Tracking for Homebound Appellants Represented at Regular Hearings
NYC OAH Staff [X]    NYC ALJs/ [X]    NYC Agencies [ ] SUP ALJs [X]	

Pursuant to the Varshavsky litigation it is now necessary to identify and track all hearings requested on behalf of homebound appellants at which a representative will appear at a regular hearing as distinguished from those at which the homebound appellant will participate in a homebound telephone hearing. This is required to comply with the preliminary injunction in Varshavsky and will ensure that all homebound appellants are afforded equal protection.

Communications Intake Staff Responsibilities

Please instruct all intake staff that if an appellant starts out requesting a homebound telephone hearing and subsequently agrees to send a representative to a regularly scheduled hearing, issue code 997 should be utilized in addition to the issue(s) subject to the hearing. Issue code 997 is also to be utilized for those appellants who indicate that they are homebound but will have a representative appear on their behalf.

Further, any request for a hearing initiated by a friend, family member, or representative on behalf of a homebound appellant and which will not be subject to a homebound telephone hearing but rather the representative will appear, must be coded 997. This will include, but is not limited to, all of the following broad categories:

- F-15 Recipients
- F-63 Recipients
- All Personal Care Services/Homecare Services cases
- Certified Home Health Aide cases
- Handicapped Children's cases
- OHSM - Medical equipment, head injuries, out-of-state placement cases
- Appellants in nursing homes for whom a representative will appear

The issue code 997 (Varshavsky Litigation) would follow the action (DEN, DISC, REDU, INAD) of the primary issue. Effective January 23, 1995, agency code NYS6 must be added as an additional agency field to ensure that Henry Pedicone is provided with a copy of the decision. (see Transmittal 95-04).

These instructions apply statewide. It is important that all telephone intake staff question all representatives who state that they will appear on behalf of an appellant as follows:

"Is the person you are representing able to appear at the hearing?"

If not, intake staff must determine whether the appellant is homebound and apply code 997 appropriately. Clarification of when to utilize issue code 997 can be made by supervisory staff if there are individual questions.

Any 997 issue coded case will not be purged from the system in the standard two-year time span but will remain accessible for the duration of litigation in this matter.

#### NYC Calendar Management Unit Responsibilities

There can be no disposition of DEFAULT on 997 coded cases. NYC files should be noted as Adjourned (OADG) with a #10 Reason Code (Administrative - Awaiting Outcome of Litigation). These cases should be sent to the Homebound Hearing Unit/Karen Longale for further handling. Karen will enter OADG and "M" scheduling status and send a letter requesting medical documentation. These cases are readily identifiable by the NYS6 agency field on the file label.

For all NYC adjournments, any case pertaining to a homebound appellant who will be represented at a regular hearing, the issue code 997 should be added to FHIS, agency field NYS6 should be added to FHIS, and an orange-colored label should be affixed to the file jacket in the upper-right-corner position, if the file is available. These files should then be sent to the Albany office separate from all other adjourned cases.

#### Offsite Receptionists (MA and OES) Staff Responsibilities

There can be no disposition of DEFAULT on 997 coded cases. The file should be noted as Adjourned (OADG) with a #10 Reason Code (Administrative - Awaiting Outcome of Litigation). These files should be sent via courier to 80 Centre Street separate from all other Defaults where they will be sent on to the Homebound Hearing Unit in Albany. These cases are readily identifiable by the NYS6 agency field on the file label.

For all adjournments, any case pertaining to a homebound appellant who will be represented at a regular hearing, the issue code 997 should be added to the DSS 2846, agency field NYS6 should be added to the DSS 2846, and an orange-colored label should be affixed to the file jacket in the upper-right-corner position, if the file is available. These files should then be separated from all other Adjournments and sent via courier to 80 Centre Street to be input into FHIS.

#### Decision Management Unit Responsibilities

Prior to issuance, any heard case with either an issue code 997 on the Fair Hearings Data Sheet and/or NYS6 agency field in the "Additional Information" section of the file jacket that is not identified as such on FHIS, must have the 997 entered, the NYS6 entered, and must have an orange-colored label affixed to the file jacket in the upper-right-corner position. If an orange-colored label is not affixed to any file known to include a 997 issue or NYS6 agency field, it must be affixed before sending the file on to be issued. (This will ensure that these files are separated and routed to Karen Hazzard for final review of the Decision Outcome Codes prior to filing).

NOTE: Any 997 or 999 Affirmance MUST NOT be issued until further notice.

Upstate and NYC Administrative Law Judge Responsibilities

ALJ staff must follow precise procedures to ensure proper coding and segregation of these cases as set forth below:

All issue code 997 heard cases should be isolated and sent to the Albany office separately from all other cases. All affirmances must be treated in a similar manner to issue code 999 affirmances (see January 9, 1995 memo from Henry Pedicone) which instructs that files be retained until further notice. Upstate ALJS should draft the affirmances and route them to their supervisor for retention; NYC ALJS should draft the affirmances and retain them personally.

ALJs should add agency field "NYS6" to the Additional Information section of the file jacket so that Decision Management Unit staff will update the record to ensure that Henry Pedicone receives a copy of the decision.

If an appellant does appear at either a hearing coded 999 (Homebound Telephone Hearing) or 997 (Varshavsky Litigation), it is important that the code 999 and/or 997 is deleted on the Fair Hearings Data Sheets since these appellants are not subject to the Varshavsky protection.

Conversely, for any hearing at which a representative appears at a regular hearing in lieu of a homebound appellant, issue code 997 code must be added to the Fair Hearings Data Sheet by the ALJ. Agency field "NYS6" must be added to the Additional Information section of the file jacket.

To ensure proper handling in accordance with this litigation, it is critical that green sheets accurately reflect whether the:

- (1) appellant appeared in person
- (2) appellant appeared by speaker phone (999)
- (3) appellant was not present but was represented (997)

Decision Outcome Codes (Affirmed, Reversed, Withdrawn, or Other) for the 997 issue code must follow the primary issue code (similar to issue code 999 cases); however, if any issue in the decision is Affirmed, the Decision Outcome Code for the 997 issue code must be noted as Affirmed.

Upstate Administrative Law Judges please note that there can be no disposition of DEFAULT on 997 coded cases. The upstate file should be noted as ADJOURNED (OADG) and sent to the Albany office separately from all other adjourned files with a label clearly indicating "997" to ensure proper handling of these cases. (Issue code 997 cases adjourned for any other reason need not be separated).

Your cooperation in complying with all of the above procedures is essential to successful tracking of these cases. Individualized circumstances which appear to be unique or not covered by the above should be brought to the attention of appropriate supervisory staff. Specific questions regarding this transmittal can be directed to your supervisor or to Sue Fiehl via e-mail (90J029) or at (518) 473-4779.

---

Mark Lacivita, Director of Administration  
Office of Administrative Hearings