

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 22(8), and 34(3)(f) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby repeal Part 358 and add a new Part 358, repeal Sections 387.20(a)(1) and (2) and add new Sections 387.20(a)(1) and (2), repeal Sections 387.20(b) and (c) and add new Sections 387.20(b) and (c), repeal Sections 393.5(d) and 393.5(f) and add new Sections 393.5(d) and 393.5(f), repeal Section 387.20(d)(6) and repeal Section 421.24(f)(6); amend Sections 351.23(a) and (b), 351.24(g)(1), 355.2(b)(5), 360.33(a)(1), 360.33(b)(1), 387.17(d)(7)(iv), 387.17(d)(9), 387.17(g)(2), 387.20(d)(4) and (5), 393.5(b)(2), 393.5(c), 404.1(f)(4) and the title and opening language of Section 387.20(d); add new Sections 355.2(b)(6), 387.21, 399.7(q), 399.8(e) and 431.11, and redesignate Section 387.21 as Section 387.22 and Section 421.24(f)(7) as Section 421.24(f)(6) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective January 15, 1989.

Dated: December 22, 1988

Signed: 

Commissioner

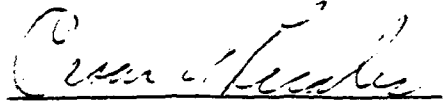
This is to certify that this is the original of an order of the State Department of Social Services, made on December 22, 1988 repealing Part 358 and adding a

new Part 358, repealing Sections 387.20(a)(1) and (2) and adding new Sections 387.20(a)(1) and (2), repealing Sections 387.20(b) and (c) and adding new Sections 387.20(b) and (c), repealing Sections 393.5(d) and 393.5(f) and adding new Sections 393.5(d) and 393.5(f), repealing Section 387.20(d)(6) and repealing Section 421.24(f)(6); amending Sections 351.23(a) and (b), 351.24(g)(1), 355.2(b)(5), 360.33(a)(1), 360.33(b)(1), 387.17(d)(7)(iv), 387.17(d)(9), 387.17(g)(2), 387.20(d)(4) and (5), 393.5(b)(2), 393.5(c), 404.1(f)(4) and the title and opening language of Section 387.20(d); adding new Sections 355.2(b)(6), 387.21, 399.7(q), 399.8(e) and 431.11, and redesignating Section 387.21 as Section --- 387-22 and Section 421.24(f)(7) as Section 421.24(f)(6) of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR,

a summary of which was published
in the New York State Register on
December 30, 1987.

Dated: December 22, 1988

Signed:

A handwritten signature in cursive script, appearing to read "C. W. ...", written over a horizontal line.

Commissioner

Part 358 is hereby repealed and a new Part 358 enacted to read as follows:

Part 358

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

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Subpart 358-1

Scope and Effective Date

Sec. 358-1.1	General
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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 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.
- (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 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.

- (a) The provisions of this Part are effective January 15, 1989; however, provisions requiring that recipients be notified of increases in food stamp benefits are not effective until June 1, 1989.
- (b) Except as provided in subdivision (c) of this section, social services agencies are required to utilize notices which meet the requirements of this Part no later than June 1, 1989.
- (c) (1) Notices used in the HEAP Program are required to meet the requirements of this Part commencing with the 1989/90 HEAP Program year.

- (2) Automated notices currently in use by social services districts must conform to the requirements of this Part no later than October 1, 1989.

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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.

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:

- (a) 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:
 - (1) 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;
 - (2) an increase in the amount of a medical assistance spenddown: both the amount of the spenddown prior to the increase and the spenddown amount after the increase must be specified;
 - (3) 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;
 - (4) an acceptance of a food stamp application:
 - (i) the benefit level, including variations based on changes anticipated at the time of certification, the date of initial issuance of the authorization to participate (ATP) 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;
 - (ii) 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;

- (5) 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 Aid to Dependent Children or Supplemental Security Income benefits;
 - (6) a notice of authorization of a public assistance grant: the amount of the grant must be specified;
 - (7) an increase in a public assistance grant or food stamp benefits: the new amount of the grant or benefits must be specified;
 - (8) 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, must be specified;
 - (9) 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;
 - (10) 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.
 - (11) an acceptance of an application for medical assistance: the extent of coverage must be specified.
- (b) except in the case of a denial, the effective date of the action;
- (c) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;

- (d) the specific laws and/or regulations upon which the action is based;
- (e) the applicant's or recipient's right to request an agency conference and fair hearing;
- (f) 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;
- (g) 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.
- (h) 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 and;
- (i) 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;
- (j) 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;
- (k) the right to present written and oral evidence at the hearing;
- (l) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;

- (m) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing; and
- (n) 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.

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 Social Services or the Commissioner's designee.

358-2.9 Covered programs or services

Covered programs or services means one or more of the following: aid to dependent children, home relief, 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 Social Services as defined in section 358-2.20 of this Part.

358-2.10 Department.

Department means the New York State Department of Social Services.

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 the Department 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 who is employed by the Department and designated and authorized by the Commissioner 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 the Department 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 or recipient 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 or recipient of public assistance is employable, a restriction of a medical assistance authorization, and a denial or acceptance of HEAP.

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 aid to dependent children, home relief, emergency assistance to aged, blind or disabled persons, and emergency assistance to needy families including special grants and benefits available pursuant to Part 352 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 Social Services.

Services funded through the New York State Department of Social Services means services provided pursuant to the local social services district's Consolidated Services Plan. Such services may include, but are not

limited to day care services, preventive services for children and families and for adults, protective services for 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 or HEAP certifying agency 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 Codes Rules and Regulations (NYCRR) also referred to as the Regulations of the Department of Social Services.

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.

Subpart 358-3

Rights and Obligations of Applicants and Recipients and Sponsors of Aliens

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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 Department 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 service 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 a 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 or 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 or recipient of public assistance and you object to a social services agency determination that you are employable or to the extent of your employability; 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 schedule; or
 - (17) you disagree with the amount of a claim for the overissuance of food stamp benefits, except if the amount of such claim has already been decided by a hearing in accordance with Part 399 of this Title.
- (c) As the sponsor of an alien receiving food stamp benefits and for whom there has been an overissuance 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 overissuance; and
 - (2) the amount of the overissuance 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 whereby you must personally pick-up your food stamp authorization to participate (ATP) or food stamp coupons; 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 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 of public assistance paid; 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.

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 or emergency assistance to aged, blind or disabled persons and you are appealing the denial of such benefits; or
- (b) you have been denied other assistance or benefits where the Department requires the expedited determination of eligibility for such benefits; or
- (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.

358-3.3 Notice requirements.

(a) Public assistance, medical assistance and services: notice of action.

(1) Action to discontinue, suspend, reduce, restrict; employability determinations.

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) determines to change the manner or method or form of payment of your public assistance grant; or
- (iii) determines that you are employable and you are a recipient of aid to dependent children or home relief benefits; or
- (iv) determines to restrict your medical assistance authorization.

(2) Action to accept, deny, increase or make change in calculation.

When a social services agency accepts or denies your application for public assistance, medical assistance or services, or increases your public assistance grant, or 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, you have a right to adequate notice.

(b) Food stamps.

(1) Action to discontinue, suspend, reduce or recoup: action taken notice.

Except as set forth in subdivision (e) of this section, when a social services agency proposes to take any action to discontinue, suspend or reduce your food stamp benefits you have the right to timely and adequate notice.

- (2) Action to accept, deny, increase, change in calculation: 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 an aid to dependent children 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 has 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 home, 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 monthly report required by section 351.24 of this Title;
 - (vi) you are a recipient of home relief 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 home relief.
- (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.
- (1) You are not entitled to an individual adverse action notice when:
 - (i) a mass change is initiated by the Department 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 399 of this Title and 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 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 the Department 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 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;

- (f) general information on whom to contact for additional information; and
- (g) the liability the household will incur for any overissued benefits if the fair hearing decision is adverse.

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 Part,. 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 Part;
- (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 Part;
- (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 the Department 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; and
- (k) to decision 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, 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.
 - (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.
 - (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 to dispute the adequacy of HEAP benefits must be requested no later than 60 days after the mailing of the notice; however, in no event may a hearing request be made more than 105 days after the district terminates the receipt of applications for the program year.

- (5) If the last day for requesting a fair hearing falls on a weekend or holiday, a hearing request postmarked or received by the Department 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. The Department 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 by 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 the Department that you were entitled to have your public assistance, medical assistance or services continue uninterrupted pursuant to this paragraph.
- (iii) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by the Department 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 the Department has determined that the sole issue is one of State or federal law or policy and not one of incorrect grant computation; or
 - (ii) medical assistance or services where the Department 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.
- (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 the Department 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 the Department 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 no later than five business days after being advised by the Department of such determination.

- (ii) If the tenth 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 the Department on the day after the weekend or holiday will be considered timely for the purposes of reinstatement pursuant to 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 the Department that you are entitled to have your benefits continue unchanged pursuant to this paragraph.

- (iii) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by the Department 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) the Department 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.
- (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 the Department 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 the Department 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 the Department or by the social services agency.

If the Department 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 the Department 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, medical assistance 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 which you should not have received. This subdivision does not apply to fair hearings to review the imposition of an employment sanction.

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 within three business days of your request, 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 within three business days of the request or at the time of the hearing, whichever is earlier;
- (2) Upon request, you have the right to be provided within three business days of your request, at no charge, with copies of any additional documents which you 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 within three business days of the request or at the time of the hearing, whichever is earlier;

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.
- (b) Even though you have not requested a fair hearing, you may request an agency conference to review any action on your case.

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 Department 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 the Department relating to the conference and fair hearing.

Subpart 358-4

Rights and Obligations of Social Services Agencies

Sec. 358-4.0	Introduction
358-4.1	Proposed actions
358-4.2	Pre-hearing responsibilities
358-4.3	Responsibilities and rights in the fair hearing process
358-4.4	Compliance with fair hearing decision

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 proposing to approve, deny, discontinue, suspend, or reduce a public assistance grant, medical assistance authorization, food stamp benefits, or services, or to increase a public assistance grant or food stamp benefits or a medical assistance spenddown, or to change the amount of one of the items used in the calculation of a public assistance grant, food stamp benefits or a medical assistance spenddown, or to accept or deny an application for HEAP benefits, must review or cause to be reviewed the intended action to determine whether the intended action is correct on the basis of the available evidence included in the applicant's or recipient's case record.
- (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 the Department 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 subdivision 358-3.6(b) and paragraph 358-3.6(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 request, the social services agency must provide to the appellant or appellant's representative copies of the documents to be presented at the fair hearing. Such copies must be provided within the time-frames set forth in section 358-3.7 of this Part. Such documents must be provided without charge.
- (d) Upon request, the social services agency must provide to the appellant or appellant's authorized representative copies of any documents from appellant's case file which the appellant requests for purposes of hearing preparation. Such copies must be provided within the time-frames set forth in section 358-3.7 of this Part. Such documents must be provided without charge.
- (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, 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 Department. The Office of Administrative Hearings 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 section 358-3.7 and 358-4.2(c). 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; and
 - (vi) the relevant budget or budgets prepared by the local agency for the appellant or the household of such appellant; and
- (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 Office of Administrative Hearings of the Department to appear at a hearing on papers only. The Office of Administrative Hearings 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 service agencies have those hearing rights which appellants have as set forth in subdivision 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) 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

Sec. 358-5.0	Introduction
358-5.1	Notice of fair hearing
358-5.2	Scheduling
358-5.3	Adjourning the fair hearing
358-5.4	Withdrawal of a request for a fair hearing
358-5.5	Abandonment of a request for a fair hearing
358-5.6	Hearing Officer
358-5.7	Who may be present at the fair hearing
358-5.8	Media admission to fair hearing
358-5.9	Fair hearing procedures
358-5.10	Consolidated fair hearings
358-5.11	The hearing record

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 the Department 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; and
 - (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; and
 - (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.

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, the Department will consider such things as the physical inability of the appellant to travel to the regular hearing location.
- (b) 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 pivotal dates before which the hearing must be scheduled to allow for the appellant to receive the decision while still in the district.
- (c) When a hearing is requested concerning an application for emergency assistance to needy families with children or emergency assistance to aged, blind or disabled persons or other assistance or benefits where the Department requires that expedited determination of eligibility of such assistance or benefits, priority in scheduling will be given to that hearing.

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 the Department 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, the Department 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 subdivisions (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) The Department will consider a hearing request to be withdrawn under the following circumstances:
 - (1) the Department 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) The Department 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 the Department within 15 days of the scheduled date of the fair hearing to request that the fair hearing be rescheduled; and
 - (2) provided the Department with a good cause reason for failing to appear at the fair hearing on the scheduled date; or

- (3) contacted the Department within 45 days of the scheduled date of the hearing and establishes that the appellant did not receive the notice of fair hearing prior to the scheduled hearing date.
- (b) The Department will restore a case to the calendar if the appellant or appellant's authorized representative has met the requirements of subdivision (a) of this section.

358-5.6 Hearing officer.

- (a) The hearing shall be conducted by an impartial hearing officer employed by the department, 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.

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, 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. 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.

358-5.10 Consolidated fair hearings.

- (a) The Department 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. A written transcript or recording of the fair hearing testimony, the fair hearing exhibits, the hearing officer's official report including 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 Office of Administrative Hearings, or upon request at some other location subject to the approval of the Office of Administrative Hearings.

**Subpart 358-6
Decision and Compliance**

Sec. 358-6.0	Introduction
358-6.1	All decisions
358-6.2	Decision without hearing
358-6.3	Direction relative to similar cases
358-6.4	Compliance
358-6.5	Compliance with direction relative to similar cases
358-6.6	Corrected decisions and reopened hearings.

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 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 Part.
- (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 the Department'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 Commissioner 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 the Commissioner, 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 Commissioner 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, Department regulations, or such agency's own State-approved policy, the Commissioner'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 the Department.

- (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 Department 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, Department 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 Department within 30 days after receipt of the direction. The social services agency must make such additional reports as the Department 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 Title.

- (b) Reopened hearings. On notice to all parties, the Commissioner 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 (4) of subdivision (a) of this section apply.

Subdivisions (a) and (b) of section 351.23 are amended to read as follows:

- (a) The recipient [shall] must be notified of any change in grant in accordance with [department regulations] this Title.
- (b) The recipient [shall] must be notified of the right to a fair hearing in accordance with Part 358 of this [Chapter] Title whenever there is a proposed reduction in, or discontinuance of, or increase in, the grant.

Paragraph (1) of subdivision (g) of section 351.24 is amended to read as follows:

- (1) If the recipient does not respond to the second monthly report or fails to file a complete report, a timely and adequate notice as defined in [section 358.8(a)] subpart 358-2 of this Title, [shall] must be sent[,] notifying the recipient that the public assistance case [shall] will be closed at the end of the month following the month for which the report was required.

Paragraph (5) of subdivision (b) of section 355.2 is amended and a new paragraph (6) is added to such subdivision to read as follows:

- (5) at the time of transfer or reclassification to another program administered by the same local department [.] and
- (6) at the time of an increase in assistance.

Paragraph (1) of subdivision (a) of section 360.33 is amended to read as follows:

- (1) the recipient, [his] the recipient's representative or appropriate relative [shall] must be notified in writing by the utilization review committee of such action. Such notice [shall] must be both timely and adequate in accordance with the requirements therefor set forth in [subdivision (a) of section 358.8] subpart 358-2 of this Title. Such notice and the action taken thereon [shall] must be consistent with both State and Federal requirements relating to utilization review.

Paragraph (1) of subdivision (b) of section 360.33 is amended to read as follows:

- (1) The recipient, [his] the recipient's representative or appropriate relative [shall] must be notified in writing by the utilization review committee of such action. Such notice [shall] must be adequate in accordance with the requirements therefor set forth in [paragraph (a) (2) of section 358.8] subpart 358-2 of this Title. Such notice and the action taken thereon [shall] must be consistent with both State and Federal requirements relating to utilization review.

Subparagraph (iv) of paragraph (7) of subdivision (d) of section 387.17 is amended to read as follows:

- (iv) If the recipient does not respond to the second monthly report or fails to file a complete report, an adequate notice as defined in [section 358.8] subpart 358-2 of this Title [shall] must be sent notifying the recipient that the food stamp case [shall] will be closed at the end of the month following the month for which the report was required.

Paragraph (9) of subdivision (d) of section 387.17 is amended to read as follows:

- (9) The local department [shall] must suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income. An adequate notice, as defined in section [358.8] 358-2.2 of this Title, may be issued to inform the household of the suspension if the suspension results from information reported by the household on a monthly report. The local department [shall] must continue to supply monthly reports to the household for a month. The household remains subject to monthly reporting requirements during the month of suspension. If the suspended household does not become eligible after one month, the local district [shall] must terminate the household.

Paragraph (2) of subdivision (g) of section 387.17 is amended to read as follows:

- (2) A notice of adverse action is not required for mass changes due to changes in public assistance. However, notice of the change [shall] must be sent to all households prior to the change being put into effect. If a household requests a fair hearing, benefits [shall] must be continued at the former level only if the issue being appealed is that food stamp eligibility or benefit [calculation] were improperly computed or that federal law or regulation is being misapplied or misinterpreted by the Department or by the social services agency.

Paragraphs (1) and (2) of subdivision (a) of section 387.20 are repealed and new paragraphs (1) and (2) are adopted to read as follows:

- (1) Notice of certification/acceptance. When an application for food stamps has been approved and a household is certified for participation in the food stamp program, a written notice must be sent to the household which complies with the requirements of section 358-3.3 of this Title.
- (2) Notice of ineligibility/denial. When an application for food stamp benefits is denied because the household is found ineligible, a written notice of denial must be sent which complies with the requirements of section 358-3.3 of this Title.

Subdivisions (b) and (c) of section 387.20 are repealed and new subdivisions (b) and (c) are adopted to read as follows:

- (b) Notification to recipients. Each food stamp household must be notified in writing of any change, including a reduction, termination or increase of the household's food stamp benefits. The notice must comply with the requirements of section 358-3.3 of this Title.
- (c) Exemptions from notice. Individual notices of proposed action are not required in the circumstances set forth in section 358-3.3(e) of this Title.

The opening language and title of subdivision (d) of section 387.20 are amended to read as follows:

(d) Informing applicants [and recipients] of right to conference or fair hearing.

[In addition to any requirements set forth above, every] Every applicant [and recipient shall] must be informed in writing at the time of application [and at the time of any local department action affecting the individual's receipt of food stamps] of:

Paragraphs (4) and (5) of subdivision (d) of section 387.20 are amended to read as follows:

(4) the right to be represented by legal counsel, or by a relative, friend or other spokesperson, or that individual may represent himself or herself; and

(5) the community legal services available to assist that individual in the conference or fair hearing[;and].

Paragraph (6) of subdivision (d) of section 387.20 is repealed.

Section 387.21 is redesignated as section 387.22 and a new section 387.21 is adopted to read as follows:

387.21 Implementation of fair hearing decisions.

- (a) The social services district is responsible for ensuring that all fair hearing decisions are reflected in a household's coupon allotment in accordance with the provisions of section 358-6.4 of this Title.
- (b) When a hearing decision determines that a household has been improperly denied food stamp benefits or has been issued a lesser allotment than was due, lost benefits must be provided to the household in accordance with section 387.18 of this Part. Benefits must be restored to households which are leaving the social services district before departure, whenever possible. If benefits are not restored prior to the household's departure, the social services district must forward an authorization for food stamp benefits to the household or to the new social services district, if this information is known. The new social services district must accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another social services district.

Paragraph (2) of subdivision (b) of section 393.5 is amended to read as follows:

- (2) Notices of determination [shall] must be issued to those applicants eligible for the program but for whom Federal funds are unavailable. [Such notice shall inform the applicant household that a benefit will be provided if sufficient Federal funds become available.] Such notice must be adequate as defined in Part 358 of this Title.

Subdivision (c) of section 393.5 is amended to read as follows:

An applicant or recipient of HEAP [shall] must be informed of [his] the right to request a fair hearing when [his] the application has not been acted upon within 30 days or the application is denied or the grant is deemed inadequate [or is discontinued].

Subdivision (d) of section 393.5 is repealed and a new subdivision (d) is adopted to read as follows:

Whenever an application has been denied, the department's written notice of final action must be adequate as defined in Part 358 of this Title.

Subdivision (f) of section 393.5 is repealed and a new subdivision (f) is adopted to read as follows:

- (f) The hearing must comply with the requirements of Part 358 of this Title.

A new subdivision (g) is added to section 399.7 to read as follows:

- (g) A decision of intentional program violation made after an administrative disqualification hearing cannot be reversed by a subsequent fair hearing decision. There is no right to appeal the decision by a fair hearing.

A new subdivision (e) is added to section 399.8 to read as follows:

- (e) After an individual waives the right to an administrative disqualification hearing and a disqualification penalty has been imposed, such penalty cannot be changed by a subsequent fair hearing decision. There is no right to appeal the penalty by a fair hearing.

Paragraph (4) of subdivision (f) of section 404.1 is amended to read as follows:

All notices of determination of eligibility or ineligibility [shall] must include information concerning the right of an applicant or recipient to request a fair hearing and all other information required by section 358-2.2 of this Title;

Paragraph (6) of subdivision (f) of section 421.24 is repealed and paragraph (7) is redesignated as paragraph (6).

A new section 431.11 is adopted to read as follows:

431.11 Rights of parents or guardians. Parents or guardians of children placed voluntarily in foster care pursuant to an instrument executed under section 384-a of the Social Services Law have a right to a hearing before the Department on the following grounds:

- (a) the failure of the authorized agency which executed such an instrument to permit the parent or guardian to visit the child while the child is receiving foster care; or
- (b) the failure of an authorized agency which executed such an instrument to provide to the foster child, parent or guardian those preventive services and other supportive services authorized to be provided pursuant to the State consolidated services plan.

(Deleted material [bracketed]; new material underlined).