

NEW YORK STATE  
**DEPARTMENT OF SOCIAL SERVICES**  
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001



SUSAN V. DEMERS  
*Deputy Commissioner  
and General Counsel*

Gregory M. Kaladjian  
Acting Commissioner

Writer's Direct Dial No.

(518) 473-4775

January 30, 1992

Mr. Eugene Doyle  
P.O.O.R.  
102-12 164th Avenue  
Hamilton Beach, New York 11414

Re: Issuance of Subpoenas  
at Fair Hearings

Dear Mr. Doyle:

I am in receipt of your letter of January 23, 1992 in which you inquire as to this Department's policies concerning the issuance of subpoenas at fair hearings.

As you are aware, Department regulations at 18 NYCRR 358-5.6(b)(8) authorize the hearing officer, in his or her discretion, to issue subpoenas and/or require the attendance of witnesses and the production of documents at hearings when this is necessary to develop a complete evidentiary record. Since it is the hearing officer's responsibility to ensure that the hearing record is complete, he or she is the only person at the hearing authorized to determine whether the issuance of a subpoena is necessary.

If the hearing officer determines that the issuance of a subpoena is necessary and appropriate, he or she will sign a form subpoena which the Department has available for this purpose. It is the appellant's responsibility, however, for the service of this subpoena. If fees are incurred for service, such fees should be requested from the local agency pursuant to 18 NYCRR 358-4.3(d), which provides that the social services agency must provide for any necessary costs and expenditures related to the fair hearing. If the agency denies the request, this determination can be included as an issue for the fair hearing or can be the subject of another fair hearing, as appropriate.

With respect to the enforcement of a subpoena issued by a hearing officer, this Department does not currently possess sufficient resources or staffing for this purpose. Therefore, in accordance with Section 2308(b) of the Civil Practice Law and Rules, it must be the responsibility of the appellant, as the person on whose behalf the subpoena was issued, to obtain judicial enforcement.

Mr. Eugene Doyle

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I hope that this satisfactorily responds to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell J. Hanks". The signature is written in a cursive style with a large initial "R".

Russell J. Hanks  
Acting Deputy Counsel  
for Fair Hearings

RJH/DB:db

cc: John Robitzek  
Sebastian Addamo  
Robert McDougall  
Philip Nostramo