

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>	<b>Transmittal 16-09</b>
<b>Distribution:</b>	<b>Date: July 15, 2016</b> <b>Page: Page 1 of 2 plus attachment</b>
Albany OAH Staff <input checked="" type="checkbox"/>	Rest of State Hearing Officers <input checked="" type="checkbox"/>
	Supervising Hearing Officers <input checked="" type="checkbox"/>
NYC OAH Staff <input checked="" type="checkbox"/>	NYC Hearing Officers <input checked="" type="checkbox"/>
	Supervising Hearing Officers <input checked="" type="checkbox"/>
Rest of State Social Service Districts <input checked="" type="checkbox"/>	<b>Subject:</b> <b>Fishman v. Daines Litigation Procedures</b>  <b>(Amended 16-02)</b>
NYC Agencies <input checked="" type="checkbox"/>	

This amends and replaces OAH Internal Procedures Transmittal 16-02 dated April 13, 2016.  
**Changes have been made to internal procedures only.**

Effective April 11, 2016, pursuant to the preliminary injunction in Fishman v. Daines, upon default of a hearing requested only to contest any Medicaid related issue, the Office of Administrative Hearings (OAH) will issue a letter entitled Fishman Default Letter (FHIS Letter 18) to the appellant and the appellant's representative. The date of the letter will be the mailing date, approximately two business days after the scheduled date of the hearing. The new disposition of OADG 65 Administrative – Fishman Litigation will be entered automatically in the Fair Hearings Information System (FHIS). FHIS Comments will be updated automatically with the insertion of the following language: "Letter 18 Fishman Default Letter sent (mm/dd/yyyy)." The hearing will be put in "HOLD" status automatically. A copy of Letter 18 is attached.

The Fishman Default Letter will instruct clients who wish to have their hearing rescheduled to respond to the letter within ten days of the date of the postmark.

Upon receipt of a request to reschedule a Medicaid hearing, Communications Intake Unit Staff (CIU) will correct the adjournment code to **OADG 93 FISHMAN RESCHEDULE** and remove the "HOLD," if appropriate. Other issues cannot be added to the previously defaulted Medicaid hearing.

At the rescheduled hearing, the Hearing Officer will determine whether the appellant had good cause for missing the initially scheduled hearing date.

If the appellant defaults the hearing a second time, a subsequent Fishman Default Letter will not be issued.

Ten days after the Fishman Default Letter is sent, any hearings for which no response was received will be marked as defaulted by designated staff, and dismissed. If the appellant requests a re-opening of the Medicaid fair hearing after a default has been entered, CIU staff should make a good cause determination pursuant to the terms of State Regulation 18 NYCRR 358-5.5 and follow the same procedures in Transmittal 12-01.

If you have any questions regarding this transmittal, you may contact your supervisor or Michael Allen at (518) 473-4969 or at [Mike.Allen@otda.ny.gov](mailto:Mike.Allen@otda.ny.gov).

A handwritten signature in black ink, appearing to read "Samuel L. Spitzberg". The signature is written in a cursive style with a large, sweeping initial 'S'.

Samuel L. Spitzberg, Director,  
Office of Administrative Hearings



ANDREW M. CUOMO  
Governor

## Office of Temporary and Disability Assistance

SAMUEL D. ROBERTS  
Commissioner

MICHAEL PERRN  
Executive Deputy Commissioner

Date: 04/14/16

JOHN DOE  
123 ABC ST  
BROOKLYN, NY 10980-0000

Re: FH# 7654321H  
Medicaid Hearing Default

Dear Appellant/Representative:

This letter is in regard to the above referenced fair hearing.

Because neither you nor a representative appeared at the hearing, we would like to know if the matter has been resolved, or if you wish to pursue the matter. If you would like to have the fair hearing rescheduled, please notify us within ten days of the postmark of this letter. At the rescheduled date you will have the opportunity to explain why you did not attend your prior hearing.

You may contact us by calling 800-342-3334, by faxing 518-473-6735 or by writing to:

NYS Office of Temporary and Disability Assistance  
Office of Administrative Hearings  
PO Box 1930  
Albany, NY 12201-1930

If you do not contact us, we will consider that you no longer wish to pursue the matter and it will be dismissed. Even if we dismiss your hearing, we may still reopen it if you contact us with a good cause reason for missing your hearing within one year of the date you failed to appear. You should contact us as soon as possible.

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This letter has been generated to comply with an Order in Fishman v. Daines. Counsel in the Fishman litigation is Peter Vollmer, Esq., (516) 730-5024. Contact him if you have any questions concerning the Fishman litigation.



Office of Temporary  
and Disability Assistance

## Assistance Information

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Important notice enclosed. If you need help reading the notice, call 1-800-342-3334.

Aviso importante adjunto: si necesita ayuda para leer este aviso, marque el 1-800-342-3334.

إخطار هام مرفق. إذا احتجت إلى المساعدة في قراءة الإخطار يرجى الاتصال بالرقم 1-800-342-3334.

內附重要通告。如需幫助閱讀此通告，請撥打1-800-342-3334。

Avis important à l'intérieur. Si vous avez besoin d'aide pour lire cet avis, veuillez appeler au 1-800-342-3334.

Avi enpòtan enkli. Si w bezwen èd pou w li avi a, rele 1-800-342-3334.

중요한 공지사항이 포함되어 있습니다. 이 공지사항을 읽는데 도움이 필요하시면, 1-800-342-3334로 전화하세요.

Содержит важную информацию. Если при чтении этого извещения у Вас возникнут трудности, позвоните по телефону 1-800-342-3334.

Kèm theo là thông báo quan trọng. Nếu quý vị cần giúp đọc thông báo này, hãy gọi 1-800-342-3334.

ביגעלייגט אַ וויכטיקע מעלדונג. אויב איר דאַרפֿט הילף ביים לייענען די מעלדונג, קלינגט אָן 1-800-342-3334.

Importante avviso allegato. Se occorre aiuto per leggere l'avviso, telefonare al numero 1-800-342-3334.

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[www.otda.ny.gov](http://www.otda.ny.gov)