NEW YORK STATE OF OPPORTUNITY. Office of Temporary and Disability Assistance

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General Information System (GIS) Message

Transmittal:	Office of Administrative Hearings Transmittal 20-02; 20 TA/DC014
Date:	March 12, 2020
To:	Office of Administrative Hearings, All Social Services Districts, Managed Care and Long-Term Managed Care Organizations, New York State Department of Health, State Supplement Program
Suggested Distribution:	All Fair Hearings Workers
From:	Roy A. Esnard, Deputy Commissioner Office of Administrative Hearings
Subject:	Demonstration Project – Conducting Hearings by Telephone, Video, and Other Means of Communication
Effective Date:	Immediately
Contact Information:	Deputy Commissioner, Roy A. Esnard Roy.Esnard@otda.ny.gov; (718) 923-4334 or Director, Samuel Spitzberg Samuel.Spitzberg@otda.ny.gov; (518) 486-9570

In accordance with Social Services Law § 36-a and 18 NYCRR § 300.11, the OTDA Office of Administrative Hearings (OAH) will conduct a demonstration project designed to ascertain the viability of conducting fair hearings to the greatest extent possible utilizing telephone, video, and other means of communication. The demonstration project will evaluate whether holding hearings utilizing telephone, video, and other means will improve timeliness and reduce unnecessary travel while protecting due process rights.

The current health crisis related to the COVID-19 virus and the resulting declaration of a New York State disaster emergency emphasizes the need to limit unnecessary public transit and gathering of individuals. Conducting hearings utilizing telephone, video, and other means should reduce density at locations where hearings are held in-person.

The demonstration will run for six months commencing on March 12, 2020, and expire on or about September 12, 2020, unless otherwise extended.

Since 2015, the Fully Integrated Dual Advantage Program and State Supplement Program hearings have been regularly conducted by telephone, video, or other means. These hearings provided Appellants with due process, allowed hearings to be held more quickly, and did not result in significant increases in reconsideration requests or court challenges.

This demonstration project will provide OAH with the capacity to hold all hearings by telephone, video, or other means, provided, however, that an in-person hearing will still be held when: 1) the applicant or recipient makes a request for an in-person hearing, 2) when, in the judgment of OAH or the Hearing Officer, a party's due process rights would best be served by conducting a hearing in-person, or 3) when, in the judgment of OAH or the Hearing Officer, there are circumstances presented by the appellant which make proceeding with the hearing by telephone, video, or other means inadvisable.

Hearings conducted by telephone, video, or other means will be offered to all Appellants and their authorized representatives requesting a new hearing starting on March 12, 2020. Appellants and their authorized representatives currently scheduled for an in-person hearing will be permitted to adjourn the hearing request or have the scheduled hearing redirected to allow for hearing by telephone, video, or other means at the already scheduled date and time.

Interpreters will participate via telephone, video, or other means or be in the same physical location as the Hearing Officer as necessary.

18 NYCRR § 358-4.3 requires documentary evidence to be provided to Appellants and their authorized representatives as late as the scheduled hearing date. However, under this demonstration, Appellants and their authorized representatives who have hearings scheduled by telephone, video, or other means must receive evidentiary packets at least one business day in advance of the scheduled hearing. OAH *must also receive evidentiary packets at least one day in advance of the scheduled hearing*. Agencies must ensure delivery processes meet this standard.

Agencies will receive notification on the manner of hearing (i.e., in-person, telephonic, video, or other means) electronically in the normal course of business. Agencies should have systems in place to meet the deadline requirement for delivering documentary evidence consistent with current confidentiality and security policies. Agencies are reminded they will be unable to hand documentary evidence to Appellants and their authorized representatives at the hearing if the hearing is not in-person. Agencies are encouraged to include rebuttal documentary evidence in the original evidence packet to avoid adjournments and delays.

Appellants and their authorized representatives will be instructed to send copies of documentary evidence to OAH in advance of the hearing. OAH will provide all evidence electronically to the Hearing Officer. The Hearing Officer will transmit any documentary evidence received from the Appellant to the Agency via encrypted email.

Questions about this demonstration project should be directed to OAH Deputy Commissioner Roy A. Esnard at: Roy.Esnard@otda.ny.gov and (718) 923-4334 or Director Samuel Spitzberg at: Samuel.Spitzberg@otda.ny.gov and (518) 486-9570.

As always, OTDA greatly appreciates your cooperation as we work together to continue providing impartial fair hearings in a timely and fair manner.