

# FAIR HEARINGS

## THROUGH THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

### A GUIDE TO PREPARING FOR A HEARING WITHOUT LEGAL REPRESENTATION

A Community Education Pamphlet

Prepared by Legal Aid Society of Mid-New York, Inc.



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(Updated 1/5/06)



Funded in Part by the Legal Services  
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# FAIR HEARINGS

## THROUGH THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

WE RECOMMEND YOU READ THE ENTIRE PAMPHLET. IF YOU READ NOTHING ELSE, READ THIS PAGE

\* You should ask for a Fair Hearing if you have one these problems and you do not agree with the decision made by the agency:

- You have been denied Cash Assistance, Emergency Assistance, Food Stamps, Medicaid, Child Health Plus or Family Health Plus, Day Care Assistance, HEAP or some support service you need to maintain employment.
- You were receiving Cash Assistance, Emergency Assistance, Food Stamps, Medicaid, Child Health Plus or Family Health Plus, Day Care Assistance, HEAP or some support service you need to maintain employment and are now being told the benefit is being discontinued or reduced.
- You are being told you must participate in the work program to receive benefits.
- You are being sent to a work assignment which you do not think is appropriate for you.

\* You also should ask for a Fair Hearing if you applied for a benefit and the agency did not respond to your request at all or did not respond in writing.

\* If you received a written notice, you must ask for the hearing by the deadlines on page 2 of this pamphlet.

\* Call 1-800-342-3334 to request a hearing. If you received a Notice from the local agency, have that notice handy when you call.

\* You have the right to look at your agency file before the hearing.

\* You have a right to receive copies of papers that are in your agency file which you need to prepare for your hearing, at no cost.

\* You have the right to receive a copy of the "hearing packet" the agency intends to show the judge. If you request it far enough before your hearing date, you should be given the packet before your hearing date.

\* You have the right to ask that your hearing be rescheduled, if you ask the agency for information before the hearing and the agency does not give you that information before the hearing.

\* You have the right to have your hearing rescheduled if you have a good reason to reschedule (see page 2 for details about deadlines for rescheduling requests)

\* You have the right to testify at your hearing and to ask questions of the agency.

\* You should bring any papers you think will help you to the hearing with you.

\* You have the right to a written hearing decision.

\* You have the right to appeal a hearing decision which you do not agree with.

## HOW DO I REQUEST A FAIR HEARING ?

A Fair Hearing request must be made 60 days (90 days for food stamps) after the notice or the action you are complaining about. ***Hearings regarding employability must be requested within 10 days of the notice date.***

You can request a hearing by writing to the Office of Administrative Hearings, NYS Office of Temporary and Disability Assistance, P.O. Box 1930, Albany N.Y. 12201.

You can also call 1-800-342-3334.

(When calling, expect to be

placed on hold and have your DSS

notice available, if you received a

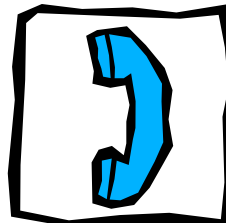
notice.) A hearing can also be re-

quested by FAX at 1-518-473-6735

If you have access to the internet, hearings can be requested at

[www.otda.state.ny.us/oah/forms.asp](http://www.otda.state.ny.us/oah/forms.asp)

If you move before receiving a notice of your hearing date, be sure to contact the same office with your new address. Telling your local caseworker your new address is not enough.



Call for a hearing quickly

IF YOUR NOTICE

INVOLVED A DISCONTINUANCE OR REDUCTION OF BENEFITS, YOU MAY QUALIFY FOR AID CONTINUING IF YOU ASK FOR A HEARING **WITHIN 10 DAYS OF THE NOTICE DATE.** (If you lose the hearing, you

may need to pay back the Aid Continuing.)

IF YOUR NOTICE INVOLVED EMPLOYABILITY, YOU MAY BE ABLE TO AVOID ASSIGNMENTS TO THE WORK PROGRAM IF YOU ASK FOR A HEARING **WITHIN 10 DAYS OF THE NOTICE DATE.** Do not simply skip future assignments if you think this applies to you. Make sure

you tell the work program that you have asked for the hearing and ask if this has excused you from the work program until the hearing decision regarding your employability is made. (The answer should be yes if the request was made in the ten day period.)

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## WHEN AND WHERE WILL I GO FOR A HEARING?

The Fair Hearing should be scheduled 3-6 weeks after the request. A written notice should be sent to you at least 10 calendar days before the Fair Hearing.

The Notice you receive will tell you exactly where your hearing will take place. The Fair Hearing will generally be held at the local agency where you sought benefits. If you live in a rural county which does not have hearings frequently and an emergency is involved, try asking to have your hearing heard sooner in a nearby, larger county.

The Notice will also tell you the time of your hearing. Hearings are generally scheduled at 9:00, 9:30, or 10:00 in the morning or at 1:00 p.m. in the afternoon. Many hearings are scheduled for the same time. You will need to sign in. It helps to be early if you want your name to be toward the beginning of the list. Generally, cases are heard in the order people sign in. (The administrative law judge may take some cases out of order. Usually these are

the cases in which an agreement has already been reached or an adjournment is being requested.) You should plan on waiting a while.

### Changing the hearing date

If you cannot attend the Fair Hearing on the assigned date because of sickness or another conflict call 1-877- 209-1134 to ask for an adjournment and give the following information:

1. Fair Hearing number on the notice
2. The date of the Fair Hearing
3. The time of the Fair Hearing
4. Why you cannot attend

A new hearing date will generally be scheduled if you give the agency a good reason for changing the hearing date.

If you missed the hearing for a good reason, you need to contact the fair hearing office listed above within 15 days of your

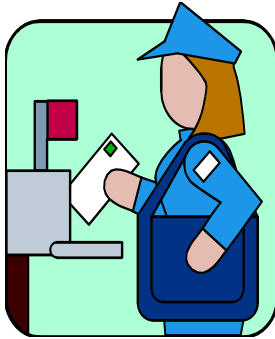
hearing date. If you give the agency a good reason for missing the hearing, they will probably reschedule it. You may be required to prove your reason. (For example, if you were in the hospital, you may need to bring a discharge paper from the hospital to your hearing when it is rescheduled).

You should not wait until after the hearing to request a new date if you know you have a time conflict. If you know ahead of time that you have a good reason, call before the hearing date. It is easier to get an adjournment than to have a case rescheduled. Also, if you are on aid continuing, your assistance may be continued if you adjourn the hearing. It will generally not continue if you miss the hearing and then ask for a rescheduling.

If you missed the hearing because you didn't receive the notice, you have 45 days to reschedule. You will need to convince the agency you did not receive the notice.

## WHAT WILL HAPPEN AFTER THE FAIR HEARING?

After the hearing, the judge will send his/her suggested opinion to the Commissioner of the appropriate agency in Albany. The judge's suggestions include his conclusions about what happened and the judge's recommendation for the case. The Commissioner of the



*Your hearing decision will be mailed to you*

agency will make the final decision.

A decision will be mailed to you. Generally, the decision will take 3-4 weeks. Sometimes it is longer.

## WHAT CAN I EXPECT FROM THE DECISION?

The decision by the Commissioner will probably be based on the recommendation made by the judge. However, if the Commissioner believes the administrative law judge did not correctly apply the law in the recommended decision, the Commissioner is not always required to follow the judge's recommendation.

It may take one or two months to receive the decision of the Fair Hearing in the mail. (Decisions are supposed to be received within three months of your hearing request, but it sometimes takes longer. If you are waiting an excessively long time for a decision, you may wish to contact the agency to make sure it was mailed to the correct address. If the agency does not issue your hearing decision within the time limits, you may want to try to file a formal complaint or ask a lawyer to go to court to have a judge order the agency to issue the decision within their time limits.)

Your decision should include:

- (1) a summary of the facts - what the Commissioner believes happened,
- (2) all the law and regulations dealt with in your case, and
- (3) a discussion of why the Commissioner thinks you should win or lose your case.

In the last few paragraphs of the decision, it should say if you have won or lost the case. If you have won, it will usually state "The determination of the agency is not correct". If you lost the case, it will usually state "The determination of the agency is correct."

If you lose and wish to appeal, you have only four months to go to court. You would need to file what is called an Article 78 action. This should be filed in the Supreme Court of the county where the original decision was made. You can do this on your own if you need to, but it recommended that you contact an attorney for this.

An Article 78 appeal is not a new hearing. The judge(s) will not be hearing extra testimony. The decision will be made after reviewing the record which was created at the Fair Hearing.

Remember, if you want an attorney to consider filing an Article 78 action for you, the attorney will need to request a copy of the hearing tape and the documents used at your hearing and will need time to review this. The attorney will only decide whether he or she could file the case for you after doing the review. This takes time. So, contact an attorney soon after you receive your decision. Otherwise, the attorney might not have time to look at your case.

If you appeal, generally the decision of the Commissioner will be enforced while the court process is happening. If you win the appeal, you may be awarded back benefits.

## HOW DO I PREPARE FOR THE FAIR HEARING?

Three things must be done in order to prepare for a Fair Hearing. First, gather all of the facts and information to present your case. Second, before the hearing, think through what you need to say to the judge. Third, bring everything you want the judge to consider to the hearing with you.

You have the right to review your file at the agency before the Fair Hearing. To do this, call your caseworker or caseworker's supervisor to make arrangements to see the file. Some counties have special fair hearing units. Your caseworker may refer you to that unit to see your file. If you are refused access to your file, complain to the Commissioner. Also, keep notes about who you asked, when you asked, as well as who denied access. You may need to discuss this with the judge at your hearing.

You also have the right to receive free copies of the parts of the file you feel you need to prepare for the hearing. If you need the papers to prepare for a hearing, you cannot be charged for copies.

You can also ask to see, in advance, what the agency plans to show the administrative law judge. You must be given a copy of anything the agency intends to show to the judge. (These papers are usually called the "hearing packet"). Make your request for the hearing packet early so you can receive this at least a couple days before the hearing. If you do not make arrangements to pick this up in advance, you may be given the packet right before your scheduled

hearing. This will not give you much time to review the materials.

If the agency shows the judge something during the hearing which had not been shown to you in advance, tell the judge that you had not been informed that the paper was going to be used at your hearing. It is especially important that you let the judge know if you asked to receive the hearing packet early and were not given that by the agency.

You should also ask in advance for a hearing summary. This will force the agency to put in writing the reasons they took the action they took. This summary might explain the agency's position to you better than a collection of papers. Every hearing packet should have a hearing summary attached. If there is no summary on top of the hearing packet which you receive, point that out to the administrative law judge.

Think ahead. Plan what you want to say to the judge. If you have received the agency's packet ahead of time, plan how to respond to the things the agency said you did wrong or which you think make you look bad. If there are things you think are important which the agency does not mention in the hearing packet, plan to raise these things with the judge. Sometimes it helps to make a checklist of things you want to say to the judge before you go into the hearing.

Make sure you gather proof of everything you want to say to the

judge. If you missed an appointment because you had a doctor's visit, bring a note from the doctor. If you turned papers in at the agency, bring your receipt. If you have no proof on paper, you may wish to bring a witness. (For example, if your neighbor was with you when you turned in a paper at the agency and you were not given any receipt, you may want to bring your neighbor to testify that she saw you hand in the paper.)

Plan to bring the papers you wish to refer to at the hearing. It is not enough to tell the judge that some agency has the papers. You should get the papers from that agency and bring them to the hearing. You cannot tell a judge that she could call someone to check things out. You should bring in a statement from the person. The judge will not look for documents for you or contact someone outside of the hearing.

If you have made a good faith attempt to get papers which are important to your case, tell the judge what you have done and ask for an adjournment to have more time to obtain your proof.

Sometimes, you have no proof to back you up. Then, you need to tell the judge your side. If you have no proof on paper and no witnesses, you should be prepared to be specific about what happened and to present as many details as possible. (For example, if you mailed in a paper which the agency says was not returned, can you remember what the paper looked like, where you mailed it, when you mailed it, or the name of the person it was mailed to?)

# WHAT IS SETTLING A CASE?

Settling a case is reaching an agreement with the agency before meeting with the judge. You should be very careful when reaching an agreement with the agency. Make sure that everything which is agreed to is in writing and that you have a copy.

Some counties will call you in for a conference when you have requested a hearing. They may agree to do something that you feel settles your case. Then, they will give you a paper to sign which says something very general, like "I have reached an agreement with the agency and I am withdrawing my fair hearing request." It is unwise to sign any paper withdrawing your hearing request before the hearing unless the paper says **VERY CLEARLY, IN DETAIL**, what Social Services has agreed to do.

Similarly, some caseworkers talk with persons and promise to fix problems, telling the person that a hearing is not necessary. Do not miss a hearing on an oral promise to fix something. If the caseworker doesn't fix it, there is no way to prove that promise was made. If you rely on an oral promise which is not followed up on, you may miss the deadline for requesting a hearing. Request the hearing and appear at the hearing. If the agency really intends to fix the problem, they will tell the judge and put the agreement in writing.

If you do reach an agreement with the agency, insist that it be specific and in writing. Make sure somebody at the agency signs and dates it and that you receive a copy.

For example, if the agency says that they will go back and consider paystubs you provided, make sure that is written down. If the agency says that they will reconsider your application for assistance, make sure that is put in writing. If the agency is going to reconsider something you thought was a bad decision in your case, it is best if the agreement says:

- (1) that the agency will withdraw the bad decision (for example, the notice telling you that your benefits were being stopped or cut, etc.)
- (2) that the agency is going to review your situation again, and
- (3) that the agency will give you a new notice telling you their new decision.

ered decision of the agency is not in your favor, you will have a new written notice and would have the right to request a hearing on that new notice.

It is generally unwise to settle your case if you have doubts about what is happening and want the judge to hear your case. It is also unwise to settle if you do not understand what the agency is offering and/or you are unsure about every detail.



**READ ALL AGREEMENTS CAREFULLY BEFORE SIGNING**

Generally, if you reach an agreement, it is wise to go to the hearing and have the agency state the agreement in front of the judge. At the hearing the representative will actually put that agreement in writing. You will be able to check it to be certain the written agreement accurately says what you agreed to. Usually settlements discussed at the hearings will be written by the agency representative and signed by you, the agency representative and the judge.

**MAKE SURE THAT ANY AGREEMENT WITH THE AGENCY IS IN WRITING AND IS DETAILED. MAKE SURE YOU ARE GIVEN A COPY**

If you obtain an agreement which lists 1-3 above, the agency will not be able to use the first notice against you because you have it in writing that the first notice is withdrawn. Also, if the reconsid-

When you agree to a settlement at the hearing itself, the judge is supposed to put the agreement on the record. That means that the judge should tape record the meeting, make sure everyone understands the details, and make sure all the details are recorded. You should receive a copy of any settlement reached with the judge in the room. By having a written copy of the agreement, you have proof of the agreement and can be sure that it is complied with.

# THE HEARING PROCESS

At the Fair Hearing at least three people must be present: you, an agency representative, and the administrative law judge. It is allowed for you to have a lawyer or other representative present, but is not required. Most people do not have a representative. ***If you need an interpreter, you should request one at the time you make the hearing request. Then, OTDA is responsible for providing the interpreter for the hearing.***

The agency representative might be a person who previously worked on the case, like your caseworker or the caseworker's supervisor. But, in counties with a Fair Hearing Unit, it will generally be an agency staff member who has not worked on your case before you asked for the hearing. Those counties may also bring your caseworker to the hearing. If there was an investigation in your case, the investigator might be at the hearing. If the hearing is about home health care or personal services, the nurse who visited you may be at the hearing. You can bring any witnesses you think would be helpful to you.

The Fair Hearing will start once a digital recorder has been turned on. (The judge will dial the telephone and will set it on the speaker. There is a digital recorder at the other end of the phone.) You should insist that anything which is said to the administrative law judge about your case is said with the recorder running. The recording can be used at a later time if any problems arise. Make sure you speak up so that your statements are loud enough for the recorder to pick them up.

First, the agency representative will produce copies of records from your case and will explain why the agency

took the action they did. Before the hearing, you should have been given copies of all records shown to the judge. If the agency shows the judge something you were not given earlier, tell the judge. The agency representative might also have witnesses to help present their case.

Do not interrupt while the agency is presenting its case. You should be given a chance to ask questions and present your side when the agency is done

After the agency representative is finished explaining the agency's case, you can ask the representative questions concerning what was said. You can ask any agency witness about what the witness has said. Be calm and as clear as possible when you ask questions. **If the judge does not offer to give you the chance to ask questions, politely but firmly ask the judge to let you ask questions. Asking questions is your right.**

Then, it is your turn to present your case by explaining your side of the story. You can mention anything left out by the agency representative or any other information you think is important. You also have the right to show the judge and agency any papers that you think are important. Make sure that you ask the judge to make copies of these for himself and for agency, and to let you keep a copy. **Ask this while the tape recorder is running.**

Be specific about what papers you are asking the judge to look at. That way, if the judge does not make a copy of the paper and you ask for a later re-

view, somebody listening to the tape recorder will know exactly what you asked the judge to review. (For example, it is better to say "I have a letter from my doctor, dated Sept. 17, saying she thought I was too ill to go to my work assignment on August 2." than to say "I have a paper here"). Politely but firmly ask the judge to make a copy for the record.



*The hearing is your chance to discuss the problem with a judge.*

If the judge will not look at your papers, it is acceptable for you to, respectfully, say out loud that you disagree with the judge's decision not to look at the papers. A person listening to a tape recording later cannot see what is happening, so sometimes you should describe what is happening out loud.

For the same reason, you need to describe directions rather than point. If your right side was injured in an accident, do not simply say "I was hurt here" and point. Instead, point, but say, for example, "I was hurt on my right side, from the middle of my rib-cage to my hip". That way, a person listening to the tape will know what you were pointing out to the judge. You also should say "yes" or "no" instead of shaking your head.

You have the right to bring in witnesses as well. You can ask them questions about your case. The agency representative can then ask you and your witnesses questions. You should expect you will be asked questions. Do not get mad or angry about this. It is part of the process. The judge may ask questions about what anybody has said. The judge can ask questions at all times.

Most importantly, be honest. Making false statements can lead to major problems. So, tell the truth. Do not feel that you must please the agency representative or the judge by "making up" an answer to a question you do not understand. If the question is clear and you do not know the answer, say so. If you simply do not understand the question or are confused about it, say you do not understand and ask the person to ask the question more clearly. If you think that the questions the agency's representative is asking have nothing to do with why you asked for the hearing, calmly tell the judge that. The judge will decide whether it is relevant and whether you

need to answer.

Sometimes, the agency's representative will interrupt and start asking questions before you are done presenting your case. Sometimes that will cause you to lose track of what you were saying. If this happens, tell the judge that you were not done yet and ask that the judge tell the representative to hold up her questions until you are done telling your side. If the representative or the judge asks questions before you are done, just make sure you go back to your side of the case.

It sometimes helps to bring a checklist of the things you want to say. Then before the hearing is over, you can look at your list and make sure you said everything you wanted to. This is especially helpful if you get sidetracked.

At the end of the hearing, you and the agency representative should have a chance to summarize your cases or add anything else you think the judge should know. Make sure you say anything you want to say while the recorder is running. The recording can be used at a later time if any problems arise. Once the hearing is over, simply thank the people for their time and leave.

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## WHEN CAN I OBJECT?

You can object to many things the agency representative says if there is not confirmation in the records shown to the judge. If the representative says that something is department policy, you have the right to ask whether she has any proof that the caseworker involved actually followed the policy.

If the representative says something happened, she should be able to prove it by showing a paper saying so or by saying she saw it personally. For example, if she says a notice was mailed to you, she should be able to show a copy of that notice. Her copy should show it was mailed to the correct address. She should also be able to explain the agency's mailing procedure. You can ask if she saw it actually being mailed. If the agency presents a form which you did not receive, check the copy carefully. If the copy does not show your name and address or is misaddressed, make sure you point that out to the judge.

You can object if the agency representative just repeats comments s/he heard from somebody else if that other person is not present at the hearing. If the representative is just repeating some-

thing she heard someone else say, she doesn't really know whether it's true or not. You can tell the judge you believe it is not fair to for the representative to repeat something without you having a chance to ask questions of the person who originally made the statement. For example, what if the representative says your caseworker talked to your landlord and the landlord told the caseworker that you had three extra people living in your apartment? You can say its not fair for the judge to listen to that without you having a chance to ask your caseworker or the landlord questions about the conversation.

You can also object to information that the agency received after the notice was issued to you. You could explain to the judge that the agency should have had enough information to back up its notice when the notice was issued, and that the agency should not be using information it received after it issued the notice to prove the case. The judge will decide whether or not he thinks the information should be considered.

You can also object to anything that the agency raises which does not seem to

have any connection to the reason you asked for a hearing. For example, if you asked for a hearing regarding Medicaid and the representative starts to talk about your Food Stamps, you might want to object. Use your common sense. If something does not sound right, feel free to tell the judge calmly and as pleasantly as you can.

If you feel you must object to something, do it briefly and politely. Getting mad does not help and could hurt.

Just because you object does not mean the judge won't pay attention to something that the agency says or shows to the judge. The judge makes the final decision on what s/he listens to, so you should also be ready to give your side of the case.

**Do not just criticize the agency. It is important that the judge hears what you have to say on your own behalf, not just what you think the agency did wrong.**