



## Office of Temporary and Disability Assistance

ANDREW M. CUOMO  
Governor

MICHAEL P. HEIN  
Commissioner

BARBARA C. GUINN  
Executive Deputy Commissioner

### General Information System (GIS) Message

|                                |                                                                                                                                                                                                                                                            |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Transmittal:</b>            | Office of Administrative Hearings Transmittal 20-03                                                                                                                                                                                                        |
| <b>Date:</b>                   | April 16, 2020                                                                                                                                                                                                                                             |
| <b>To:</b>                     | 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                                                                     |
| <b>Suggested Distribution:</b> | All Fair Hearings Workers                                                                                                                                                                                                                                  |
| <b>From:</b>                   | Roy A. Esnard, Deputy Commissioner<br>Office of Administrative Hearings                                                                                                                                                                                    |
| <b>Subject:</b>                | Allowing or Requiring Fair Hearing Appearances by Written, Telephonic, Video or Other Electronic Means                                                                                                                                                     |
| <b>Effective Date:</b>         | Immediately                                                                                                                                                                                                                                                |
| <b>Contact Information:</b>    | Deputy Commissioner Roy A. Esnard<br><a href="mailto:Roy.Esnard@otda.ny.gov">Roy.Esnard@otda.ny.gov</a> ; 718.923.4334<br>or<br>Director Samuel Spitzberg<br><a href="mailto:Samuel.Spitzberg@otda.ny.gov">Samuel.Spitzberg@otda.ny.gov</a> ; 518.486.9570 |

The Office of Temporary and Disability Assistance, Office of Administrative Hearings (OAH) is working diligently to meet the needs of Appellants and Agencies by modifying hearing procedures to best serve residents who rely on critical benefits and services during the current public health crisis.

Governor Cuomo's Executive Orders 202.5 and 202.14 suspended, through May 7, 2020, Sections 358-4.3, 358-5.12 and 358-5.13 of Title 18 of the NYCRR to the extent necessary to allow or require appearance by any parties to a fair hearing by written, telephonic, video, or other electronic means. This is consistent with the demonstration project announced on March 12, 2020 in OAH GIS 20-02 which allows hearings to be conducted by telephone, video and other means of communication through September 12, 2020.

OAH is currently conducting fair hearings primarily by written, telephonic, video, or other electronic means. This means, while Executive Order 202.5 and any relevant extensions are in effect, Appellants may submit written documentation and waive personal appearance or submit written documentation and participate telephonically. Social Services Agencies (see, 18 N.Y.C.R.R. 358-2.21) must still provide evidence packets, but must also complete a waiver packet providing contact information to participate in a hearing telephonically.

All previously scheduled in-person hearings will be conducted by primarily by written, telephonic, video, or other electronic means. Revised notifications will not be forthcoming unless a hearing is adjourned and rescheduled to a new date.

Interpreters will participate by telephonic, video, or other electronic 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. In accordance with Executive Order 202.5, Appellants and their authorized representatives must receive evidentiary packets at least one business day in advance of the scheduled hearing. OAH **must also receive evidentiary packets at least one business day in advance of the scheduled hearing**. Agencies must ensure delivery processes meet this standard.

Agencies must include a telephone number and designated representative to participate in fair hearings conducted by written, telephonic, video, or other electronic means. Hearing Officers may require telephonic, video, or other electronic means of participating even when an Agency submits written materials and does not want to participate by telephone, video, or other electronic means. If an Appellant does not have access to a telephone or wishes to submit written evidence and does not have access to a fax or other means of submitting such documentation, to the extent that OAH knows of the issue, it will be addressed on a case-by-case basis. Regardless, Appellants will not be defaulted for failure to submit evidence or for failing to answer the Hearing Officer's call to commence their hearing while Executive Order 202.5 is in effect.

Agencies must include the fair hearing number, designated representative, summary, and telephone number with the evidentiary packets to OAH at:

Email: [otda.sm.hearings.waivers@otda.ny.gov](mailto:otda.sm.hearings.waivers@otda.ny.gov)

Fax: 518-473-6735

Regular mail: Office of Administrative Hearings, 40 N. Pearl Street, Floor 15B, Albany, NY 12243

or

PO Box 1930, Albany, NY 12201

Please include the fair hearing number in the subject line on Email and fax or mail coversheet.

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. Agencies are encouraged to include rebuttal documentary evidence in the original evidence packet to avoid adjournments and delays.

Appellants and their authorized representatives are 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.

OTDA greatly appreciates your cooperation in providing impartial fair hearings in a timely and fair manner. Below are responses to a series of commonly asked questions.

## Frequently Asked Questions

### Q. How will Hearing Officers call Agencies and Appellants for telephonic hearings?

A. The Hearing Officer will call the phone numbers listed in the hearing request and on the written submissions received prior to the hearing.

**Q. How will hearings requested and scheduled prior to the health crisis be affected?**

- A. Hearings requested or scheduled prior to the declared State disaster emergency will be conducted by written, telephonic, video, or other electronic means, notwithstanding directions on the scheduling notice representing the hearing will be at a physical location. OAH is actively attempting to reach Appellants by telephone to apprise them of this and any subsequent adjournments.

**Q: What happens if an Appellant does not have a telephone?**

- A. For New York City Appellants, the OAH office at 14 Boerum Place can accommodate limited numbers of individuals who will be provided a private room in which they can participate telephonically. OAH will accommodate Appellants in this circumstance outside New York City on a case-by-case basis. Where an in-person hearing is requested by an Appellant or when the Hearing Officer determines that individual's due process rights would be best served by conducting an in-person or video hearing, OAH will handle on a case-by-case basis to accommodate. Regardless, at this time, when an Appellant cannot be reached by phone for a scheduled telephone, the hearing will be adjourned and the Appellant will not be defaulted.

**Q. Can Agencies and Appellants and their authorized representatives provide updated telephone numbers and points of contact?**

- A. Agencies and Appellants and their authorized representatives may provide updated telephone numbers and points of contact as part of written submissions.

**Q. What time will the hearings happen?**

- A. Hearings are scheduled for mornings and afternoons. Some hearings take longer than others; OAH cannot guarantee an appointment time. Parties must be available between 9:00am and 12:00 for morning hearings and between 1:00pm and 5:00pm for afternoon hearings.

**Q. What happens if no one answers the Hearing Officer's call?**

- A. No hearing requests will be considered abandoned if an Appellant or the authorized representative fails to answer the phone. If parties are not reachable, OAH will adjourn and reschedule the hearing.

**Q. What happens if the Appellant answers the phone, but the authorized representative is unreachable?**

- A. If an Appellant's authorized representative is unreachable, the hearing will be adjourned and rescheduled, unless the Appellant's authorized representative asked to appear on written submissions only and the Hearing Officer had no questions for the representative or the Appellant dismisses the authorized representative.

**Q. Are there any in-person or home hearings?**

- A. OAH will schedule all hearings to be conducted by written, telephonic, video, or other electronic means. Where an in-person hearing is requested by an Appellant or when the Hearing Officer determines that individual's due process rights would be best served by conducting an in-person hearing or video, OAH will handle on a case-by-case basis to accommodate.

**Q. Can an Appellant insist on waiting until after the declared State disaster emergency and have an in-person hearing?**

A. No. OAH will schedule hearings to prioritize non-aid continuing hearings. However, all adjournment requests will be granted and if an Appellant is not reachable, OAH will adjourn and reschedule the hearing.

**Q. Will a hearing be held without a representative if the Appellant has a representative?**

A. Appellants may choose to proceed without a representative if the Appellant dismisses the representative in writing in advance of the hearing or on the record during the hearing.

**Q. Can a Hearing Officer conference in several numbers, so that an Appellant and their authorized representative and other witnesses can all participate regardless of their physical locations?**

A. Hearing Officers have the technological ability to allow telephonic participation by Agencies, Appellants and their authorized representatives, interpreters, and relevant witnesses.

**Q. How can individuals with limited telephone plans participate in a telephonic hearing?**

A. Most hearings are completed rapidly. Many providers of cellular service have notified customers of an increase in minutes and data as a result of the COVID-19 crisis. In-person hearings often required individuals to wait for up to two or three hours before their hearing was called. Now, participants' time will be more efficiently utilized.

**Q. Why is OAH not adjourning all hearings when an Appellant has aid continuing until after the declared State disaster emergency?**

A. OAH is scheduling and holding as many hearings as possible. Scheduling is prioritized in accordance with statutory and regulatory provisions.

**Q. How will fair hearing notices be sent to Appellants and their authorized representatives?**

A. Fair hearing notices will continue to be mailed.

**Q. How will fair hearing request forms be adapted to meet the new requirements?**

A. OAH forms include a place for a contact number; no updates are required.

**Q. By when must the Agency deliver evidence packets to Appellants and their authorized representatives?**

A. Appellants and their authorized representatives must receive evidentiary packets at least one business day in advance of the scheduled hearing. Agencies must ensure delivery processes meet this standard.

**Q. Will OAH review Fair Hearing Summaries and determine whether the Agency has met its burden of proof before holding the hearing? If so, will OAH issue decisions without a fair hearing?**

A. All matters will proceed to a fair hearing unless all parties request participation by written submission only and the Hearing Officer has no questions for any party.

**Q. Will Appellants and their authorized representatives be provided evidentiary packets electronically?**

A. Agencies are required to deliver evidentiary packets at least one business day in advance of the hearing whether by fax, mail, or other method.

**Q. How can Appellants and their authorized representatives submit written materials in advance of the hearing?**

A. Appellants and their authorized representatives can submit written materials by:

- Email: [otda.sm.fhdocuments.submission@otda.ny.gov](mailto:otda.sm.fhdocuments.submission@otda.ny.gov)
- Fax: 518-473-6735
- Regular mail: Office of Administrative Hearings, 40 N. Pearl Street, Floor 15B, Albany, NY 12243  
or  
PO Box 1930, Albany, NY 12201

Please include the fair hearing number in the subject line on Emails and on a fax or mail coversheet. Please submit materials at least a week before the hearing.

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