



VIA EMAIL

June 14, 2022

Daniel W. Tietz, Commissioner
New York State Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243

Re: Recommendations to Improve the Fair Hearing Demonstration Project

Dear Commissioner Tietz:

Thank you for meeting with us on March 30 to discuss OTDA's remote fair hearing Demonstration project and the concerns and suggestions we sent in August 2021 and in our January 25, 2022 correspondence. Thank you also for sending the documents on April 13. As you requested, we write to provide a summary of our specific recommendations thus far.

Notices

Attached please find proposed edits to the notices listed below. We recommend that OTDA review all notices for reading level and edit the notices to be in plain language as much as possible. We did not make this change in the attached documents but we also ask that all notices be in an accessible format such as 14 font size and 1.15 spacing, using a sans serif format.¹

1. Fair Hearing Request Form – Fax or Mail

¹ Guidelines from the National Disability Rights Network can be found at <https://www.ndrn.org/accessibility-guidelines/>.

2. Acknowledgment of Fair Hearing Request and Confirmation of Aid Status Notice
3. Notice of Fair Hearing – We recommend creating two notices: one for a telephone hearing, and one for an in-person hearing.
4. Notice of Telephone Hearing

Model Opening Statement

Attached please find our proposed edits to the model opening statement for telephone hearings.

Other Recommendations

1. Increase capacity for the phone lines to ensure that callers more consistently reach staff and staff process hearing and aid continuing requests timely.
2. Train staff at the call center and all staff that process fair hearing requests.²
3. Promptly clear the backlog of delayed fair hearings. Issue all decisions within 90 days of the fair hearing request³ or within 60 days of a SNAP fair hearing request.⁴
4. Waive overpayments.
 - a. In any fair hearing where aid continuing has been granted and the decision issued is not favorable to the appellant, the recovery of all aid continuing shall be waived if the fair hearing decision was issued more than 90 days from the date of a fair hearing request or more than 60 days from the date of a SNAP fair hearing request.
 - b. In accordance with recent Food and Nutrition Service (FNS) guidance:⁵
 - i. submit a waiver request to FNS to administratively waive pandemic-period agency error or inadvertent household error overpayments (including pandemic-period claims previously adjudicated);
 - ii. revise the claims threshold for pandemic-caused over-issuances where the claims are not waived entirely;
 - iii. fully implement the regulatory authority to terminate and write off claims for pandemic-period over-issuances; and
 - iv. fully implement the regulatory authority to compromise unwaived claims based on financial hardship.

² This recommendation relates to a spate of recent cases where fair hearing requests were processed incorrectly, and aid continuing was wrongly denied by front line staff and later corrected by a supervisor.

³ 18 N.Y.C.R.R. § 358-6.4; 42 C.F.R. § 431.244(f)(1)

⁴ 7 C.F.R. § 273.15(c)

⁵ U.S. Department of Agriculture, Food and Nutrition Service, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): RECIPIENT CLAIMS ADMINISTRATION CHALLENGES AS A RESULT OF RESPONDING TO THE COVID-19 PUBLIC HEALTH EMERGENCY, Nov. 10, 2021, available at <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAP-claims-administration-flexibility-memo.pdf>

5. Create an affirmative opt-in to telephonic hearing for all hearing requests.
 - a. Appellants who request a hearing by phone should be asked for their hearing venue preference (i.e., in person, telephone, video).
 - b. Add an option to the online form to allow Appellants to select which hearing venue (i.e., in person, telephone, video) they prefer.
 - c. Refer to our attached edits to the Fair Hearing Request Form – Fax or Mail.
6. Implement a system that allows all ALJs to securely send, receive, exchange, and otherwise share documents in real-time with appearing parties for all phone and video hearings.
7. Reissue 20 GIS TA/DC 097 and remind ALJs of the requirement that they must transmit Appellants' documentary evidence to the Agency via encrypted email during the hearing. Also remind ALJs that it is not the responsibility of the Appellant to supply the Agency's evidence packet to the ALJ.
8. Add the option for a video hearing as allowed under OAH Transmittal 20-05/20 TA/DC097, dated October 16, 2020.
 - a. Provide information on the video options that are currently being developed or considered and allow for advocate input.
9. Provide training to ALJs on remote fair hearings. In our April 5, 2022 email we requested Word documents of trainings provided to ALJs regarding remote fair hearings. We are in receipt of the public transmittals sent on April 13, 2022. We urge OTDA to develop trainings for ALJs on remote fair hearings with the input of advocates. We suggest that these trainings include how to conduct a remote fair hearing with an interpreter and issues relating to credibility determinations in this context. Please also refer to our proposed edits to the model opening statement.
10. In furtherance of OTDA's Transparency Initiatives, provide data or reports produced by OTDA for monitoring the progress of the Demonstration and publish all data on OTDA's website.⁶
11. Provide the following data from March 12, 2020 through the present, and publish all reporting on OTDA's website:⁷
 - a. Number of hearings requested by county and issue
 - b. Number of hearings conducted by county and issue
 - c. Number of hearings conducted via telephone by county and issue

⁶ Office of Temporary Disability Administration, GOVERNMENT TRANSPARENCY INITIATIVES REPORT, October 2021, available at <https://otda.ny.gov/news/attachments/OTDA-Transparency-Initiative-Report.pdf>.

⁷ This request models the fair hearing data provided in OTDA's Annual Report, and supplements it with data related to the Demonstration. Office of Temporary Disability Administration, 2021 ANNUAL REPORT, available at <https://otda.ny.gov/resources/reports/OTDA-Annual-Report-2021.pdf>

- d. Number of hearings conducted via video by county and issue
- e. Number of hearings conducted in person by county and issue
- f. Number of telephone hearings that have been defaulted by county and issue
- g. Number of in-person hearings that have been defaulted by county and issue
- h. Number of video hearings that have been defaulted by county and issue
- i. Number of telephone hearings in which the Appellant submitted evidence by county and issue
- j. Number of in-person hearings in which the Appellant submitted evidence by county and issue
- k. Number of video hearings in which the Appellant submitted evidence by county and issue
- l. Number of telephone hearings in which an interpreter was present by county and issue
- m. Number of in-person hearings in which an interpreter was present by county and issue
- n. Number of video hearings in which an interpreter was present by county and issue
- o. Number of telephone hearings in which the Appellant was unrepresented by county and issue
- p. Number of in-person hearings in which the Appellant was unrepresented by county and issue
- q. Number of video hearings in which the Appellant was unrepresented by county and issue

12. Improve hearings for LEP individuals by doing the following:

- a. Schedule all hearings for LEP individuals in-person and allow LEP Appellants to affirmatively opt-in to a phone hearing based on their preference.
- b. Provide advocates with any guidance OTDA or OAH has created specifically for interpreters at phone hearings so that advocates can make suggestions for improvements. If no guidance has been issued, create a working group to develop such guidance.
- c. Develop systems to ensure the interpreter is provided with the documents in advance of the hearing.
- d. Require agencies to translate common documents so LEP Appellants can respond to the agency's evidence.
- e. Improve ALJ Phone Script: Please refer to the edited attached Model Opening Statement.

13. Provide a liaison to advocates on urgent and emergent fair hearing issues.

14. Continue to engage with advocates and stakeholders in developing and improving remote hearing practices and policies.

We thank for you again for the opportunity to engage in these discussions. The telephonic hearing process and the ongoing delays in scheduling, issuing decisions and compliance are causing unacceptable harm to appellants throughout New York State. We continue to hear of ways in which the current system fails to uphold the due process rights of public benefit recipients and applicants. The initial recommendations set out in this letter are the first steps in remedying defects that have existed in the “temporary” system that has now been in place for over two years. Should OTDA move forward with any of these recommendations, this should not be construed as acceptance on behalf of the undersigned organizations that all issues with the demonstration project have been identified or resolved. OTDA must continue to engage with advocates and involve stakeholders in developing and improving remote hearing practices and policies.

Respectfully,

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