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We provide free legal aid to people with civil legal problems in western New York.

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How to Appeal a Fair Hearing Decision

What can I do if I get a fair hearing decision that I disagree with?

If you disagree with a fair hearing decision, you can appeal the decision in New York State courts. This appeal is called an "Article 78 proceeding." It is named after the section of New York law that sets out the rules for this kind of case: Article 78 of the New York Civil Practice Laws and Rules. Most people think about filing an Article 78 proceeding after they have lost a fair hearing against the Department of Social Services (DSS). There are other kinds of decisions by government agencies that can also be appealed to a court using Article 78 proceedings.

Do I need a lawyer?

No, you do not need a lawyer. However, Article 78 proceedings are usually filed by a lawyer. It may be hard to file the papers that you need by yourself. If you can, you should try to find a lawyer to help you. If you need help finding a lawyer, you can contact the New York State Lawyer Referral and Information Service. Their toll free number is 1-800-342-3661. They may be able to give you the names of lawyers in the area who are available and handle this type of matter. The rate is \$35 for an initial half-hour consultation.

In what court do I file my appeal?

You generally have to file your appeal in the New York State Supreme Court. Each county has its own Supreme Court. The Supreme Court is located at the County Courthouse.

Is there a deadline for filing an Article 78 proceeding?

Yes. Article 78 proceedings usually must be filed within four months of the date that you receive the fair hearing decision, but in some cases the deadline may be shorter. Check with a lawyer as soon as you can to find out your deadline to file an Article 78 proceeding.

What do I have to do to win?

What you will have to do depends on why you disagree with the fair hearing decision. You have to tell the court why the fair hearing decision was wrong. Depending on what that reason is, there are different legal arguments that might apply. Only a lawyer who listens to the facts of your case and is familiar with the law involved can give you a good answer about which arguments work best with your case.

Can I do anything else to appeal besides filing an Article 78 proceeding?

Yes, depending on what is involved in your case. If your case involves rights that are protected by the U.S. Constitution or by federal law you may be able to file a case in the federal court. You may also be able to file a case in New York State Supreme Court. If your case involves such rights, you may have up to three years from the date of the fair hearing decision to file your case. However, to avoid missing any deadlines, it is best not to wait. It is generally safest to challenge the fair hearing decision within four months of the date of the decision.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of Legal Assistance of Western New York.

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