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

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Fair Hearings

The Fair Hearing Process

When Can I Request a Fair Hearing?

If the Department of Social Services (DSS) does something you do not agree with, you have the right to request a fair hearing. Requesting a fair hearing allows you to challenge the determination and explain why you disagree to an administrative law judge.

For example, you might ask for a fair hearing if your application is denied or if your benefits are being cut off. You might also ask for a hearing if the amount of benefits you receive is being decreased.

NOTE: The date that you ask for a fair hearing can be very important. If you are already receiving benefits, and you want to keep getting the same benefits until the fair hearing, you must request a fair hearing BEFORE the date the notice goes into effect. When you receive benefits while you wait for the hearing, those benefits are called “aid to continue.”

For example, if you receive a notice telling you that your benefits will stop on May 31st, you should submit your request for a fair hearing **before** May 31st. This will allow you to continue receiving your benefits until the hearing is held and the administrative law judge makes a decision about the fair hearing issues.

For cash assistance or Medicaid issues, you can ask for a hearing for up to 60 days after the notice date. For SNAP (food stamps) issues, you can ask for a fair hearing up to 90 days after the date of the notice. However, you must request a fair hearing before the date that the change will occur if you want to continue receiving your benefits until the fair hearing.

Is There Any Downside to Requesting a Fair Hearing and Continued Aid?

If you are receiving “aid to continue” and you lose your fair hearing, you may have to pay back

the benefits that you received while waiting for your fair hearing decision. If you receive benefits in the future, the DSS office may “recoup,” or keep, up to ten percent (10%) of your monthly benefit amount to repay what you owe.

If this happens to you, and it is causing you hardship, you can ask the DSS office to keep less of your monthly benefits. Please note that the DSS office cannot recoup less than five percent (5%) of monthly benefits related to an overpayment.

If you have an overpayment and you are no longer receive monthly public assistance benefits, the DSS office may send you a bill for the overpaid benefits. If you do not respond to the bill, the DSS office could seek a money judgment against you.

How do I Request a Fair Hearing?

You can request a fair hearing by mail, telephone, fax, or online. Your request goes through the Office of Temporary and Disability Assistance (OTDA)—also known as the state fair hearing office.

MAIL:

You can mail your request to:

**New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
P.O. Box 1930
Albany, New York 12201-1930**

FAX:

You can fax your request to (518) 473-6735.

TELEPHONE:

You can request a hearing by telephone by calling **1-800-342-3334**.

Online:

Request a fair hearing online at: <http://otda.ny.gov/hearings/request/>. This is the fastest and easiest way to ask for a fair hearing.

When you open the webpage, click on Fair Hearing Online Request Form, and you will be brought to the online Fair Hearing request form. You can also click this link directly: <https://errswbnet.otda.ny.gov/errswbnet/erequestform.aspx>. Fill out the online form in order to request a hearing. Please note that you do not need to include a notice number, and that you need to only provide a brief reason for requesting a fair hearing.

Does it Make a Difference How I Request my Fair Hearing?

No. If you use a phone to ask for a fair hearing, you will get the same fair hearing that you would get if you had requested a fair hearing online. However, if you try to request a fair hearing over the phone, you may have to wait a long time. If you request your fair hearing online or by fax, make sure to print and keep a copy of the confirmation that the fair hearing request was received.

What If I Need a Fair Hearing as Soon as Possible?

If you have an emergency, such as an emergency housing denial, you should try to request your fair hearing by phone. When you speak to someone at the OTDA, tell them that you need an “emergency fair hearing” and explain to them why you need a fair hearing right away. If the OTDA representative agrees that it is an emergency, they will try to schedule the fair hearing as soon as possible. Depending on how soon the fair hearing is scheduled, there may not be time for the OTDA representative to mail a fair hearing scheduling notice to you, so be sure to write down the date, time, and location of the fair hearing.

Do I Need a Notice from DSS to Request a Fair Hearing?

No. You do not need to have a notice from DSS to request a fair hearing. This is also true if you have lost or misplaced the notice that you are asking for a fair hearing about. You can also ask for a fair hearing if you have not received a decision on your application and you believe there is a delay in processing your benefits application.

What Information Should I Have When I Ask for a Fair Hearing?

If you do not have a DSS notice, you will need to provide your name, date of birth, social security number, the county that you live in, and the reason why you are asking for a fair hearing.

If you are asking for a fair hearing based on a notice DSS sent you, you will want to have that notice with you. If you are requesting a hearing by phone, they will ask you for some information from that notice. If you are requesting a hearing by fax or by mail, you may want to include a copy of the notice with your request. If you are asking for a hearing online, then you will need some information from that notice.

If you have an advocate, they may be able to request the fair hearing on your behalf. You should ask them if they are able to make this request.

Can I Reapply for Benefits if I am Requesting a Fair Hearing?

Yes, generally you can do both at once. If you are requesting a fair hearing because your application was denied, you can reapply for benefits while you are waiting for the fair hearing.

Also, if you are requesting a hearing because your benefits were discontinued or stopped, you can try to reapply for benefits while you are waiting for a hearing to be scheduled.

What Happens After I Request a Fair Hearing?

After you request a fair hearing, you should receive an acknowledgment notice in the mail one or two weeks later. An acknowledgment notice is different than the fair hearing scheduling notice. An acknowledgment notice confirms that your fair hearing request was received, and includes the number assigned to your fair hearing (your fair hearing number). The acknowledgment notice will also tell you if you will continue to get benefits while you wait for the fair hearing.

Then, after another week or two, you should get a scheduling notice in the mail. The scheduling notice will tell you the time, date, and location of your fair hearing.

What if I Know I Cannot go to the Fair Hearing at the Scheduled Time?

If you know you cannot go to the fair hearing at the scheduled time, you should contact the New York State Office of Temporary and Disability Assistance (OTDA). You can ask the state fair hearing office to move the date of your fair hearing so that you can be there. Asking the fair hearing to be moved to a later date is called requesting an adjournment.

Just like when you first asked for a fair hearing, you can ask for an adjournment by phone, fax, mail, or online. However, because you do not know if OTDA will agree to a different date, it is best to call OTDA and speak to a live person. If you ask for an adjournment, you should keep proof that you asked. If you find out later that your fair hearing was not moved, you will need proof that you requested an adjournment if you want to try to get your fair hearing reopened.

What Can I do to Prepare for my Fair Hearing?

Before your fair hearing, you should gather any proof you have that supports what you are going to say. You will want to bring this proof with you to the hearing so that you can show it to the administrative law judge.

If you think that the DSS office has a copy in your file of proof that you need, you can ask them to let you review your case file before the fair hearing. You can also ask for a copy of the packet of evidence that the DSS office representative is going to use at the fair hearing. The packet is made up of different documents that support their position and the decision that was made about your case.

What Should I Know Before I go to my Fair Hearing?

Fair hearings are handled by the New York State Office of Temporary and Disability Assistance (OTDA). Each fair hearing is administered by an administrative law judge. At the fair hearing, the administrative law judge will listen to both sides, look over the paperwork, and ask questions of the parties. A fair hearing is more informal than other court proceedings.

You do not need to have legal representation at a fair hearing. You can bring witnesses and paperwork to help you. However, you can contact your local legal services office for possible representation.

It is important that you arrive early for the fair hearing. Generally, you will have to check-in at the DSS office when you arrive. If you do not check-in, then the DSS representative may think that you did not show up. The order for fair hearings is normally first-come, first-served. This means that the earlier that you check-in, the less time you may have to wait.

Many fair hearings are about whether you provided a document to the DSS office, such as a landlord statement or a birth certificate. Even if you did not provide the document to your DSS caseworker previously, try to bring it with you to the fair hearing to give to the administrative law judge.

If possible, be patient and polite. The administrative law judge will first allow the DSS representative to explain the DSS office's actions. Then, you will be given a chance to ask the DSS representative questions about anything they have said. Next, the administrative law judge will allow you to explain your side. Once you finish speaking, the DSS representative will have a chance to ask you questions. The administrative law judge may ask questions to you and/or the DSS representative.

The administrative law judge should listen to all the testimony, look over all the evidence, and then make a decision based on the law as it affects your particular situation. You will usually not receive a decision at your fair hearing.

What Cannot Be Fixed at a Fair Hearing?

The administrative law judge will only be able to hear testimony and review evidence about the problem that you requested a fair hearing about. You may have other problems with your case, but the administrative law judge will only be able to discuss those problems if you specifically included them in your fair hearing request.

The administrative law judge also cannot change the law. For example, you may think you are not receiving enough monthly benefits. However, if the amount you are receiving is correct under the current law, then the administrative law judge cannot order the DSS office to give you more benefits. You must meet New York State's eligibility rules for any benefits you receive. The laws decide who is eligible for which benefits. The administrative law judge only decides if the law was applied correctly in your case.

What Happens After the Hearing: The Decision

Generally, the administrative law judge does not make a decision at the fair hearing. It can take

several weeks for you to receive a fair hearing decision in the mail. The fair hearing decision can include several pages. Near the end of the decision there is a section called "DECISION AND ORDER." This section is where it will state if the administrative law judge ruled in your favor or ruled against you.

If the judge rules in your favor, the DSS office should take the required action stated in the decision within ten days. If the administrative law judge rules against you, the DSS office can take action against you (examples: stopping your benefits, reducing your benefits).

If you had an emergency fair hearing, you should receive a decision soon after your fair hearing.

If you receive a favorable hearing decision but the DSS office has not done what the judge told them to do, you can contact OTDA for help. The decision paperwork will tell you how to contact ODTA. You can also contact your local legal services program for possible assistance.

What if I Don't Agree with the Decision?

If you receive an unfavorable fair hearing decision, and you believe that the decision is wrong, you may be able to file an appeal (Article 78). Appeals are handled by the New York State Supreme Court. It can be very difficult to file an appeal without an attorney. You can contact a legal services office in your area for more information.

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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 our office.

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