

Know Your Rights: Fair Hearing

Presentation by Nassau Suffolk Law Services

Nassau Suffolk Law Services (NSLS) is committed to helping people in need assert and secure their rights under the law. Established in 1966, NSLS was one of the first Legal Services Corporation programs in New York State (NYS). We provide free legal services in thousands of civil (non-criminal) cases each year, as well as legal support to community advocates to ensure that people with low incomes and disabilities have equal access to the civil justice system on Long Island.

When to Request a Fair Hearing

To challenge the reduction, discontinuation, restriction, suspension or denial of any public benefit, such as:

- Failure to send a notice or error in the notice
- Removal of a person from a budget, or DSS failing to add a person to the budget
- Case closing for failure to recertify
- Sanction
- Inappropriate charge of overpayment or recoupment
- Incorrect budgeting of income

How to Request a Fair Hearing

- Online: <https://otda.ny.gov/hearings/request/>
- Mail:

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

- Fax: (518) 473-6735
- Phone: 1-800-342-3334

Timeline to Request

- If individual wants benefit to continue unchanged: within 10 days of the notice or before the effective date of the notice (Aid to Continue)
- Must be requested within 60 days of notice of agency action on a Public Assistance of Medicaid challenge.
- Must be requested within 90 days for Food Stamp Challenges
- Regulations: 18 NYCRR § 358-3.5(b); 18 NYCRR § 385.2(d); SSL § 22(4)(b)



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Expedited Fair Hearing

- Rent arrears where eviction is imminent
- Expedited food stamps
- Utility grant to prevent shut off
- Emergency housing issues
- The request to expedite the hearing must be made at the time the hearing request is submitted so that it can be scheduled more quickly

Appellant Rights: Notices

- Applicants must receive adequate notice of a denial of benefits
- Recipients must receive timely and adequate notice when DSS intends to change an existing grant

Appellant Rights at the Hearing

- Be heard in a meaningful manner and state their position orally (give testimony)
- Review the evidence DSS submits at the hearing and may ask for copies of the evidence (the ALJ will allow copies to be made afterward)
- Call necessary witnesses and confront and cross-examine adverse witnesses (including the Agency's representative –often the Agency representative does not have personal knowledge of the situation)
- Be represented by counsel or a representative, or proceed unrepresented.
- Make opening or closing statements.
- Make objections to the relevance of evidence, hearsay, personal knowledge, or to procedures.
- Have an impartial decision maker (the ALJ) make a conclusion resting solely on the evidence brought forth at the hearing.

Fair Hearing Decisions

- Fair Hearing Decisions 18 NYCRR § 358-6.1
- Decision must be based exclusively on the fair hearing record, or in case of decision without hearing, on documents submitted by Appellant and DSS
- Decision is final and binding on DSS
- OAH will mail copy of Decision After the Fair Hearing to Appellant and the Appellant's representative
- Redacted fair hearing decisions are available here:
<https://otda.ny.gov/hearings/search/>

