

# 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 or hearing officer.

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, whether seeking a fair hearing for cash assistance, Medicaid, or SNAP, you must request a fair hearing before the date that your benefits will be stopped/changed, 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. This would be called an overpayment. 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 eligible to 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 (OTDA)  
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:**

You can 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 the Fair Hearing Online Request Form. 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.

Most fair hearings will be scheduled to take place over the telephone. If you want to have your fair hearing held in person you must let the fair hearing office or New York State Office of Temporary and Disability Assistance (OTDA) know when you request your hearing. If you request an in-person fair hearing, the local DSS should provide you a private space and telephone or video equipment for your hearing. If you are unable to travel to your local DSS and do not have a telephone to use for the fair hearing, you should let OTDA know that you are homebound when you request your 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 fair hearing office or 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 from 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 "aid-to-continue" 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.

The scheduling notice will also have the phone number OTDA will call at the time of your hearing. If this number is wrong, you should let OTDA know the correct phone number as soon as possible. On the day of the hearing, you will receive a call from the administrative law judge. The telephone calls may appear as Blocked Caller, Private, Unknown, or have 212, 718, or 518 area codes. You should make sure your phone settings allow you to receive blocked calls.

If you do not answer, the administrative law judge will call 1 more time approximately 10 minutes later. If you miss both calls, your hearing request will be considered abandoned and you would need to show good cause to have your hearing request reopened.

Generally fair hearings are scheduled for morning or afternoon. Fair hearings scheduled at 9:00 am can start anytime between 9:00 am and 1:00 pm. Fair hearings scheduled at 1:00 pm can start anytime between 1:00 pm and 5:00 pm.

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

If you know you are not available for the scheduled time, you should contact OTDA. You can ask the state fair hearing office to move the date of your fair hearing so that you can be available. 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 by writing down the date and time you called and the name of the representative you spoke to. 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. 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 must submit your evidence to OTDA at least 2 business days before your hearing.

You can upload your evidence at [UpLoad.NY.gov](http://UpLoad.NY.gov).

You can email your evidence to [intakemail.hearings@otda.ny.gov](mailto:intakemail.hearings@otda.ny.gov).

You can fax your evidence to 518-473-6735.

You can mail your evidence to:

Office of Administrative Hearings

40 N. Pearl St, Fl 15B, Albany NY 12243

Or

Office of Administrative Hearings

PO Box 1930 Albany NY 12201

Whichever method you use, you should include your fair hearing number and the date/time of your hearing with your evidence.

Your local DSS must provide you with a copy of their evidence packet at least 2 business days before your fair hearing. The DSS evidence packet is made up of different documents that support their position and the decision they made about your case. If you have not received the DSS evidence packet 2 business days before your hearing, you should let the administrative law judge know at the beginning of your hearing.

### **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. Free civil legal services may be available to help you with your fair hearing as well. The legal services agencies in your area should be listed on your notice from DSS. You can also find legal services online at <https://www.lawhelpny.org/find-legal-help>.

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 before, you can submit that document to DSS before your hearing. You can also provide that document in your evidence packet to OTDA.

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 OTDA. You can also request that OTDA force the local DSS to do what the decision told them to do online at <https://otda.ny.gov/hearings/compliance/#online>. 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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Legal Assistance of Western New York, Inc. ®

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