

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

GEORGE B. WYMAN
COMMISSIONER

ADMINISTRATIVE LETTER

TRANSMITTAL NO. 72 PWD-61

DATE: April 20, 1972

TO: Commissioners of Social Services

SUBJECT: ALMENARES v. WYMAN -- Court order requiring continuation, without reduction, of grants of public assistance, in the federally aided categories, until state fair hearings afforded, held and decided (to comply with 45 CFR 205.10)

DISTRIBUTION: B 2a Commissioners only

Attached hereto are new fair hearing regulations as they will be filed with the Secretary of State. You must comply with these regulations on April 22, 1972 and thereafter. There is attached hereto detailed instructions for those proposed discontinuances, suspensions and reductions which were initiated prior to April 22, 1972 and those that will be initiated on and after April 22, 1972. Also attached are Notices of Discontinuance, Suspension and Reduction forms which must be reproduced and used by you in all proposed discontinuances, suspensions and reductions initiated on and after April 22, 1972. Examples of reasons to be given in such notices are also attached.

By Administrative Letter dated March 24, 1972 (Transmittal No. 40) drafts of the new fair hearing regulations were sent to you for your comments and suggestions. Because the Court established a tight time schedule (for implementation of Section 205.10 of the Federal Regulations) we were not able to afford you very much time to review the drafts and to comment on them. Despite this, many comments and suggestions were received and where they were acceptable to the Court and H.E.W., they were incorporated. If they were not acceptable, they could not be, and were not, incorporated.

You should know that the Federal District Court is supervising all aspects of our implementation of Federal Regulation 205.10 very closely. You should also know that the department, while complying with the directions of the Court, is making every effort to have Secretary Richardson withdraw or revise Federal Regulation 205.10.

On April 18, 1972, we applied to the Court for a brief extension of the April 22, 1972 implementation date in order for the department to further develop the forms and procedures which will be required and for the districts to revise their procedures, train staff, etc., but we regret to inform you that the Court denied our application.



First Deputy Commissioner

I. INSTRUCTIONS FOR IMPLEMENTATION
OF NEW FAIR HEARING REGULATIONS
(EFFECTIVE APRIL 22, 1972)

A. ON APRIL 22, 1972, THE ATTACHED FORMS FOR NOTICES OF DISCONTINUANCE, SUSPENSION OR REDUCTION OF ASSISTANCE, AND ONLY THE ATTACHED FORMS, SHALL BE USED IN ALL CASES WHERE PROPOSALS TO DISCONTINUE, SUSPEND OR REDUCE ASSISTANCE ARE INITIATED ON THAT DATE AND THEREAFTER. YOU MUST REPRODUCE THE ATTACHED FORMS AND USE THEM.

(NOTE: The attached forms shall only be used until more detailed forms are supplied to you by the State Department of Social Services.)

B. AS OF APRIL 22, 1972 IN USING THE ATTACHED FORMS YOU MUST:

- (1) Send the recipient the appropriate notice of the proposed action at least 15 calendar days before the effective date of the proposed discontinuance, suspension or reduction of the grant. (The notice must be mailed and postmarked at least 15 days prior to the date of proposed action. The date of posting and the date the notice is signed must be the same date.) *
- (2) Give detailed reasons for the proposed discontinuance, suspension or reduction. Examples of detailed reasons are attached. These examples are broken down into categories of the major reasons for discontinuance, suspension or reduction, which categories will be the basis for the forms that will be shortly supplied to you.
- (3) Give the recipient an opportunity for a conference before the proposed date of discontinuance, suspension or reduction, if requested by him, to discuss his case. (This right to a conference is not intended to meet the requirements of present Section 351.26 pre-termination review. Section 351.26 is not applicable under the new procedure and is to be REPEALED).
- (4) Insert the appropriate telephone number in the blank space provided on the form under the subject RIGHT TO A FAIR HEARING that recipients presently use to orally request fair hearings by telephone (Area Office).
- (5) Send a copy (duplicate photo or carbon) of all notices of discontinuance, suspension or reduction to the Fair Hearing Section, Division for Legal Affairs, State Department of Social Services, 1450 Western Avenue, Albany, New York on the same day that the notices are sent to the recipient

C. IN EACH CASE WHERE A NOTICE OF DISCONTINUANCE, SUSPENSION OR REDUCTION HAS BEEN SENT BY YOU TO A RECIPIENT AND THE RECIPIENT REQUESTS A FAIR HEARING FROM THE STATE DEPARTMENT OF SOCIAL SERVICES WITHIN THE 15 DAYS, YOU MUST NOT DISCONTINUE, SUSPEND OR REDUCE HIS ASSISTANCE AS PROPOSED UNTIL AFTER THE FAIR HEARING DECISION IS RECEIVED BY YOU. YOU WILL BE NOTIFIED IN EACH CASE BY THE STATE DEPARTMENT OF SOCIAL SERVICES BY TELEPHONE AND CONFIRMED IN WRITING WHEN ASSISTANCE MUST BE CONTINUED UNCHANGED.

(NOTE: You will be immediately notified by telephone and in writing when assistance should be discontinued or reduced as proposed because the recipient did not appear for the scheduled hearing and gave no acceptable reason for not appearing.)

* Notices need not be sent where the grant is being discontinued because of the death of the recipient or the recipient's whereabouts are not known.

D. WHEN A FAIR HEARING DECISION IS RECEIVED BY YOU AFFIRMING THE PROPOSED DISCONTINUANCE, SUSPENSION OR REDUCTION, YOU MUST DISCONTINUE OR REDUCE THE RECIPIENT'S GRANT AS SOON AS POSSIBLE, BUT NO LATER THAN ONE PAYMENT PERIOD AFTER THE FAIR HEARING DECISION IS ISSUED.

II. INSTRUCTIONS FOR ALL CASES WHERE NOTICES OF PROPOSED DISCONTINUANCE, SUSPENSION OR REDUCTION WERE INITIATED PRIOR TO APRIL 22, 1972

A. ALL OF THE PRESENT, EXISTING FAIR HEARING PROCEDURES WILL BE FOLLOWED BY THE SOCIAL SERVICES DISTRICTS (AND THE STATE). THIS INCLUDES THE FOLLOWING:

- (1) Districts must adhere to all of the requirements of Section 351.26 (pre-termination review) of the present regulations.
- (2) If the decision after a Section 351.26 local review is afforded (if requested) is to discontinue, suspend or reduce, the recipient's grant must be discontinued, suspended or reduced as proposed.
- (3) If the recipient requests a fair hearing in connection with proposed discontinuances, suspensions or reductions initiated prior to April 22, 1972, do not continue assistance until the fair hearing decision is issued.

(NOTE: You must continue assistance only pursuant to Section 351.26 of the present regulations.)

(2 copies to recipient)
(1 copy to Albany)

Name of Agency and Center or District Office, Address

NOTICE OF INTENT TO DISCONTINUE PUBLIC ASSISTANCE

Name of Recipient:

Category and Case No:

Address:

Date:

This is to advise you that this department intends to DISCONTINUE your public assistance grant on _____ for the following reason(s):

You may have a conference at this department to review your case at any time before the proposed date of discontinuance of your grant.

(Signed)

(Date)

RIGHT TO FAIR HEARING

If you believe that your assistance should not be discontinued, you may request a state fair hearing by telephoning _____ or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be discontinued as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be discontinued, you will continue to receive your assistance unchanged until the fair hearing decision is issued.

(2 copies to recipient)
(1 copy to Albany)

Name of Agency and Center or District Office, Address

NOTICE OF INTENT TO DISCONTINUE MEDICAL ASSISTANCE AUTHORIZATION

Name of Recipient:

Category and Case No.:

Address:

Date:

This is to advise you that this department intends to DISCONTINUE your medical assistance authorization on _____ for the following reason(s):

You may have a conference at this department to review your case at any time before the proposed date of discontinuance of your medical assistance.

(Signed)

(Date)

RIGHT TO FAIR HEARING

If you believe that your medical assistance should not be discontinued, you may request a state fair hearing by telephoning _____ or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your medical assistance should not be discontinued as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your medical assistance is proposed to be discontinued, you will continue to receive your medical assistance unchanged until the fair hearing decision is issued.

(2 copies to recipient)
(1 copy to Albany)

Name of Agency and Center or District Office, Address

NOTICE OF INTENT TO SUSPEND PUBLIC ASSISTANCE

Name of Recipient:

Category and Case No.:

Address:

Date:

This is to advise you that this department intends to SUSPEND your public assistance grant on _____ for the following reason(s):

You may have a conference at this department to review your case at any time before the proposed date of suspension of your grant.

(Signed)

(Date)

RIGHT TO FAIR HEARING

If you believe that your assistance should not be suspended, you may request a state fair hearing by telephoning _____ or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be suspended as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be suspended, you will continue to receive your assistance unchanged until the fair hearing decision is issued.

(2 copies to recipient)
(1 copy to Albany)

Name of Agency and Center or District Office, Address

NOTICE OF INTENT TO REDUCE PUBLIC ASSISTANCE

Name of Recipient:

Category and Case.:

Address:

Date:

This is to advise you that this department intends to reduce your public assistance grant from _____ to _____ for the following reason(s):

You may have a conference at this department to review your case at any time before the proposed date of reduction of your grant.

(Signed)

(Date)

RIGHT TO FAIR HEARING

If you believe that your assistance should not be reduced, you may request a state fair hearing by telephoning _____ or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be reduced as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be reduced, you will continue to receive your assistance unchanged until the fair hearing decision is issued.

EXAMPLES OF DETAILED REASONS TO BE GIVEN ON
NOTICES OF DISCONTINUANCE, SUSPENSION OR
REDUCTIONS INITIATED ON AND AFTER APRIL 22, 1972

(NOTE: You must give reasons in at least as much detail as in the examples below)

A. NOTICE OF DISCONTINUANCE:

EXAMPLE 1. (Failure to accept a job) ... for the reason that you did not accept employment at _____ (place) on _____ (date) as you were advised to do on _____ (date) by _____ (name).

The reason you gave _____ (reason) to _____ (name) on _____ (date) for failing to accept employment is not an acceptable reason under the law. The following are acceptable reasons under the law:

1. The job offer was not bona fide.
2. The salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation hours or conditions of work offered are substantially less favorable than those prevailing for similar work in locality.
3. A strike, lock-out or other industrial controversy was in progress at the place in which employment was offered.
4. The acceptance of such employment would either require you to join a company union or resign from or refrain from joining any bona fide labor organization.
5. The job would have been hazardous to your life or health, or there was an absence, if appropriate, of workmen's compensation.
6. The place of employment was an unreasonable distance from your home.
7. Transportation by public carrier or by private means between your home and the place of employment was unavailable.
8. Child care plans were temporarily disrupted making it impossible for you to report as required.
9. Temporary and verified illness incapacitated you.

EXAMPLE 2. (income exceeds needs).... for the reason that your applicable income of _____ (amount and period) after allowable deductions of _____ (amounts and types) is greater than your public assistance needs of _____ (amount and period) and you, therefore, have surplus income of _____ (amount and period).

EXAMPLE 3. (excess resources).... for the reason that you have money in the amount of _____ available to meet your public assistance needs of _____ (amount of budget and period) in the _____ (name of bank) under account no. _____ which was verified by _____ (name of agency worker) on _____ by _____ (means of verification) and, you must, use this money to meet your needs.

B. NOTICE OF REDUCTION:

EXAMPLE 1. (receipt of benefits) for the reason that you began receiving _____ (type of benefit) in the amount of _____ (amount and period) on _____ (date) which was verified by _____ (name of agency worker) on _____ (date) by _____ (means of verification).

EXAMPLE 2. (recoupment of overpayment)... for the reason that on _____ (date) we will begin deducting _____ (amount) from your next _____ (no.) regular grants in order to recoup _____ (total amount) because for the period _____ your needs were _____ (amount) and you received assistance grants in the amount of _____ due to _____ (reason) which resulted in an overpayment to you of _____ (amount)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of sections 20 and 34 of the Social Services Law, and section 83 of Chapter 110 of the Laws of 1971, I, Barry L. Van Lare, Acting Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Chapter I and Chapter II of the Official Regulations of the State Department of Social Services, effective April 22, 1972.

Parts 84 and 358 and section 351.26 are hereby REPEALED.

Subchapter B of Chapter II is hereby amended by adding thereto a new Part to be numbered Part 358 thereof to read as follows:

PART 358

FAIR HEARINGS

Section 358.1 Federal categories; home relief. The State Department of Social Services will consider all complaints and appeals and requests for fair hearings on the basis of the eligibility requirements as set forth in the Social Services Law, the rules of the State Board of Social Welfare and the regulations of the department [see Chapter II of this Title], the policies governing the administration of public assistance in the districts involved and the reasonable application of discretionary judgments properly exercised by social services officials.

Definitions.

358.2/(a) Appellant. An applicant or recipient who requests a fair hearing shall be termed an appellant.

(b) Board. Board means the State Board of Social Welfare.

(c) Commissioner. Commissioner means the State Commissioner of Social Services.

(d) Department. Department means the State Department of Social Services.

(e) Fair hearing. Fair hearing is the procedure by which an applicant for or recipient of public assistance and care or services may appeal to the Commissioner from certain decisions or actions of a social services official and have a hearing thereon.

(f) Hearing officer. Hearing officer means an attorney who is employed by the department exclusively to conduct hearings for the commissioner.

(g) Parties. The parties to a fair hearing shall be the appellant and the social services official whose decision or action is being reviewed.

(h) Social services official. Social services official means the county, city or town official responsible for the administration of public assistance and care. The term shall also include the Director of the Bureau of Mental Health Affairs or the head of any other bureau of the department to which is assigned responsibility for furnishing public assistance and care to persons in family care on conditional release from an institution in the State Department of Mental Hygiene in accordance with the provisions of section 133-a of the Social Services Law and responsibility for furnishing medical assistance for the needy to eligible persons who are 65 years of age or older who are patients in State hospitals for the mentally disabled or for the treatment of tuberculosis in accordance with the provisions of subdivision 2 of section 365 of the Social Services Law.

358.3 Informing applicants and recipients of right to fair hearing. Every applicant and recipient shall be informed in writing at the time of application and at the time of any action affecting his receipt of assistance or services: (a) Of his right to a fair hearing;

(b) Of the method by which he may obtain a hearing;

(c) That he may be represented by legal counsel, or by a relative, friend, or other spokesman, or he may represent himself; and

(d) Of the availability of the community legal services available to assist him in the fair hearing.

358.4 Right to a fair hearing. The following persons shall be entitled to a fair hearing: (a) Applicants for or recipients of aid to dependent children, aid to the aged, blind or disabled, medical assistance for needy persons, home relief or veterans assistance on the following grounds:

(1) denial of assistance;

(2) failure to determine the applicant's eligibility and, if found eligible, to issue a cash grant or authorize medical assistance within 30 days from the date his application therefor was made;

(3) inadequacy in amount or manner of payment of assistance;

(4) discontinuance or suspension of assistance, in whole or in part;

(5) objections to department policy as it affects the applicant or recipient's situation; and

(6) any other grounds affecting the applicant or recipient's entitlement to assistance or the amount thereof or the time of payment thereof, including, but not limited to, determinations of employability where assistance has not been discontinued or reduced.

(b) Applicants for or recipients of aid to dependent children, aid to the aged, blind or disabled, home relief or veterans assistance, and applicants for or recipients of child welfare services, on the following grounds:

(1) denial of an application for any service required to be provided by a social services official in accordance with applicable provisions of law, rules of the board or regulations of the department;

(2) discontinuance of any such service;

(3) a determination that an applicant or recipient must participate in a service program, or

(4) a determination which failed to take account of a recipient's choice of service program.

(c) Applicants for or participants in the food stamp program on the following grounds:

(1) denial of authorization for participation;

(2) failure to determine the applicant's eligibility and, if found eligible, to authorize participation within 30 days from the date of application therefor was made;

(3) inadequacy in the extent or manner of authorization for participation;

(4) discontinuance or suspension of authorization, in whole or in part.

358.5 How request for a fair hearing is made, withdrawn or abandoned. (a) Any clear written or oral communication to the department by or on behalf of an applicant or recipient requesting review of a social services official's decision, action or failure to act shall constitute a request for a fair hearing if made within 60 days after the action or failure to act complained of.

(b) The freedom to make such a request must not be limited or interfered with in any way, and emphasis must be on helping the appellant to submit and process his request and in preparing his case, if needed.

(c) A request for a fair hearing shall not be denied or dismissed except where it has been withdrawn by the applicant or recipient in writing, or abandoned.

(1) A request for a hearing shall be considered as withdrawn only upon receipt of a written statement from the appellant or his representative, or upon a statement on the record at the hearing.

(2) A request for a hearing may be considered abandoned if neither the appellant nor his representative appears at the time and place agreed upon for the hearing, and if, within 10 calendar days after the mailing of an inquiry by the department as to whether the appellant or his representative wishes any further action taken on his request for a hearing, no reply is received by the department.

(3) In the event the appellant informs the social services official that he is satisfied and no longer wishes to pursue his request for a fair hearing, he shall be advised that he must address a written withdrawal to the department in Albany.

358.6 Group hearings. Where two or more appellants request fair hearings and the sole issue is one of objection to department policy, such cases shall be consolidated and decided by a group hearing at the request of the appellants or they may be consolidated by the department without such a request. Each appellant has the right to withdraw from the group hearing and have an individual hearing.

358.7 Referral of request to social services official. The department shall send promptly a copy of the request for a fair hearing to the social services official of the appropriate county, city or town.

358.8 Continuation of assistance payments and medical assistance authorization when fair hearing is requested. (a) In cases of any proposed action to terminate, suspend or reduce assistance payments or medical assistance authorization, timely and adequate advance notice thereof detailing the reasons for the proposed action shall be sent to the recipients. Under this requirement:

(1) "Timely" means that the notice is mailed at least 15 days before the action is to be taken.

(2) "Adequate advance notice" means a written notice that includes details of reasons for the proposed action, explanation of the individual's right to conference, his right to request a fair hearing and the circumstances under which assistance payments or medical assistance authorization is continued if a fair hearing is requested.

(b) If, within the advance notice period, the recipient responds by indicating his wish for a conference with local agency staff, an opportunity shall be provided for the recipient (or his representative) to discuss his situation with appropriate local agency staff, obtain an explanation of the reasons for the proposed action, and present information to show that the proposed action is incorrect. Under this requirement:

(1) During the conference, the recipient shall be given the opportunity to speak for himself or be represented by legal counsel or by a friend or other spokesman.

(2) The opportunity for a conference shall not in any way diminish the recipient's right to a fair hearing.

(c) In cases in which there is a request for a fair hearing within the advance notice period.

(1) Assistance shall be continued until the fair hearing decision is rendered and through a period consistent with the established policies for issuance of payments except when the recipient requests an adjournment of or fails to appear for the hearing without good cause.

(2) The department shall promptly notify the appropriate social services official and the recipient when a request for a fair hearing has been made which requires that assistance be continued.

358.9 Responsibility of the social services official in cases of proposed discontinuance, suspension or reduction of assistance. When a social services official proposes to discontinue, suspend or reduce a grant of assistance, he or his designee who has the appropriate authority, shall (a) review, or cause to be reviewed, the proposed action and determine its correctness;

(b) if, after the review, it is decided that the proposed action would be correct, send, or cause to be sent, a notice of the proposed action, as defined in Section 358.8(a)(2) of this Part, to the recipient at least 15 days before the date the action is to be taken, on forms required by the department;

(c) send a copy of such notice to the department at the same time the notice is sent to the recipient;

(d) within 48 hours after receipt of notification from the department of a request for a fair hearing, send to the appellant, his representative and to the department copies of all documents to be submitted into evidence at the hearing in support of the proposed action;

(e) immediately upon notification from the department that assistance must be continued until the fair hearing decision is issued, take such action to assure that such assistance shall not continue for more than one payment period after the fair hearing decision is issued;

(f) take such action as is necessary to assure that an appropriate representative of the agency will appear at the hearing with the case record and a brief written summary of the agency's case and be prepared to present evidence in support of the proposed action, including: the appropriate case number and the applicable category or categories of public assistance or care; the names, addresses, relationships and ages of persons affected; the decision or action which prompted the request for the fair hearing; a brief description of the facts, evidence and reasons allegedly supporting such decision or action, including identification of the specific provisions of law, department regulations and approved local policies which allegedly support the proposed action; the relevant budget or budgets prepared by the social services district for the person or family.

(g) take such action to assure that the person who made the determination to discontinue, suspend or reduce assistance, or who is responsible therefor, shall appear at the hearing.

358.10 Time and place of hearing. The hearing shall be held at a time and place convenient to the appellant as far as practicable, taking into account circumstances such as the physical inability of the appellant to travel to the regular hearing location. If requested, necessary transportation for the appellant and his representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.

358.11 Notice of Hearing. At least six working days prior to the date of the hearing, written notice thereof shall be sent to the parties and their representatives. The notice to the parties shall inform them: (a) of the date and place of the hearing and the appellant's right to a change in the date and place of the hearing where necessary;

(b) of the appellant's rights with respect to transportation and other costs and expenditures;

(c) of the circumstances under which assistance may continue until the fair hearing decision is issued where the recipient requests an adjournment or fails to appear for his hearing;

(d) of the manner in and means by which adjournments may be requested and granted;

(e) of the issues which are to be the subject of the hearing;

(f) of the manner in which the hearing will be conducted;

(g) of the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence.

358.12 Examination of documents before hearing, examination of case record before the hearing. (a) If copies of the documentary evidence which the social services official plans to use at the hearing have not already been provided to the appellant and his representative, an opportunity to examine such documents, if requested, shall be afforded the appellant or his representative, who shall have appropriate written authorization, at a reasonable time before the date of the hearing.

(b) The recipient or his representative, who shall have appropriate written authorization, shall be afforded an opportunity to examine the case record at a reasonable time before the hearing in accordance with and to the extent permitted by Section 357.3(c) of these regulations.

358.13 Hearing Officer. The hearing shall be conducted by an impartial hearing officer of the department, who has not been involved in any way with the action in question.

358.14 Powers of Hearing Officer. The hearing officer shall have all the powers conferred by law and regulations of the department to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

358.15 Who may be present at hearing, authorization of representative. (a) The appellant, his representative or representatives (who may be attorneys or other persons representing him), counsel or other representatives of the social services official, witnesses of both parties and any who may be called by the hearing officer and representatives of the department may be present at the hearing, together with such other persons as may be admitted by the hearing officer in his discretion with the consent of the appellant.

(b) An individual or organization, other than an attorney, representing an appellant shall have an appropriate written authorization, unless the condition of the appellant makes it impracticable for him to execute such authorization.

358.16 Conduct of hearing - rights of parties. (a) The hearing officer shall preside. He shall make an opening statement describing the nature of the proceeding, the issues and the manner in which the hearing will be conducted.

(b) Technical rules of evidence followed in a court of law shall not apply, but evidence must be relevant and material.

(c) Each party has a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party.

(d) The recipient or his representative shall have the right to examine the case record in accordance with and to the extent permitted by Section 357.3(c) of these regulations.

(e) When the hearing involves medical issues, provision shall be made to obtain a medical assessment other than that of the person(s) involved in making the original decision from a source satisfactory to the appellant and made part of the record, if the hearing officer or the appellant deems it necessary.

(f) The hearing may be adjourned by the hearing officer for good cause on his own motion or at the request of either party.

(g) A verbatim record of the hearing shall be made.

358.17 Examination of record after hearing. The record of the hearing, including the recommendations of the hearing officer, shall be confidential, but it may be examined by either party or their representatives at a place accessible to them and at a reasonable time.

358.18 Decision after hearing. (a) The fair hearing decision shall be made and issued by the commissioner on the basis of the hearing record including the recommendations of the hearing officer which recommendations shall be based exclusively on evidence and other material introduced at the hearing, It shall be issued

as promptly as feasible and within 60 days from the date the request for a fair hearing is received by the department. However, such time may be extended when the appellant requests a delay in his hearing. The decision shall describe the issues, recite the relevant facts, the pertinent provisions of law, board rule, department regulation and State approved local policy provisions, make appropriate findings, determine the issues, state the reasons for the determinations, and, when appropriate, direct specific action by the social services official. The decision shall be binding upon the social services officials.

(b) A copy of the decision shall be sent to each of the parties and their representatives, if any.

(c) In the letter transmitting the decision, clear reference shall be made to availability of judicial review.

358.19 Decision without hearing. (a) The appellant shall have the option to request that his appeal from a social services official's determination, action, or failure to act be decided by the commissioner without a hearing. In such cases, opportunity shall be afforded each party to submit written evidence and to review and comment on the evidence submitted by the other party.

(b) If at any stage of an appeal from a social services official's action or failure to act, it clearly appears to the commissioner that the social services official's action or failure to act is contrary to law, board rule, department regulation or the social services official's own State approved policy, he may issue a decision directing the social services official to perform specific actions for the benefit of the appellant.

(c) When an appellant elects that his appeal be decided by the commissioner without a hearing, the department's area office shall:

(1) notify the appellant and responsible social services official of the county, city or town to submit in writing to the area office all pertinent information relating to the appeal within 10 working days and shall inform each that such material is subject to the review and comment of the other party;

(2) on receipt of such information, furnish copies of the information furnished by each party to the other and shall invite comment thereon within 10 working days.

(d) When the appellant has emergency needs resulting from a county, city or town social services official's actions or failure to act, the department's area director shall recommend to the commissioner that a decision be issued for the benefit of the appellant.

358.20 Correction of error.

When a fair hearing decision has ordered the correction of a discontinuance, the correction of a denial of an application for assistance, or the correction of the amount of assistance, a grant shall be made to cover the full amount to which the applicant or recipient was entitled in accordance with the decision for the entire period from the date the incorrect action was taken.

358.21 Direction relative to similar cases. When a fair hearing decision indicates that the social services official has misapplied provisions of law, board rule, department regulation, or such official's own State approved policy, the commissioner's letter transmitting such decision to such official may contain a direction to such official to review other cases with similar facts for conformity with the principles and findings in the decision.

358.22 Compliance with decision. When a decision of the commissioner (whether made after or without a hearing) directs a social services official to perform specific actions, such official shall comply promptly with such directions and make a report thereof to the department within 30 days after receipt of the decision.

358.23 Compliance with direction relative to similar cases. When a direction has been given to a social services official to correct misapplication of law, board rule, department regulation or such official's own State approved policy in all cases similar to the one in which a decision has been issued, such official shall report the actions he has taken to comply with such direction to the department within 30 days after receipt of the direction. The social services official shall make such additional reports as the department may require.

358.24 Promulgation of decisions. Copies of all fair hearing decisions, complete or in summary form, shall be furnished all social services officials who shall cause them to be accessible to the public, subject to the requirements for safeguarding the confidentiality of public assistance information.

358.25 Need for revision of board rule and department regulation indicated by appeals and fair hearings. When, as a result of appeals and fair hearings, there are indications that provisions of board rule or department regulation or both may be inadequate, review of such provisions shall be promptly initiated by the department.

358.26 Required local procedure for consideration of complaints. Effective complaint and adjustment procedures, by means of which corrective action may be obtained within the local department of social services without the need for a fair hearing, are essential and shall be established by each social services official, provided that such procedures shall not be conducted or used so as to inhibit the exercise of any of the rights to a fair hearing granted under these regulations.

358.27 Application of regulations to cases for which department is responsible. These regulations shall apply to cases for which the department is responsible for furnishing public assistance and care pursuant to the provisions of section 138-a and subdivision 2 of section 365 of the social services law. In such cases, the reports required to be made to the department by sections 358.22 and 358.23 of these regulations shall be made to the commissioner or any deputy commissioner designated by him.

Dated: April 21, 1972

Signed: Barry L. Van Lare
ACTING COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on April 21, 1972, amending in part, Chapter I and Chapter II of the Official Regulations of the State Department of Social Services, as contained in Title 18 NYCRR.

Dated: April 21, 1972

Signed: Barry L. Van Lare
ACTING COMMISSIONER