Office of Administrative Hearings (OAH)	Transmittal Number: 95-28
Procedures Transmittal	Date: August 1, 1995
 Distribution:	+
ALB OAH Staff [X] UPS ALJS/ [X] Upstate LDSS [X] SUP ALJS [X]	Subject: Home Hearings Pursuant to
NYC OAH Staff [X] NYC ALJS/ [X] NYC Agencies [X] SUP ALJS [X]	Varshavsky v. Perales (Issue Code 900)

Pursuant to the <u>Varshavsky v. Perales</u> litigation, and in accordance with a preliminary injunction, this office has instituted a procedure for conducting home hearings for homebound appellants for those cases already held, but not issued, where there are non-aid issues for which an affirmance has been recommended by the ALJ. These are cases where the representative appeared on behalf of the homebound appellant (issue code 997) or where the appellant testified in a homebound telephone hearing (issue code 999).

Beginning August 4, 1995 these types of cases will be reopened, the issue code 900 will be added by staff in the Homebound Hearing Unit to signify that a Home Hearing will be scheduled, and the attached notice will be forwarded with the scheduling notice. For statistical reporting, it is important that the original issue codes 997 or 999 be retained. The 900 code will be added by staff in the Homebound Hearing Unit, as an additional code. Note: All home hearings have been determined by the court to be subject to AID CONTINUING despite previous aid status.

Aside from the 900 issue code, there are three unique ways to distinguish these cases:

(1) Review the Comment section of the DSS 1891 and laser DSS 457 for the following language:

"Pursuant to the preliminary injunction in <u>Varshavsky v. Perales</u>, the Agency is directed to provide "aid-continuing" to the appellant pending the home hearing. In this case "aid-continuing" requires

(# of hours, etc. to be spelled out in Comments)

- Note: Henry Pedicone will be responsible for determining what constitutes aid continuing on a case-by-case basis and staff in the Homebound Hearing Unit will be responsible for updating the system.)
- (2) Check the message field on PFHINQ or PFHREQ for the following language:

"AC per Varshavsky v. Perales"

(3) Refer to the hardcopy DSS 457 which is being sent to all parties for the words "Home Hearing" and the appellant's home address in Section F, "Place of Hearing." *

There are many scheduling considerations in trying to get these cases calendared and, while every attempt will be made to accommodate individualized scheduling concerns, the need to schedule Home Hearings promptly is paramount. Home Hearings in NYC will initially consist of approximately 50 non-aid MA and OHC cases. Upstate procedures have yet to be determined for the approximately 25 non-aid cases. Future calendars will be devised for aidcontinuing cases that have decisions pending, as well.

It is essential that all inquiries regarding Home Hearings (requests for adjournments, aid-continuing inquiries or redirects, possible withdrawals, etc.) are referred to the Homebound Hearing Unit for proper handling. Channeling all inquiries to either Karen Longale or Doris Flagler will ensure that the directives of the court order are consistently applied.

Further information will be provided as available. Questions can be directed to your supervisor or Sue Fiehl at (518) 473-4779 or via e-mail at 90j029; or to the Homebound Hearing Unit (Karen Longale at 486-6484 or via e-mail 89a681; or Doris Flagler at 473-7055 or via e-mail la0180.)

Mark Lacivita, Director of Administration Office of Administrative Hearings

Attachment

^{*}Until system changes can be effected, the electronic DSS 457 notification to the agency will continue to indicate Telephone Hearing at the top and will NOT indicate the appellant's home address but will continue to indicate as the hearing location the local agency, or in NYC, the appropriate borough.

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF HOMEBOUND HEARING

As a result of a preliminary injunction issued in the matter of <u>Varshavsky v. Perales</u>, the Department is required to reopen the above fair hearing, to allow you to present evidence in person at a hearing to be conducted in your home. The new hearing will allow the introduction of additional evidence on the issue(s) listed on the Notice of Scheduling, which is the same issue(s) addressed at your first hearing. A Notice of Scheduling is attached which indicates the date and time of the home hearing.

If you have a morning appointment, you must be present at your home from 9:00 am to 12:00 Noon. If you have an afternoon appointment, you must be present at your home from 1:00 pm to 4:00 pm. Between those hours an Administrative Law Judge will arrive at your home to conduct a hearing with your full participation.

If you have any questions, please call 1-800-342-3334 and ask to speak with someone in the Homebound Hearing Unit.

Attachment

HOMEBOUND HEARING LETTER N (ATTACHMENT TO DSS 457)