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 	Transmittal   Number: 96-36
Procedures Transmittal	Date: November 6, 1996
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ALB OAH Staff [X] UPS ALJs/ [ ] Upstate LDSS [ ]	Subject: <u>DeLuca</u> et al.
SUP ALJS [ ]	v. Hammons and Wing
	Dispositions of Fair
NYC OAH Staff [X] NYC ALJs/ [X] NYC Agencies [X]	Hearing Request
SUP ALJs [X] (NOHC only)	

Pursuant to the order in <u>DeLuca et al. v. Hammons and Wing</u>, which requires New York City Human Resources Administration to withdraw all outstanding notices of intent to reduce home care hours for clients with PERS (Personal Emergency Response) devices for which fair hearing requests are pending, a procedure has been devised to process and issue Dispositions of Fair Hearing Request. The NYC Office of Home Care (NOHC) shall provide an advance faxed listing of names and fair hearing numbers of those cases for which it has issued a Notice of Withdrawal. Upon receipt of this advance list, staff in the Albany Communications Intake Unit will add a subcategory of DISP to the fair hearing record. This will ensure that the hearing does not come up for automatic scheduling.

Upon receipt of the confirming Notice of Withdrawal from the Office of Home Care, a decision (Disposition of Fair Hearing Request) will be scripted by staff in the Albany Communications Intake Unit. All Notices of Withdrawal pursuant to "DeLuca v. Hammons" (whether received via mail or via fax) must, therefore, be referred to appropriate staff in the Intake Unit (currently Doris Flagler) rather than simply being withdrawn.

## ALJs Please Note:

Since this administrative procedure applies to unscheduled fair hearing requests, when the hearing has already been calendared, ALJs may be presented with the NOHC Notice of Withdrawal at the hearing. ALJs who receive Notices of Withdrawal at the time of the hearing should note the disposition as "Agency Withdrawal" and refer the file to the Albany office for issuance of a Disposition of Fair Hearing. The "Agency Withdrawal" should, therefore, be taken on the record and the file and DSS-1962, Fair Hearing Questionnaire ("Green Sheet"), so noted. If the agency fails to stipulate, for whatever reason, it is conceivable that ALJs will be required to issue a reversal in accordance with orders pursuant to DeLuca et al., v. Hammons and Wing which require the agency to withdraw all outstanding notices of intent to reduce home care hours with PERS for which hearing requests are pending and notify the NYS Department of Social Services in writing of such withdrawals (see memorandum dated June 20, 1996 to all NYC ALJs and Supervising ALJs from Henry Pedicone re: DeLuca, et al., v. Hammons (OSDC/SDNY) Stipulation and Order; Permanent Injunction). The disposition "Appellant Withdrawal" should NOT be utilized for these cases, despite the apparent resolution of these matters from the appellant's or representative's perspective.

If there are any questions with respect to this procedure, please direct them to your supervisor or to Sue Fiehl at (518) 473-4779 or via e-mail 90j029.

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Mark Lacivita, Director of Administration Office of Administrative Hearings