

Office of Administrative Hearings (OAH)			Transmittal Number: 99-40
Procedures Transmittal			Date: September 14, 1999
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Distribution:			
ALB OAH Staff [X]	UPS ALJs/ [X] SUP ALJs [X]	Upstate LDSS [X]	Subject: Hearing Right for Former Recipients When Challenging the Amount of a Claim for Overpayment of PA
NYC OAH Staff [X]	NYC ALJs/ [X] SUP ALJs [X]	NYC Agencies [X]	

Litigation in the matter of Butler v. Wing, et al. has resulted in a modification in Office of Administrative Hearing (OAH) procedures with respect to the scheduling of hearings for former recipients of public assistance who are challenging the amount of a claim for overpayment of Public Assistance. Pursuant to 18 NYCRR 358-3.1(b)(17), a hearing right is provided in situations where an appellant challenges a specific claim for overpayment brought by the local agency and disagrees

"...with the amount of a claim for the overpayment of public assistance or the over-issuance of food stamp benefits, except if the amount of such claim has already been determined in accordance with Part 359 or Part 399 of this Title, by an administrative disqualification hearing, a waiver of an administrative disqualification hearing, a court determination, or a disqualification consent agreement;"

In conjunction with 18 NYCRR 358-2.18, such a right extends to former recipients as follows:

Recipient means a person who is, or has been, receiving a covered program or service. For the purpose of this Part, recipient includes a former recipient seeking to review a determination of a social services agency and who would have a right to a hearing under section 358-3.1 of this Part if such person were a current recipient.

In the past, if a former recipient sought review through the hearing process of a claim for Public Assistance overpayments, a letter was sent as notification to the appellant that pursuant to 18 NYCRR 358-3.1(f), a former recipient of public assistance does not have a right to a hearing where the local agency has demanded recovery of public assistance paid and has not proposed to take any action with respect to a current grant of public assistance. To the extent that the issue for review at the hearing involves a dissatisfaction on the part of the appellant that the agency is (1) sending dunning letters seeking repayment, (2) seeking to enforce a lien on the appellant's property, (3) seeking a wage assignment against the appellant's assets, or (4) seeking to apply a tax refund offset, etc., Section 358-3.1(f) continues to apply, precluding a hearing right on these specific issues. However, if the request challenges the overpayment and the underlying amount of the overpayment, former recipients do have a right to a fair hearing as set forth above in accordance with Sections 358-3.1(b)(17) and 358.2-18.

The subject of the hearing will be the timeliness of the request based on the claim and the underlying issue as to whether there was an overpayment and the amount thereof. If there is a finding of fact that there was not an overpayment, or that there was an erroneous amount recovered from the appellant, the decision will direct an adjustment of the agency's records.

As a related issue, for all current and former recipients of food stamps who are subject to tax refund offsets to recover food stamps, although the refund offset issue is not hearable, the appellant has a right to a hearing if s/he is contesting the underlying food stamp overpayment determination.

Any questions can be brought to the attention of your supervisor or Sue Fiehl at (518) 473-4779 or via email 90j029.

Mark Lacivita, Director of Administration
Office of Administrative Hearings