

Agenda
Utilization of Fair Hearing Outcome Data
2011 Winter NYPWA Conference
February 2, 2011
Albany, NY

Introduction (Maria Vidal) (5 minutes)

Brief History and Legal Foundation of OAH (Mark Lahey) (10 minutes)

- Establishment of OAH
- Goldberg v. Kelly* and Due Process as foundation of modern OAH/fair hearing process
- Social Services Law §22 (basis of jurisdiction for OAH)

Agency's Role in the Fair Hearing Process (Jim Ryan) (25 minutes)

Brief Discussion of Relevant provisions in 18 NYCRR 358 relating to Agency

Notices

- CNS v. Manual
- 18 NYCRR 358-3.3 (adequate v. timely and adequate)

Aid-to-Continue

- 18 NYCRR 358-3.6

Pre-Hearing Responsibilities of Agency

- 18 NYCRR 358-3.7 (Access to Case Record/Request for Documents)
- 18 NYCRR 358-4.2 (Request for Evidence Packet, Conferences)

Responsibilities and Rights in Fair Hearing Process

- 18 NYCRR 358-4.3

Statistical Data Discussion and Analysis (Mark Lahey) (35 minutes)

- What is available to the Districts from OAH
- How Can Be Used as a Performance Based Tool
- Presentation of Data
 - Statewide Requests and Heard cases 2006-2010
 - Compare NYC v. Upstate
 - Top 10 Issues in TA, FS and MA 2006-2010
 - Compare Upstate v. NYC
 - A Look at Outcomes (2006-2010) NYC v. Upstate
 - All Issues
 - Top 10 Issues
 - A Random Sample of a large County Upstate
- Questions and Answers

Note: For Attorney attending this presentation 1.5 hours of CLE in Areas of Professional Practice will be awarded by OTDA as an Accredited Provider.

Dan Bloodstein is an attorney who has been employed by OTDA since 1980. During that time, he has served as a hearing officer and supervising hearing officer. Since 1987, he has worked in Central Office with primary responsibility for the computer systems required to create and issue fair hearing decisions and to track fair hearings data.

Mark Lahey is an attorney who has been with the Office of Administrative Hearings (OTDA) since 1980. During his tenure with OTDA he has held numerous positions, including: attorney with the compliance unit; attorney in the hearings litigation unit; Hearing Officer; and Supervising Hearing Officer. Currently, as an Acting Principal Hearing Officer he has managerial responsibility for the scheduling, conduct and issuance of fair hearings for the fifty seven local social services districts outside of New York City. Mark received his B.A. from Marist College and a J.D. from Albany Law School.

Philip Nostramo is Acting Deputy General Counsel for the Office of Administrative Hearings. He is a graduate of Hofstra Law School and has been employed in the Office of Administrative Hearings since 1976.

James Ryan is an attorney who has been employed by OTDA Office of Administrative Hearings since 1996. During that time he has served as a Hearing Officer and a Supervising Hearing Officer. He is responsible for the issuance of all fair hearing decisions forwarded to him for review by Hearing Officers he supervises. He is also responsible for advising Hearing Officers and staff of the Office of Administrative Hearings concerning current law and policy relating to the Medicaid Program. He received a B.A. from Siena College and a J.D. from Albany Law School of Union University. He is a member of the New York and District of Columbia Bar.

Maria T. Vidal is General Counsel for the New York Office of Temporary and Disability Assistance. She has been employed with NYSOTDA (NYSOSS) since August of 1986 when she accepted a position in the Compliance Unit of the Office of Administrative Hearings. In 1989 she was promoted to Administrative Law Judge and then to Supervising Administrative Law Judge until her promotion in August, 2010 to her current position as General Counsel. She received her Juris Doctor from Catholic University of Puerto Rico in 1976 and a Master in Arts from Florida State University in 1977. From 1982 to 1984 Ms. Vidal attended SUNY Albany where she enrolled in doctoral courses in the areas of Political Theory, Comparative Government, Public Administration and American Government. In 1985 Ms. Vidal was selected as a NYS Senate Fellow. Ms. Vidal has been admitted to the practice of law in Puerto Rico and New York.

ATTACHMENTS

1. Utilization of Fair Hearing Outcome Data PowerPoint
2. Statistical Data 2006-2010 PowerPoint
3. 2010 Top 10 Outcome Codes Upstate, NYC and Model Large and Medium Upstate District
4. Goldberg v. Kelly, 397 US 254 (1970)
5. Almenares v. Wyman, 453 F.2d 1075 (2d Cir. 1971), cert. denied, 405 US 944 (1972)
6. Social Services Law §22
7. 18 NYCRR Part 358
8. Executive Order 131 (Administrative Adjudication)

UTILIZATION OF FAIR HEARING OUTCOME DATA

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Agenda

- Introduction
- Brief History and Legal foundation of OAH
- Agency's Role in Fair Hearing Process (18 NYCRR 358)
- Statistical Data Discussion and Analysis
- Questions and Answers

History and Legal Foundation OAH

- Establishment of Office of Administrative Hearings
- 14th Amendment - Due Process Clause
 - No State shall deprive any person of life liberty or property, without due process of law.

History and Legal Foundation OAH (con't)

- Goldberg v. Kelly, 397 US 254 (1970)
 - The question for decision by the court was whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denied the recipient procedural due process in violation of the Due Process clause of the Fourteenth Amendment.
 - At the time the lawsuits were initially filed there was no requirement of prior notice or hearing of any kind before termination of financial benefits.

History and Legal Foundation OAH

- Goldberg v. Kelly, 397 US 254 (1970)(con't)
- After the filing of the Goldberg lawsuit, N.Y.C adopted procedures to conform to amended State regulations wherein recipients were given notice of the reasons for the proposed discontinuance at least seven days prior to the effective date, with notice also that the recipient may have the matter reviewed by a local welfare official in a position superior to that of the supervisor who approved the proposed action.

History and Legal Foundation OAH

- Goldberg v. Kelly, 397 US 254 (1970)(con't)
 - This new pre-termination review had no provisions for personal appearance, oral presentation, or cross examination.
 - If the reviewing official affirmed the determination to deny, reduce or discontinue assistance, aid was immediately stopped, the recipient was informed by letter of the reasons for the action, and was also advised that a post-termination “fair hearing” before an independent state hearing officer could be requested.

History and Legal Foundation OAH

- Goldberg v. Kelly, 397 US 254 (1970)(con't)
 - The court in Goldberg emphasized that the fundamental requisite of due process of law is the opportunity to be heard.
 - The court also noted that the hearing must be at a meaningful time and in a meaningful manner.
 - The court concluded that the aforementioned principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination or reduction, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.

History and Legal Foundation OAH

- Goldberg v. Kelly, 397 US 254 (1970)(con't)
 - The court in Goldberg concluded that the city's procedures presently did not permit recipients to appear personally, with or without counsel, before the official who finally determines continued eligibility. Thus, a recipient is not permitted to present evidence to that official orally, or to confront or cross examine adverse witnesses. These omissions were fatal to the constitutional adequacy of the procedures then in place.

History and Legal Foundation OAH

- Post Goldberg
 - After the decision in Goldberg the New York State Department of Social Services modified its regulation governing hearing procedures by providing for a local agency hearing offering basic due process rights.
 - In the event of an adverse determination at the local level, the recipient was still entitled to a post reduction State “fair hearing” which afforded further due process safeguards.

History and Legal Foundation OAH

- Almenares v. Wyman, 453 F.2d 1075 (2d Cir 1971)
- The hearing procedures adopted by NYC post Goldberg were challenged by plaintiffs in the Almenares lawsuit.
- In the opening sentence of the Almenares decision the court states that “this case begins where Goldberg v. Kelly ends.

History and Legal Foundation OAH

- Almenares v. Wyman, 453 F.2d 1075 (2d Cir 1971)
(con't)
 - Even prior to the decision in Goldberg, HEW had been reconsidering its regulation dealing with “state” fair hearings.
 - Effective April 14, 1971, new regulations required that each state plan contain provisions for a hearing before the State Agency, that notice must be given 15 days in advance, and that assistance must be continued until the fair hearing decision is issued.

History and Legal Foundation OAH

- Almenares v. Wyman, 453 F.2d 1075 (2d Cir 1971)
(con't)
- The court in *Almenares* affirmed the order of the district court which held that it was competent of HEW to determine that the objectives of a federally assisted program of ADC could be better attained by a single state hearing prior to taking action to terminate, suspend, or reduce benefits.

History and Legal Foundation

- Almenares v. Wyman, 453 F.2d 1075 (2d Cir 1971)
(con't)
- The Almenares court did note, however, that they could not blind themselves to the fact that some time would be required to transfer the large apparatus of local hearing machinery to what has been a rather small State System.

Agency's Role in Fair Hearing Process

- The local agency has a major role in the fair hearing process in defending eligibility determinations pursuant to State and Federal law and the regulations and policies issued by OTDA, OCFS and DOH.
- The local agency has many responsibilities in the fair hearing process including:
 - Issuing notices
 - Aid-to-Continue
 - Maintenance of case record
 - Client/Appellant's Access to case record and documents
 - Preparation of Evidence Packet
 - Conferences

Notices

- 18 NYCRR 358 governs the fair hearing process and contains key provisions outlining the due process requirements for social services hearings in New York State. It incorporates various requirements for notices and access to documents which were the result of litigation against the Office of Administrative Hearings, NYC Human Resources Administration, OTDA, DOH and the former New York State Department of Social Services.

Notices

- Notices (18 NYCRR 358-3.3 and 358-2.2)
- Adequate notice
 - Defined in detail in 18 NYCRR 358-2.2(a)
 - An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services.

Notices

- 18 NYCRR 358-2.2(a)(1)-(12) has a detailed list of additional information that must be included in an adequate notice. Including:
 - For reductions the previous and new amount of benefits provided;
 - Effective date of the action;
 - Specific reasons for the action;
 - Specific laws and/or regulations on which action based;
 - Fair hearing and agency conference rights including address and phone number where a fair hearing request can be made the time limits to request a hearing;
 - Circumstances under which TA, MA, FS benefits or services will be continued for re-instated;

Notices

- Right of applicant/recipient to review case record and to obtain copies of documentation which agency will present into evidence at hearing or other documentation necessary to the applicant/recipient to prepare for the hearing at no cost;
- Right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the hearing and to question witnesses at the hearing (Goldberg Rights);
- Right to present oral and written evidence at the hearing (Goldberg right);
- Liability, if any, to repay continued or reinstated assistance and benefits if recipient loses hearing;
- Copy of the budget or basis of the computation, in instances where agency's determination is based upon a budget computation.

Notices

- Timely Notice defined in 18 NYCRR 358-2.23
 - A notice which is mailed at least ten days before the date on which the proposed action is to become effective.
- Notice requirements are listed in detail in 18 NYCRR 358-3.3(a)
 - 18 NYCRR 358-3.3(a)(1) -Right to timely and adequate notice:
 - When a district proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, medical assistance or services;

Notices

- Changes manner , method or form of payment of TA grant;
- Restrict medical assistance authorization;
- Makes changes in manner of payment of child care services;
- Makes changes in manner of payment of supportive services provided to enable as a TA recipient to participate in work activities;
- Deny an extension of a waiver of TA program requirements under 18 NYCRR 351.2(l) or such waiver has been terminated or modified.

Notices

- 18 NYCRR 358-3.3(a)(2)- Right to Adequate notice:
 - Actions to accept or deny an application for public assistance, medical assistance or services;
 - Increases in public assistance grant;

Notices

- Changes in amount of one of the items used in the calculation of the public assistance grant or medical assistance spenddown although no change in amount of public assistance grant or medical assistance spenddown;
- Denials of an application for an exemption from or an increase of a medical assistance utilization threshold and individual has reached that threshold;
- Changes in manner in payment of childcare services;
- not eligible for an exemption requested from work requirements as described in 18 NYCRR 385 and individual is an applicant or recipient of public assistance;
- Denials of a waiver of public assistance program requirements under 18 NYCRR 351.2(1).

Notices

- Food Stamps -18 NYCRR 358-3.3(b)
 - Timely and adequate notice for any action to discontinue or reduce food stamp benefits, except as provided in 18 NYCRR 358-3.3(e).
 - Adequate notice when agency accepts or denies an application for food stamps or increases food stamp benefits or changes the amount of one of the items used in the calculation of food stamp benefits although no change in amount of food stamp benefits.
 - Expiration notice [18 NYCRR 358-3.3(b)(2)] provided before or at the beginning of the last month of household's current certification period for food stamp benefits. If household recertified for both public assistance and food stamps prior to last month of the food stamp certification period an exception notice not required.

Notices

- Notice requirements for HEAP are in 18 NYCRR 358-3.3(c).
- Exceptions to the timely and adequate notice requirements for public assistance and medical assistance are listed in detail in 18 NYCRR 358-3.3(d).
- Exemptions from notice requirements or timely notice requirements for food stamps are listed in detail in 18 NYCRR 358-3.3(e).
- Note: that the Client Notices System (CNS) developed and maintained by OTDA has alleviated many of the notice problems associated with manual notices.

Aid-to-Continue

- Almenares v. Wyman, 453 F.2d 1075 (2d Cir 1971) is second major foundational case for fair hearing process in New York. Almenares upheld the single state hearing prior to taking of action to discontinue, reduce or suspend benefits and the right to Aid-to-Continue.
- 18 NYCRR 3.6 governs the right to Aid-to-Continue.
 - Right to Aid-to-Continue in public assistance, medical assistance and services. 18 NYCRR 358-3.3(a)(1).

Where district is required to give timely notice before it can take any action in the case individual has right to aid-to-continue until Fair Hearing Decision is issued this includes an increase in a Medical Assistance spenddown.

Aid-to-Continue

- If assistance or services reduced or discontinued, restricted or suspended and request hearing before the effective date contained in the notice;
- 18 NYCRR 358-3.3(a)(2) provides that there is no right to aid-to-continue where:
 - Office of Administrative Hearings has determined that the sole issue for public assistance or medical assistance is a question of State or Federal law or policy;
 - If been determined presumptively eligible for medical assistance and been subsequently denied medical assistance;
 - If a medical assistance recipient in a general hospital, not receiving chronic care, and you are in short-term hospitalization and a utilization review committee determines that such level of care is no longer required;

Aid-to-Continue

- Discontinuance of benefits for receiving concurrent benefits as described in 18 NYCRR 351.9 in the same district or another district within the State.

18 NYCRR 358-3.6(a)(3) provides that when a district is required only to give adequate notice but not timely notice and has discontinued, reduced, restricted or suspended public assistance, medical assistance or services, the individual has the right to have benefits reinstated and continued until a fair hearing decision is issued only if a request for a hearing is made with ten days of the mailing of the agency's notice and if OAH determines that the action did not result from the application of or change in State or Federal law or policy.

Aid-to-Continue

- 18 NYCRR 358-3.6(b) lists circumstances where public assistance, medical assistance and services will not be continued pending issuance of a fair hearing decision:
 - Individual has voluntarily waived right to aid-to-continue in writing;
 - Individual does not appear at their fair hearing and does not have a good cause reason for not appearing;
 - Prior to the issuance of the fair hearing decision the agency proposes to take an action affecting entitlement to public assistance, medical assistance or services and the individual does not request a fair hearing concerning the subsequent notice.

Aid to continue

- 18 NYCRR 358-3.6(c) covers the right to Aid-to-Continue for Food Stamps.
- An individual has a right to keep food stamps at same level until fair hearing decision issued only where the proposed action is to take place during the certification period of the individual's food stamp authorization and the request is made prior to the effective date contained in a timely notice of case closing or authorization reduction.

Aid to Continue

- If food stamps have been reduced or discontinued by the agency and an individual has made a timely hearing request by the effective date in the notice, food stamps must be restored by the agency as soon as possible but no later than 5 business days after notification by OAH.
- There is no right to Aid to Continue for food stamps where:
 - OAH has determined that the sole issue is one of federal law or regulation and the individual's claim that their benefits were improperly computed or law or regulation was misapplied or misinterpreted is invalid;
 - Food stamps have been reduced, suspended or cancelled as a result of an order to reduce allotments issued by the Food and Nutrition Service because the requirements of states participating in the Food Stamp Program will exceed appropriations;

Aid to Continue

- Agency determines to discontinue benefits because individual is receiving concurrent benefits as described in 18 NYCRR 351.9 in the same district or another district of the State.
- 18 NYCRR 358-3.6(c)(6) provides that once an individual's food stamps are continued or reinstated, the benefits should continue until a fair hearing decision is received unless:
 - The individual's certification period expires;
 - A change affecting the household's eligibility for food stamps or the basis of issuance of food stamp benefits occurs before the hearing decision is issued and the individual fails to make a request for a fair hearing regarding a subsequent notice of adverse action;
 - Before the hearing decision is issued a mass change occurs which affects the household's eligibility for food stamps or basis of issuance.

Aid to Continue

- 18 NYCRR 358-3.6(d) provides that if public assistance, child care services or food stamps are continued until a fair hearing decision is issued and the individual loses the hearing, then the agency may recover the benefits or services which the individual should not have received. The provision does not apply to fair hearings to review the imposition of a work sanction under 18 NYCRR 351.2(i)(2), 385.12 and 385.13.
 - Note: for work sanctions the sanction is imposed prospectively after the individual loses the hearing.

Agency Responsibilities Pre-Hearing

- 18 NYCRR 358-3.7 governs the examination of the case record before the hearing by an Appellant.
- 18 NYCRR 358-3.7(a)(1) provides that at any reasonable time before the date of the fair hearing and also at the fair hearing, an appellant or an authorized representative has the right to examine the contents of their case record and all documents and records to be used by the agency at the individual's fair hearing.

Agency Responsibilities Pre-Hearing

- 18 NYCRR 358-3.7(a)(2) provides the following exceptions to an Appellant's access to their case record:
 - Materials to which access is governed by separate statutes, such as records regarding child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purposes of Child Care Review Service;
 - Materials being maintained separately from public assistance files for the purposes of criminal prosecution and referral to the district attorney's office. This exception only applies to records which are part of an active and ongoing investigatory action;
 - County attorney or county welfare attorney files.

Agency Responsibilities Pre-Hearing

- 18 NYCRR 358-3.7(b) governs requests for copies of documents made by an appellant or an authorized representative.
- Section (b)(1) provides that upon request an appellant or an authorized representative has a right to be provided at a reasonable time before the date of the hearing, **at no charge**, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request is made less than **5 business days** before the hearing the social services agency must provide the copies no later than at the time of the hearing.

Agency Responsibilities Pre-Hearing

- If the appellant or authorized representative requests that the documents be mailed, then the social services agency must mail the documents within a reasonable time from the date of the request. However, if there is insufficient time for the documents to be mailed and received by the scheduled date of the hearing, then the documents may be presented at the hearing instead of being mailed.

Agency Responsibilities Pre-Hearing

- Section (b)(2) covers requests for additional documents identified by an appellant or an authorized representative for purposes of preparing for the hearing.
- It contains the same requirements as in section (b)(1) that the documents be provided by the social services agency at a reasonable time before the date of the hearing, **at no charge**, and that if the request for documents is made less than **five business days** before the hearing, then the district must provide the copies no later than at the time of the hearing. Also has the same requirements for mailing of requested documents as in section (b)(1).

Agency Responsibility Pre-Hearing

- Requests for documents may be made in writing, orally or via telephone. 18 NYCRR 358-3.7(b)(3).
- 18 NYCRR 358-3.7(b)(4) concerns situations where a social services agency fails to comply with these requirements. It provides that the Hearing Officer may do the following:
 - Adjourn the case;
 - Allow a brief recess for the appellant to review the documents;
 - Preclude the introduction of the document where a delay would be prejudicial to the Appellant;
 - Take other appropriate action to ensure that appellant is not harmed by the agency's failure to comply.

Agency Responsibility Pre-Hearing

- Note: There are two federal court Stipulations from the early 1980's Annunziata v. Blum, 81 Civ. 302 (US Dist. SDNY 1983) and Rodriguez v. Blum, 79 Civ. 1518 (US Dist. SDNY 1983) signed by the former NYS Department of Social Services and New York City, which are still in effect, concerning access to case record in cases of a discontinuance, reduction or restriction of benefits (TA, MA, FS) and the requirement that the NYC agency produce the complete and relevant case record at the fair hearing and withdraw the notice at the hearing if the record is not produced.

Agency Responsibility Pre-Hearing

- 18 NYCRR 358-4.2 outlines the agency's responsibilities pre-hearing. These include:
- Re-instatement of public assistance, medical assistance, food stamps or services when OAH has notified the district to continue the individual's benefits pending the issuance of a fair hearing decision. 18 NYCRR 358-4.2(b).
- Providing to appellant or authorized representative requested copies of documents to be presented by agency at the fair hearing or additional documents from the appellant's case record identified by appellant or representative for hearing preparation. 18 NYCRR 358-4.2(c)&(d).
 - Note: this provision re-iterates requirements in 18 NYCRR 358-3.7 discussed earlier.

Agency Responsibility Pre-Hearing

- 18 NYCRR 358-4.2(e)- (j) addresses agency conferences and encourages districts to use them to eliminate the need to hold a hearing whenever the dispute can be resolved by scrutiny of documents and/or thorough investigation.

Agency Responsibilities in Fair Hearing Process

- 18 NYCRR 358-4.3 addressed the agency's rights and responsibilities at the fair hearing. These include:
 - The responsibility to provide complete copies of its documentary evidence to the Hearing Officer at the fair hearing and also to the appellant or the appellant's authorized representative, where the documents have not already been provided to the appellant or authorized representative under 18 NYCRR 358-3.7 and 358-4.2(c).
 - To appear at the hearing with the case record and a written summary of the case.
 - The representative of the agency must have reviewed the case and be prepared to present evidence in support of the action.

Agency Responsibilities in Fair Hearing Process

- 18 NYCRR 358-4.3(b)(2)(i)-(vii) lists certain types of evidence that a representative should be prepared to present including:
 - Case number;
 - Categories of assistance (TA, MA, FS, Services) at issue;
 - Names, addresses, relationships and ages of persons affected;
 - The determination regarding which the hearing request was made;
 - Brief description of the facts, evidence and reasons supporting the determination, including specific provisions of law, regulations and approved local policies that support determination;
 - The relevant budget(s) prepared by the agency for the appellant or the household, including WMS printouts;
 - A copy of the notice either manual or CNS.

Agency Responsibilities in Fair Hearing Process

18 NYCRR 358-4.3(b)(3) provides that the agency representative must have the authority to make binding decisions at the hearing on behalf of the agency including the authority to withdraw the action of otherwise settle the case.

18 NYCRR 358-4.3(c)(1) permits the agency to request no later than five calendar days prior to the hearing from OAH that it appear on papers only. OAH may grant such a request where the rights of the appellant can be protected and the personal appearance of the agency is neither feasible nor necessary

Agency Responsibilities in Fair Hearing Process

- However, 18 NYCRR 358-4.3(c)(2) provides that a Hearing Officer may require the appearance of a representative of the agency where such appearance is necessary to protect the due process rights of the appellant.

18 NYCRR 358-4.3(d) discusses provisions of necessary transportation upon request of the appellant.

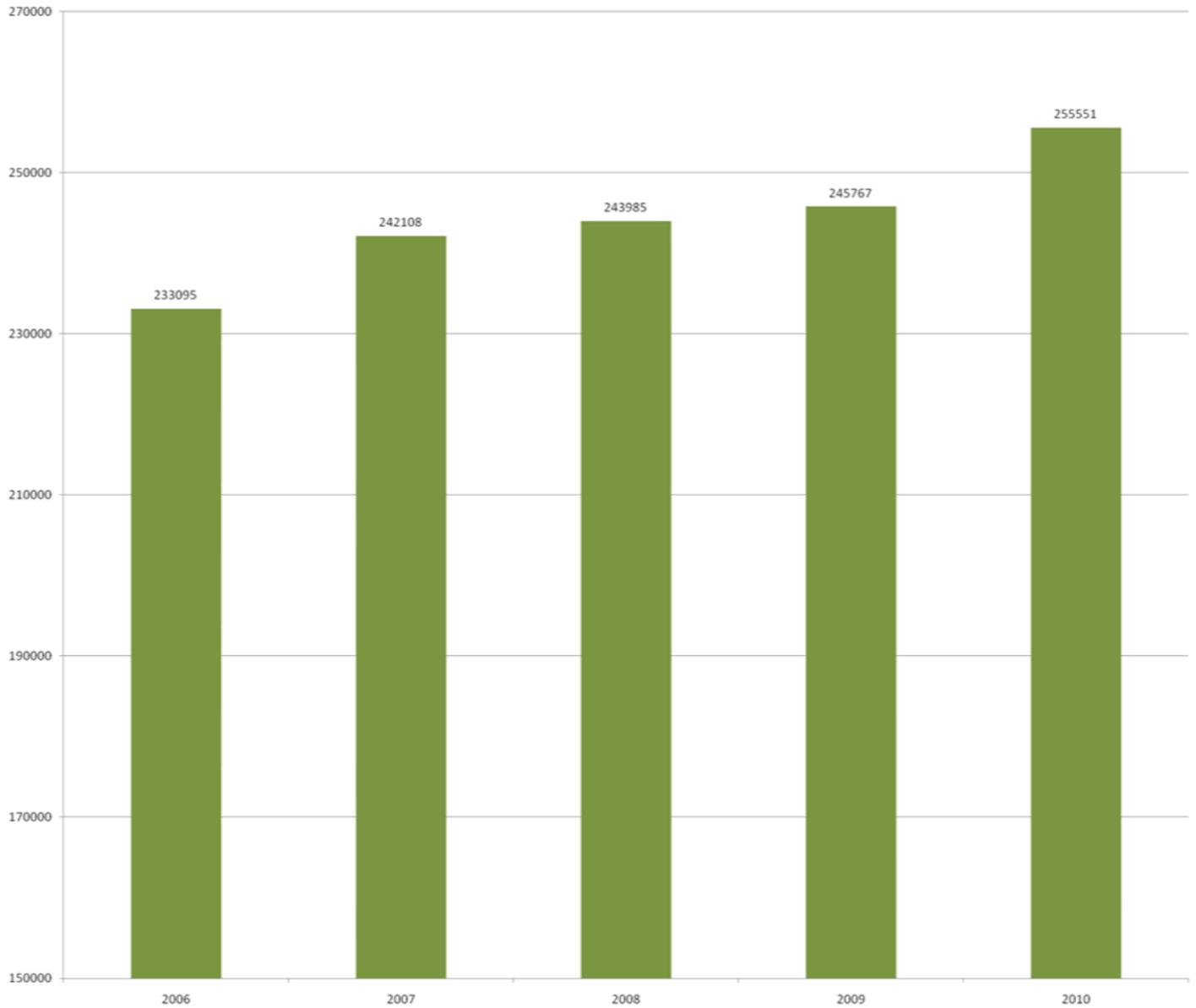
Agency's Rights in Fair Hearing Process

- 18 NYCRR 358-4.3(e) provides that social services agencies have those rights which appellant's have as follows:
 - Adjournment [18 NYCRR 358-3.4(d)];
 - Representation [18 NYCRR 358-3.4(e)];
 - Present evidence, question witnesses, examine documents [18 NYCRR 358-3.4(g)];
 - Bring witnesses [18 NYCRR 358-3.4(h)];
 - Removal of Hearing Officer [18 NYCRR 358-3.4(k)].

- 
- Thank You
 - Office of Administrative Hearings

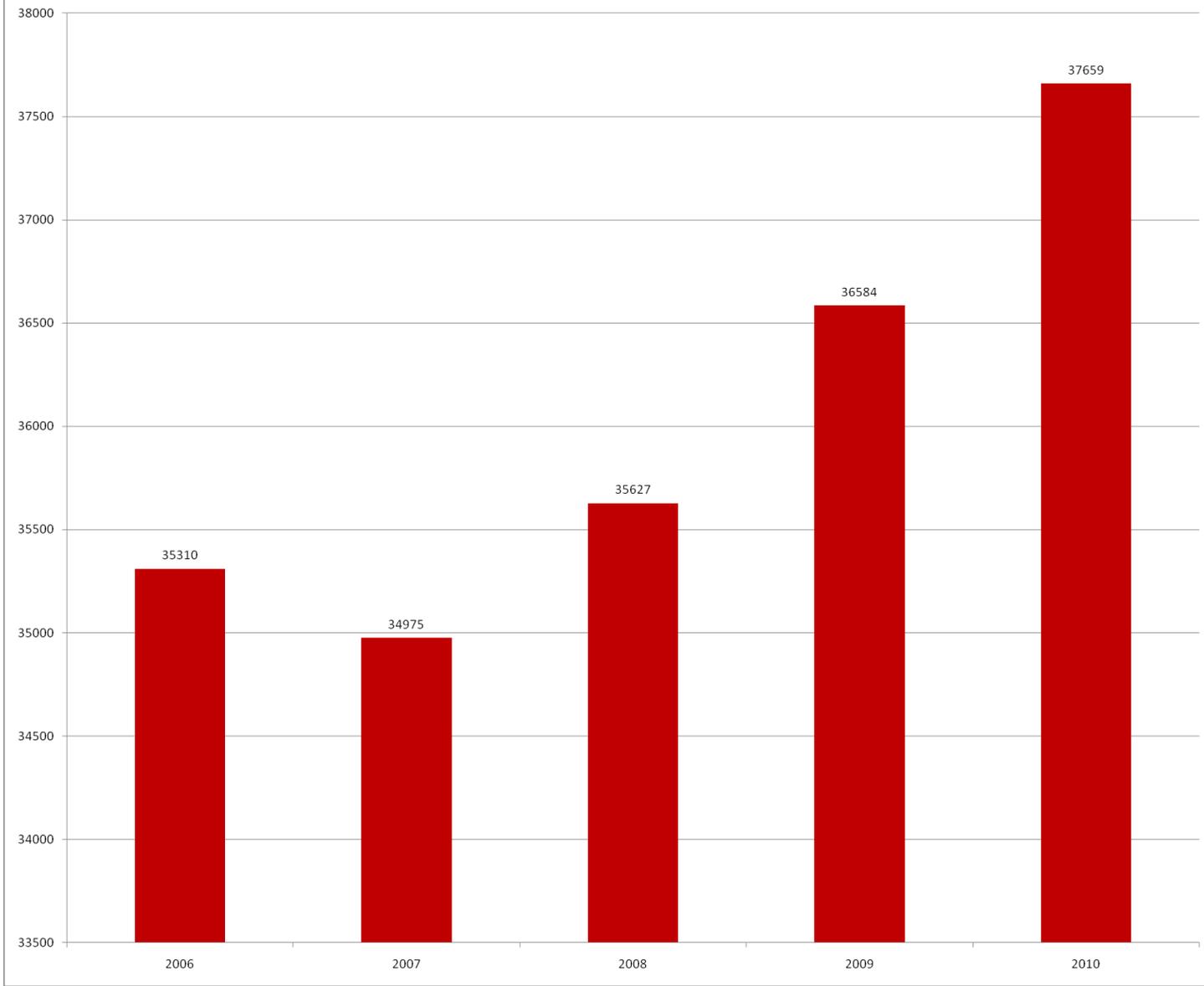
Statewide Fair Hearing Requests

Chart 1



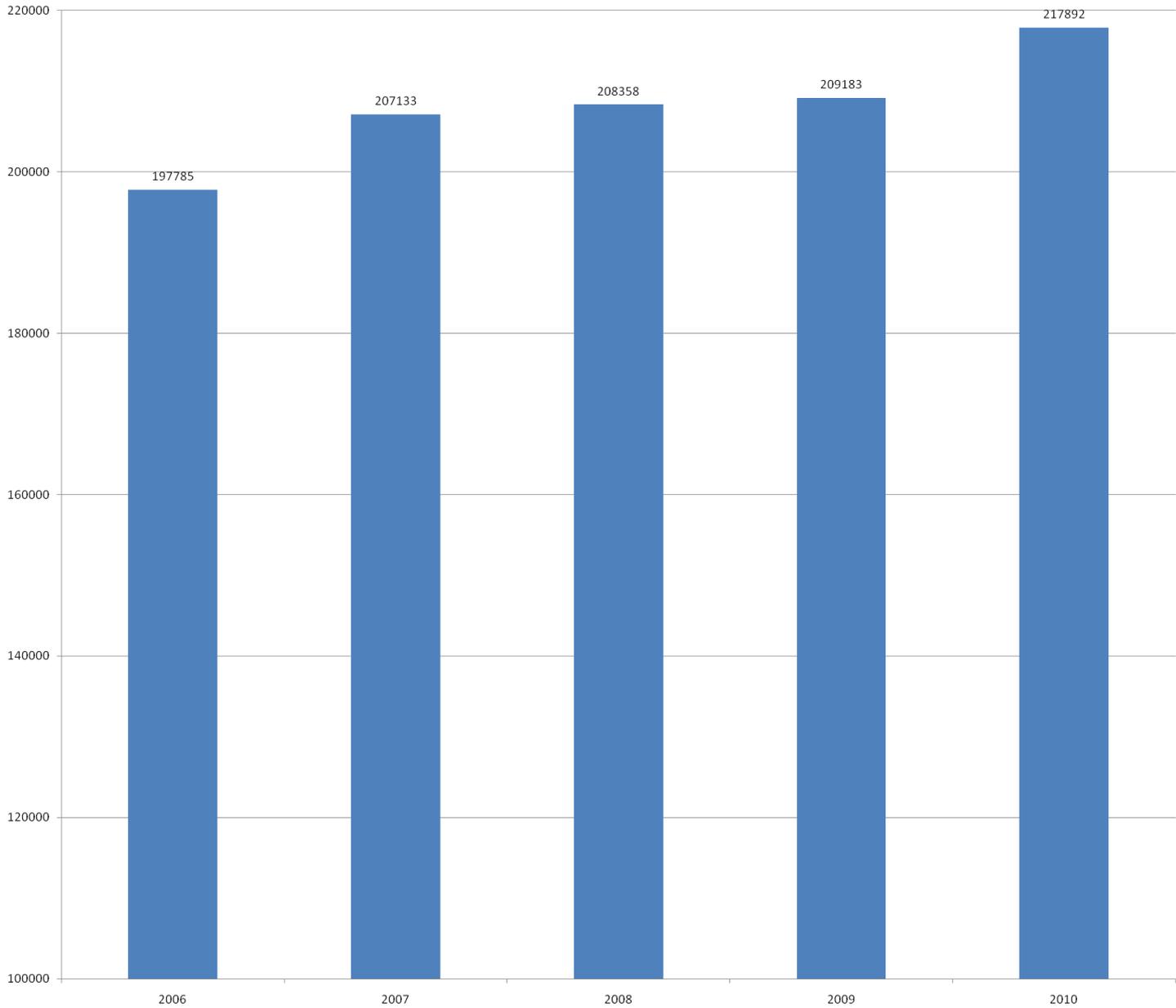
Upstate Fair Hearing Requests

Chart 3



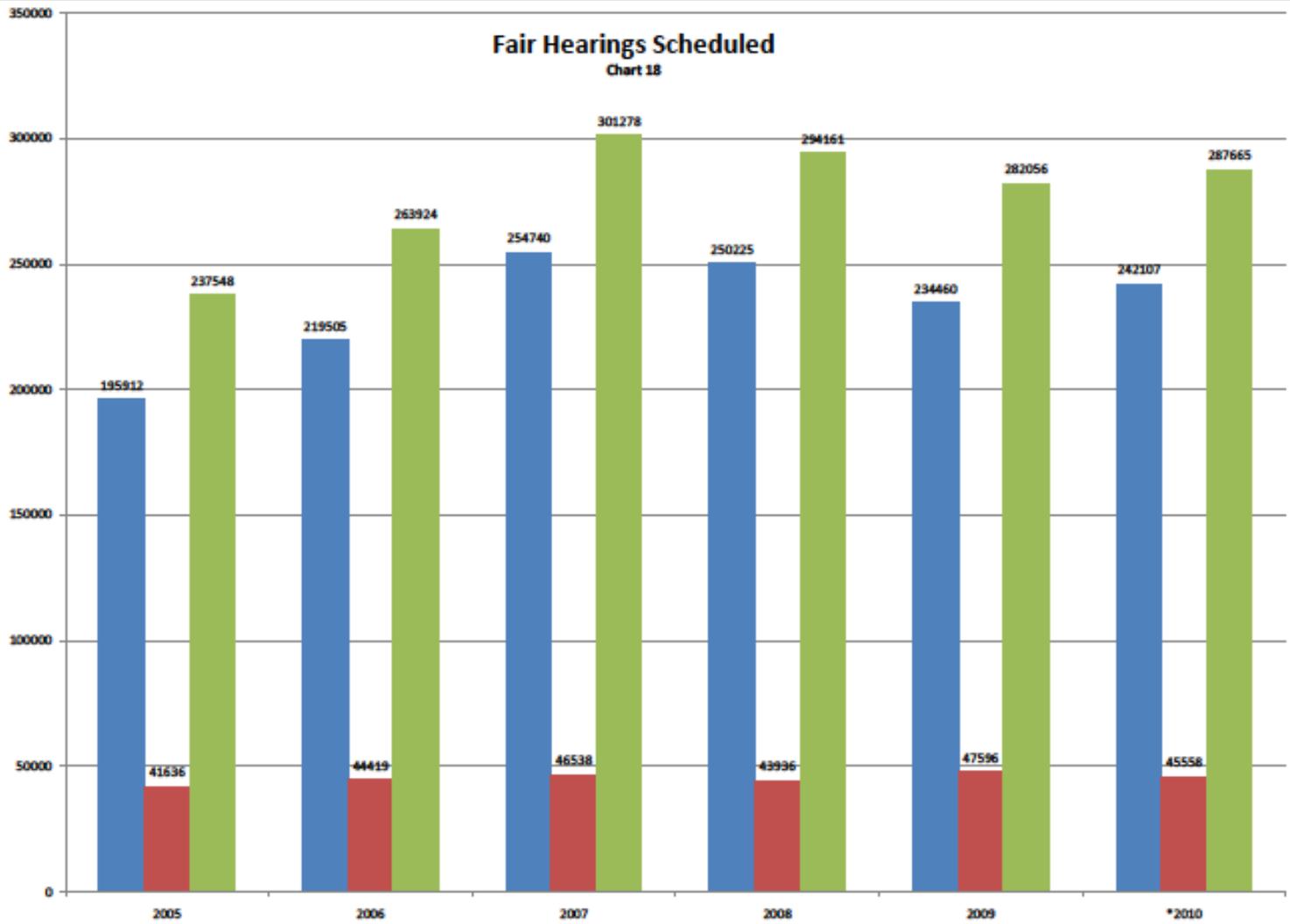
New York City Fair Hearing Requests

Chart 2



Fair Hearings Scheduled

Chart 18

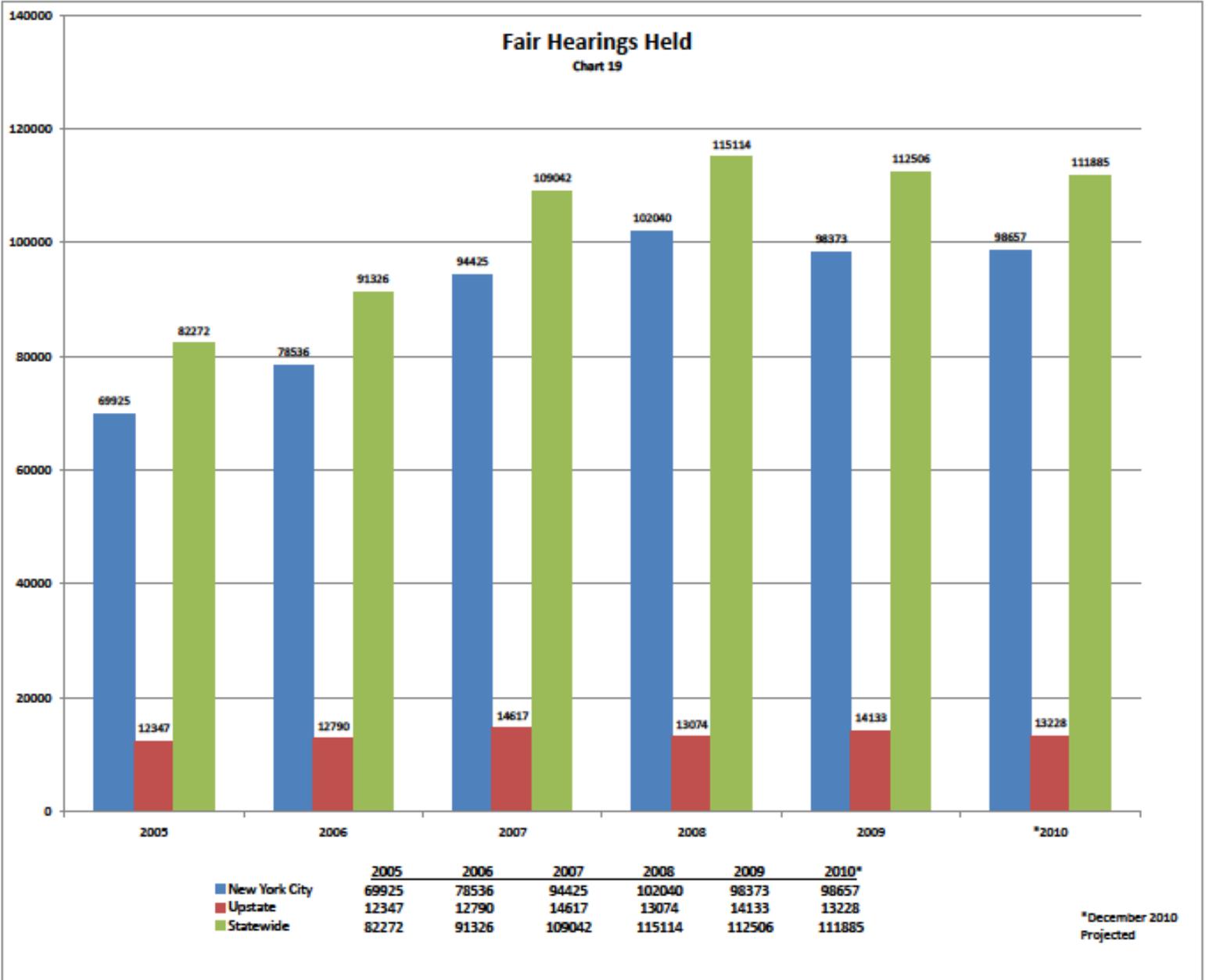


	2005	2006	2007	2008	2009	2010*
New York City	195912	219505	254740	250225	234460	242107
Upstate	41636	44419	46538	43936	47596	45558
Statewide	237548	263924	301278	294161	282056	287665

*December 2010 Projected

Fair Hearings Held

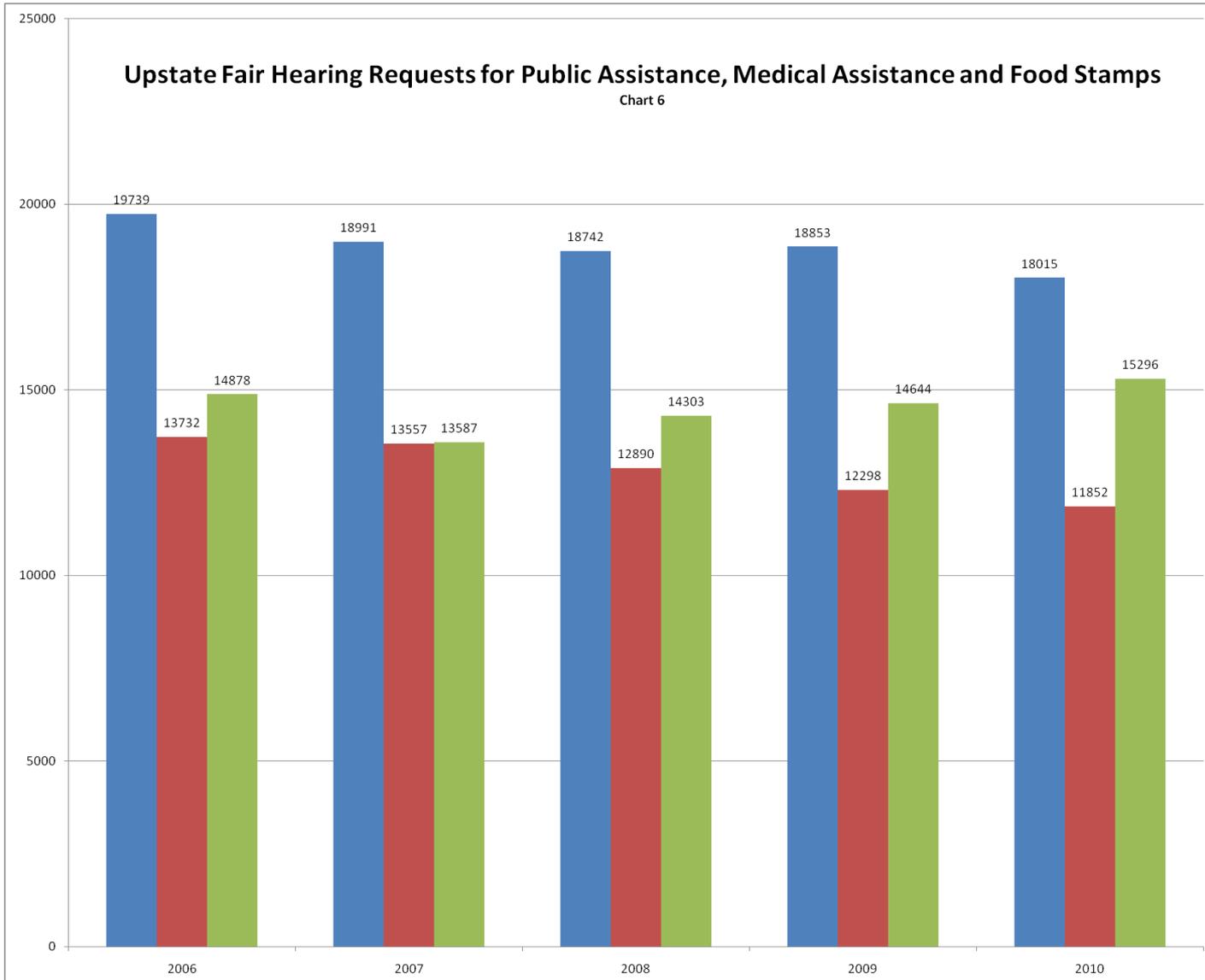
Chart 19



*December 2010 Projected

Upstate Fair Hearing Requests for Public Assistance, Medical Assistance and Food Stamps

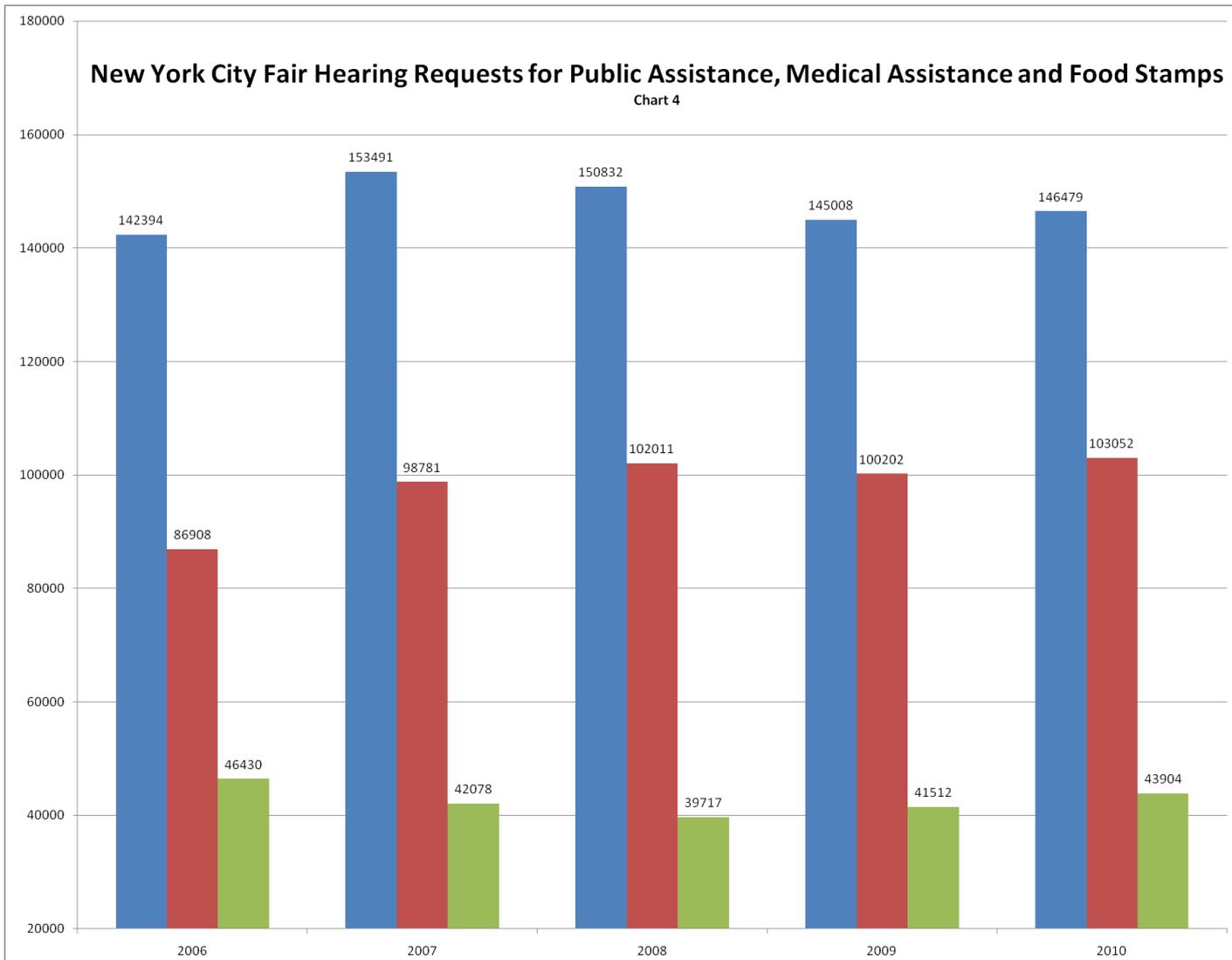
Chart 6



	2006	2007	2008	2009	2010
Public Assistance	19739	18991	18742	18853	18015
Medical Assistance	13732	13557	12890	12298	11852
Food Stamps	14878	13587	14303	14644	15296

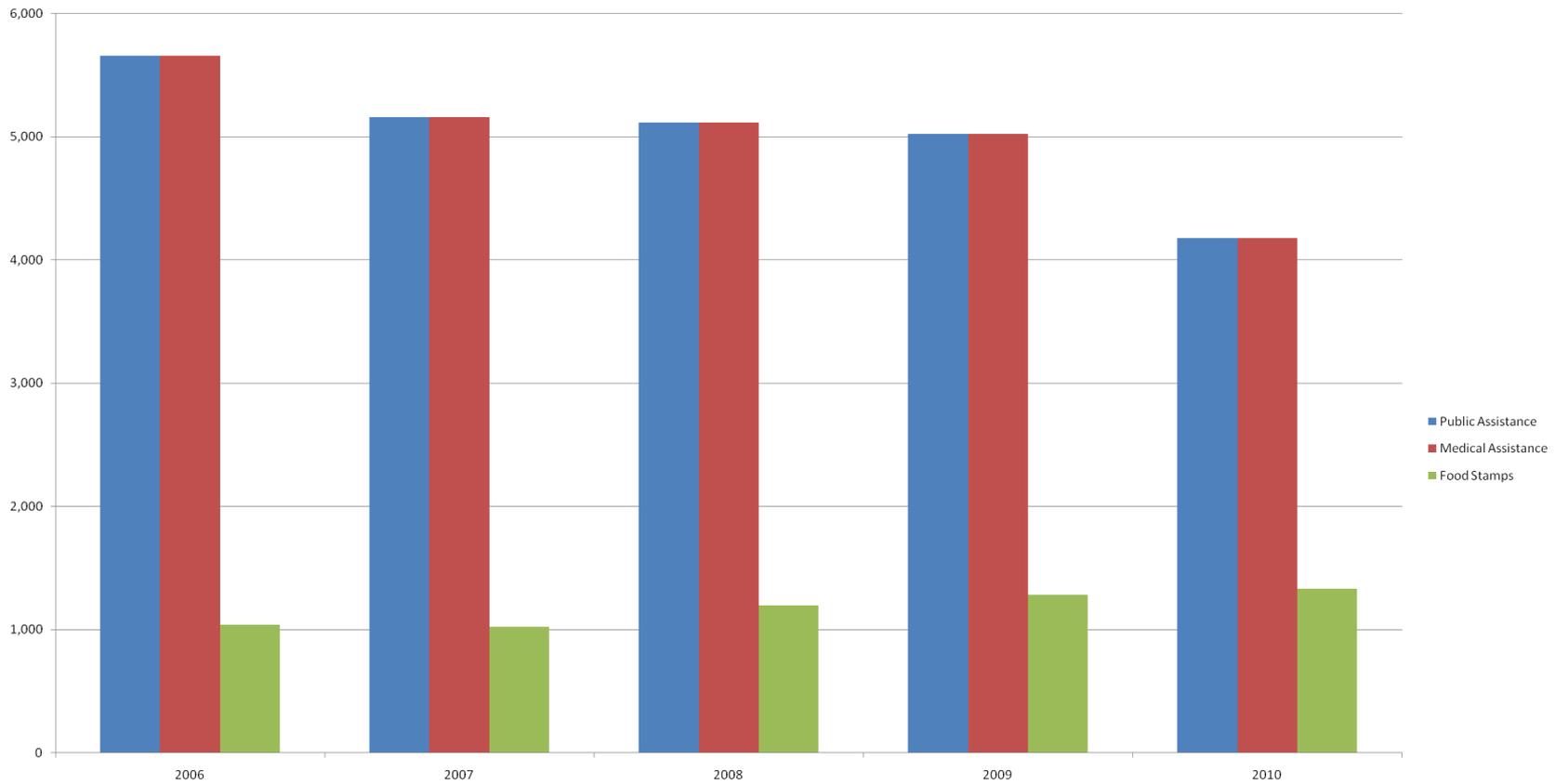
New York City Fair Hearing Requests for Public Assistance, Medical Assistance and Food Stamps

Chart 4



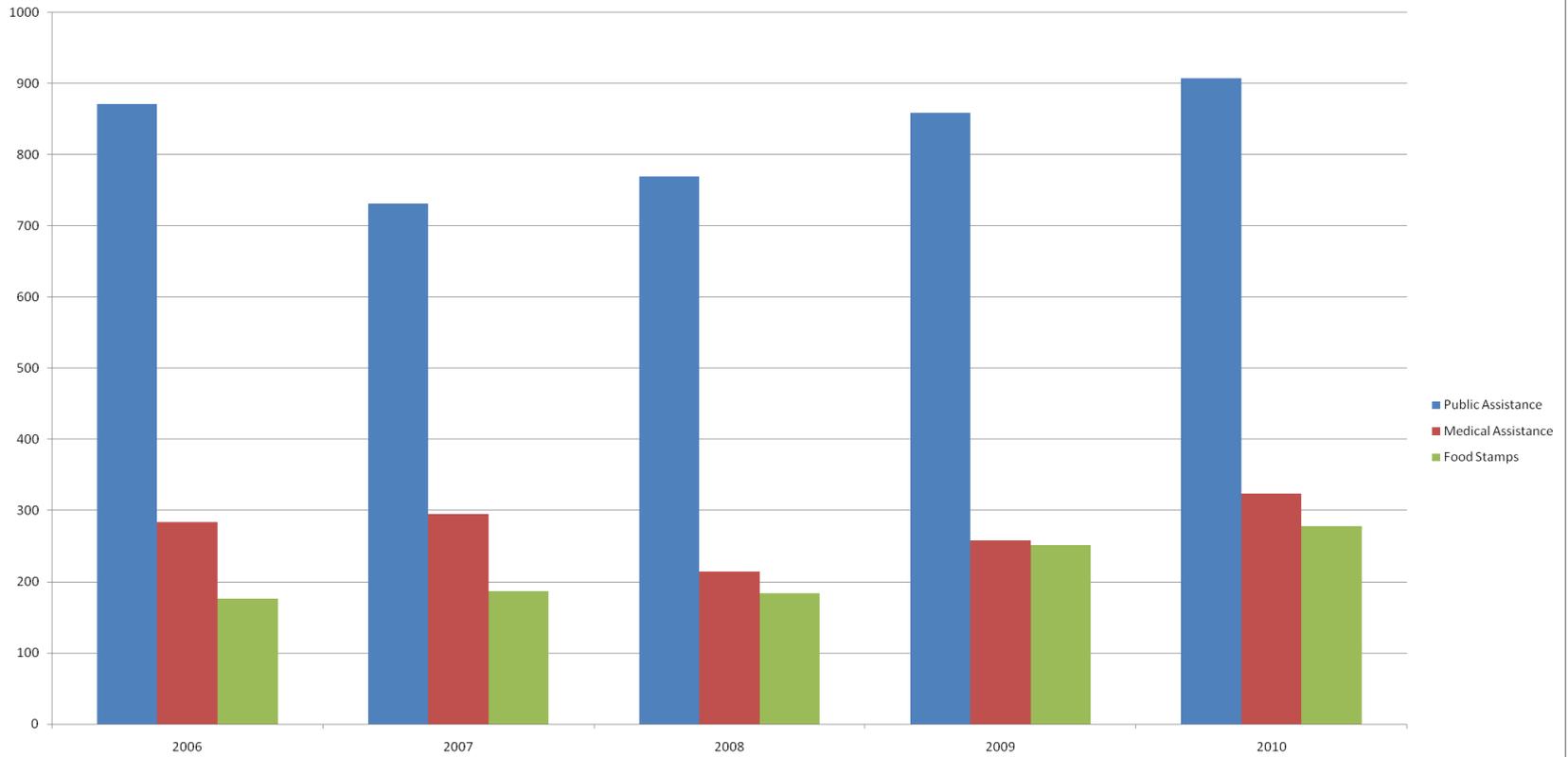
	2006	2007	2008	2009	2010
Public Assistance	142394	153491	150832	145008	146479
Food Stamps	86908	98781	102011	100202	103052
Medical Assistance	46430	42078	39717	41512	43904

Large Upstate County Requests for Public Assistance, Medical Assistance and Food Stamps



	2006	2007	2008	2009	2010
Public Assistance	5658	5161	5114	5021	4175
Medical Assistance	1253	1173	1061	1116	1194
Food Stamps	1039	1021	1198	1282	1330

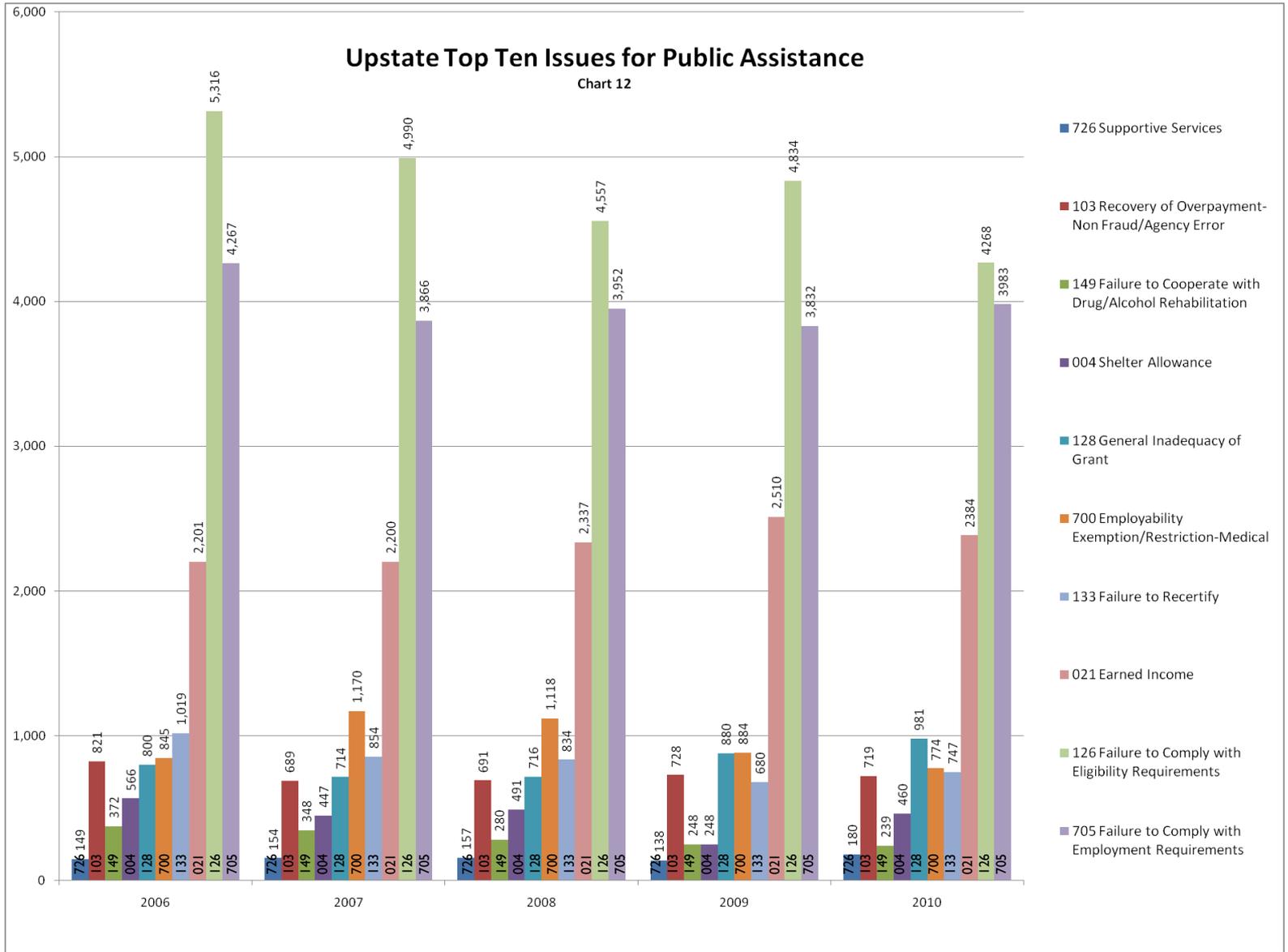
Medium Size County Requests for Public Assistance, Medical Assistance and Food Stamps



	2006	2007	2008	2009	2010
Public Assistance	871	731	769	859	907
Medical Assistance	284	295	214	258	324
Food Stamps	176	187	184	251	278

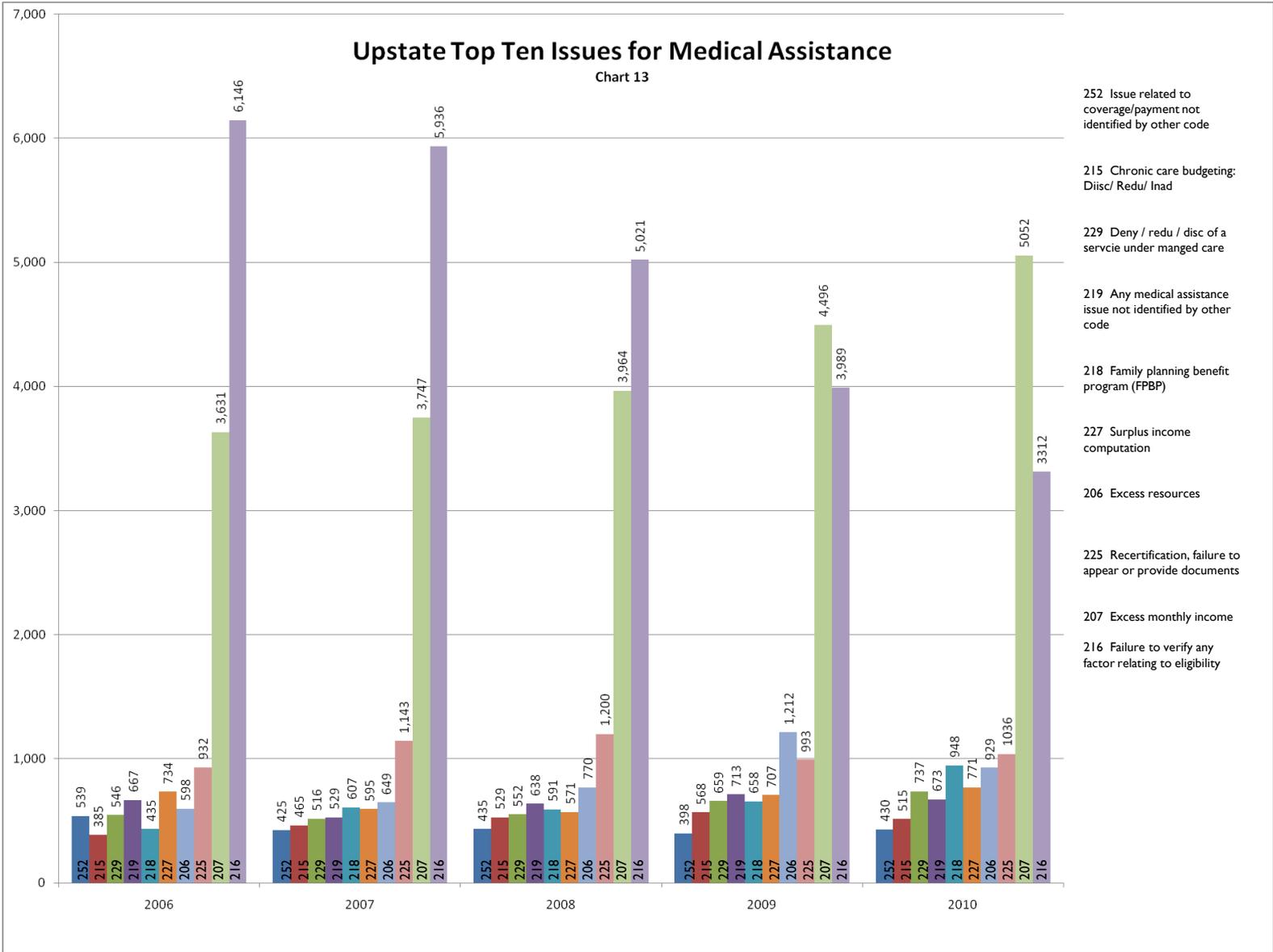
Upstate Top Ten Issues for Public Assistance

Chart 12



Upstate Top Ten Issues for Medical Assistance

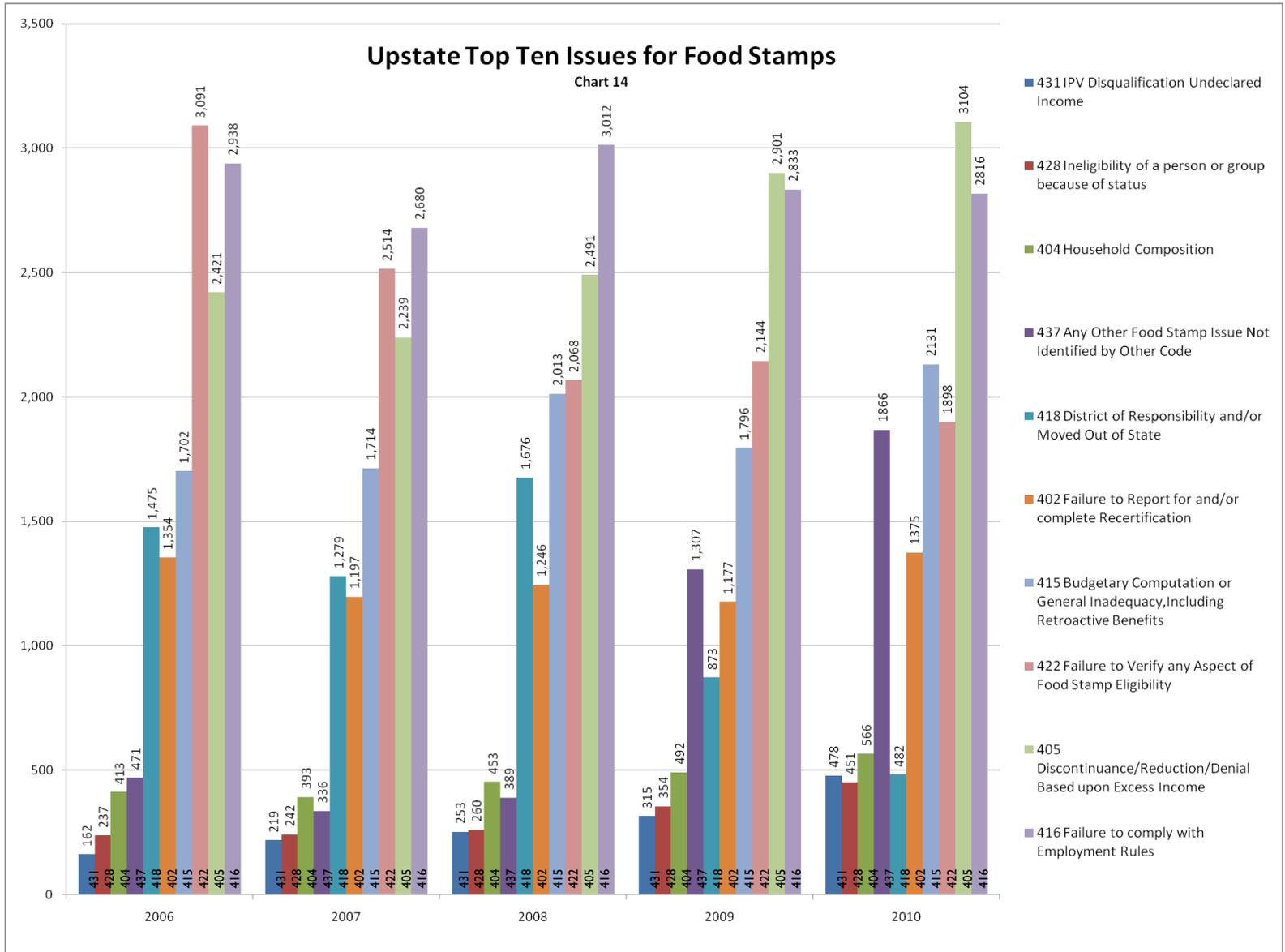
Chart 13



- 252 Issue related to coverage/payment not identified by other code
- 215 Chronic care budgeting: Diisc/ Redu/ Inad
- 229 Deny / redu / disc of a servcie under manged care
- 219 Any medical assistance issue not identified by other code
- 218 Family planning benefit program (FPBP)
- 227 Surplus income computation
- 206 Excess resources
- 225 Recertification, failure to appear or provide documents
- 207 Excess monthly income
- 216 Failure to verify any factor relating to eligibility

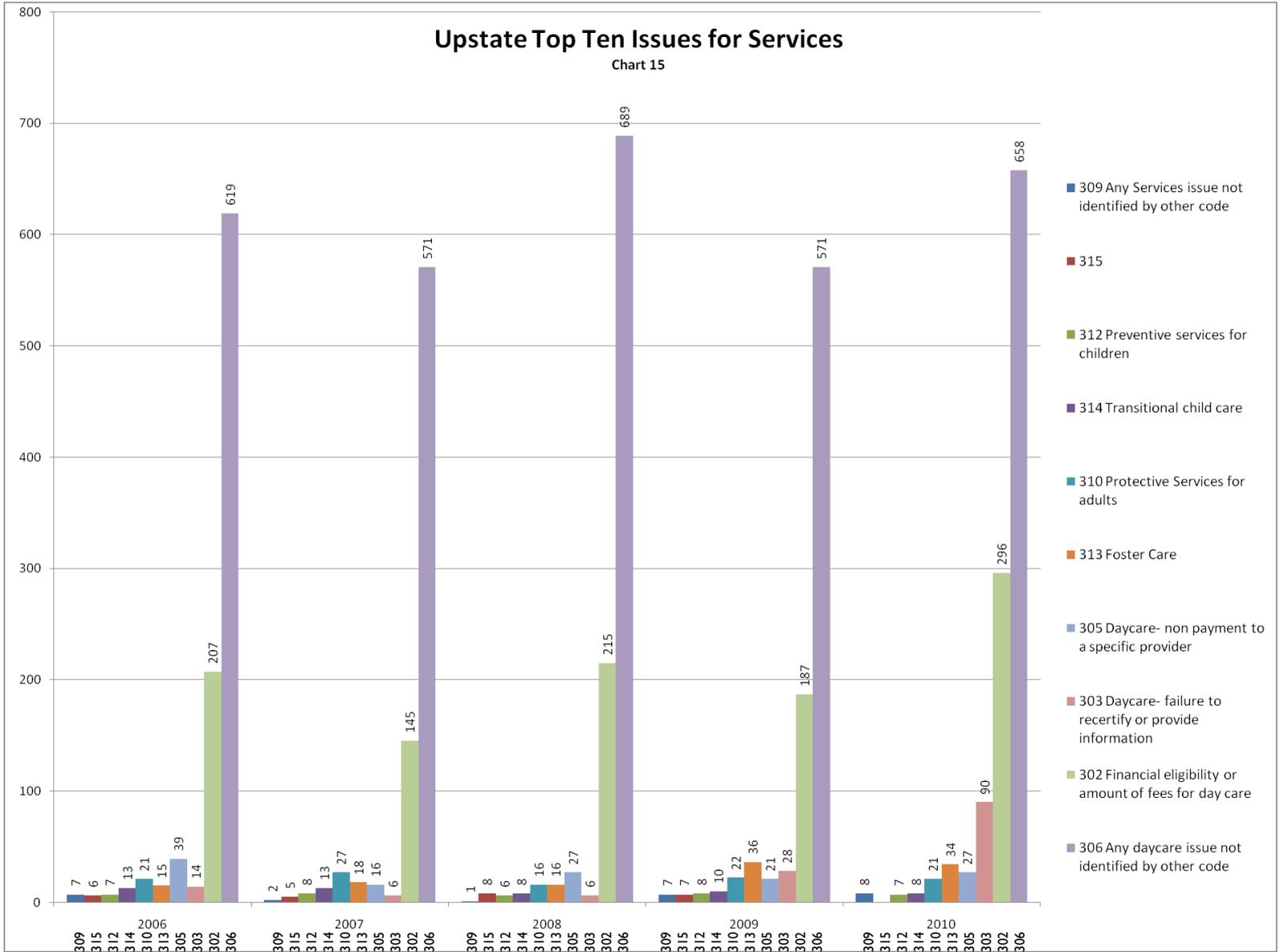
Upstate Top Ten Issues for Food Stamps

Chart 14



Upstate Top Ten Issues for Services

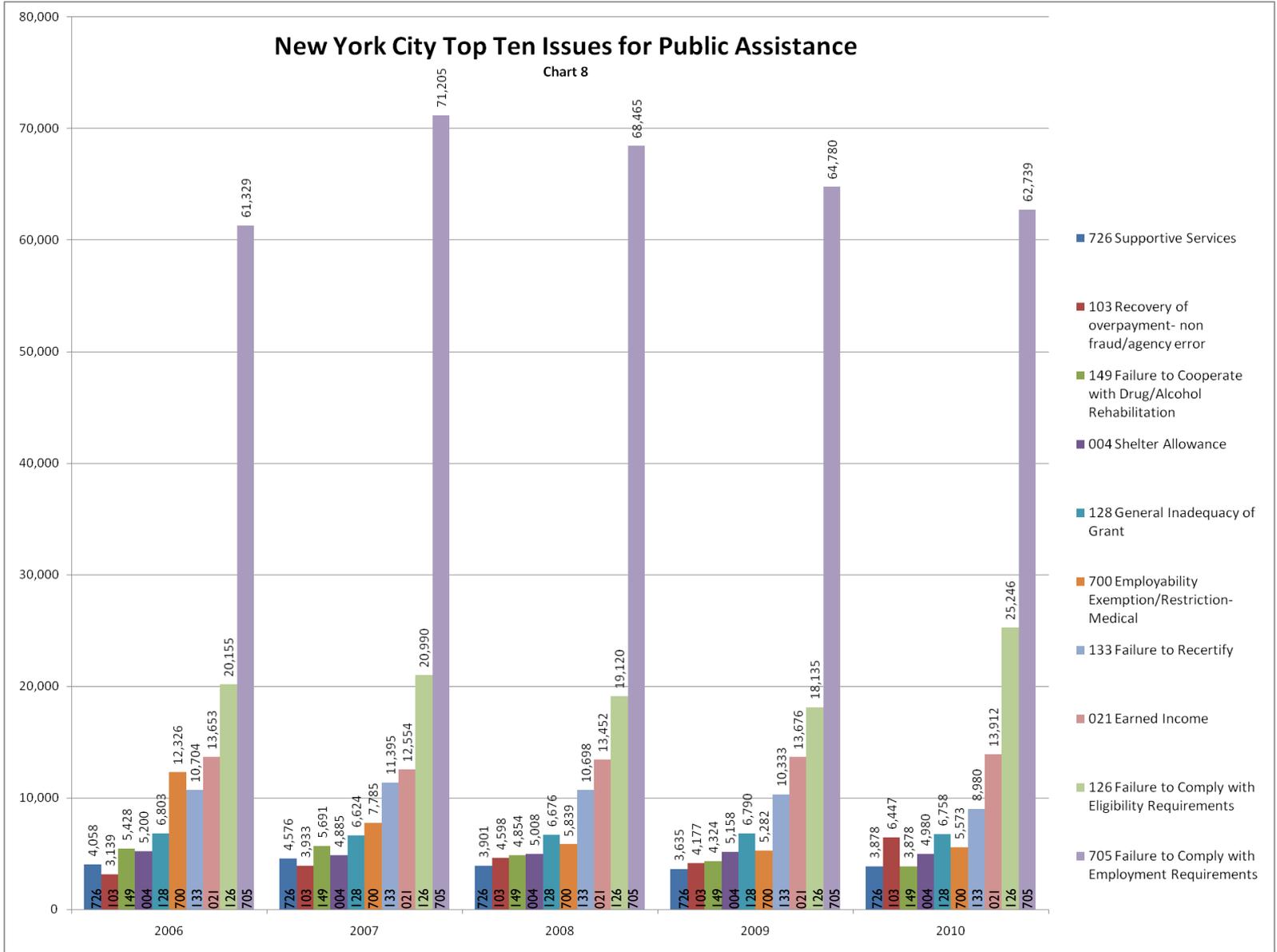
Chart 15



- 309 Any Services issue not identified by other code
- 315
- 312 Preventive services for children
- 314 Transitional child care
- 310 Protective Services for adults
- 313 Foster Care
- 305 Daycare- non payment to a specific provider
- 303 Daycare- failure to recertify or provide information
- 302 Financial eligibility or amount of fees for day care
- 306 Any daycare issue not identified by other code

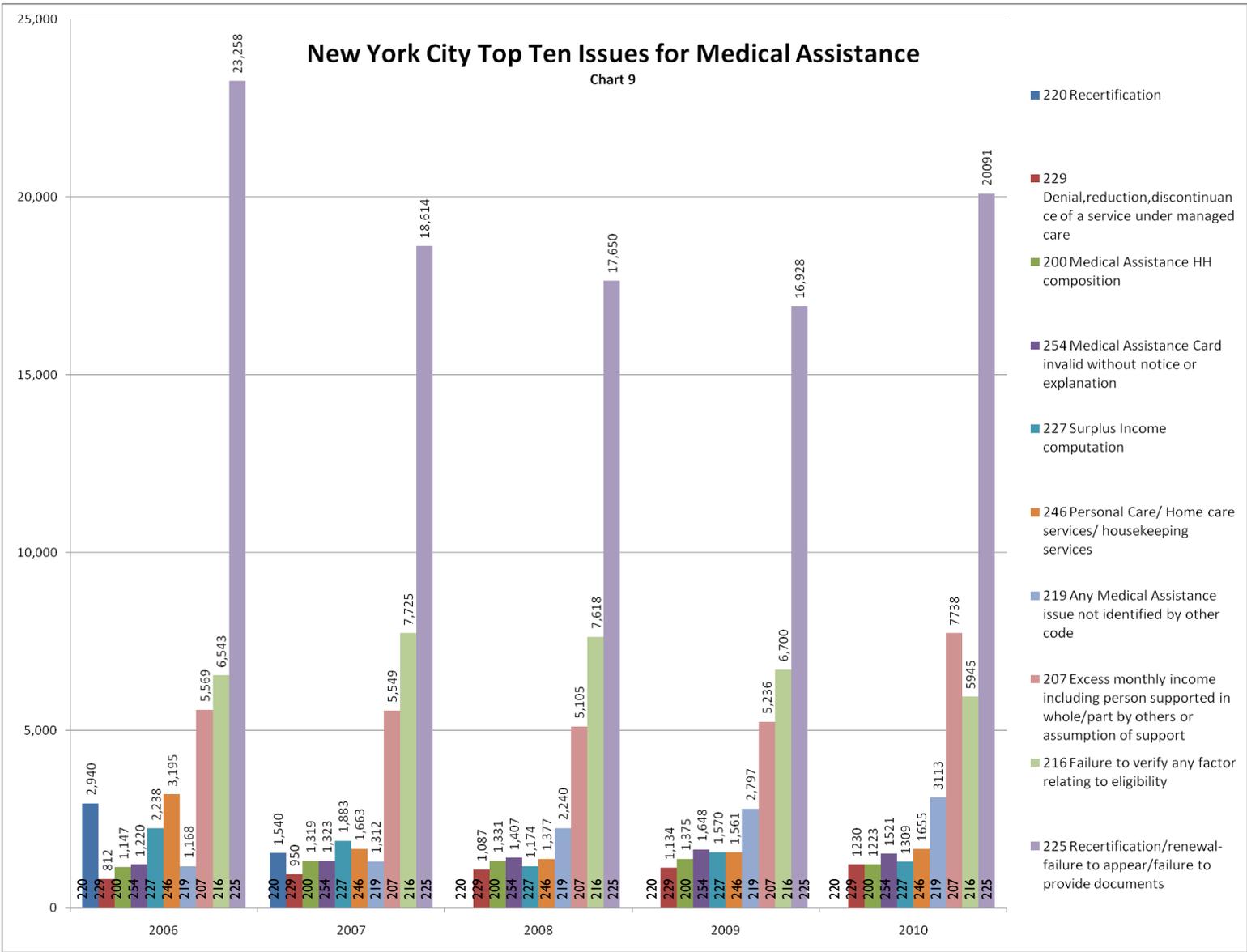
New York City Top Ten Issues for Public Assistance

Chart 8



New York City Top Ten Issues for Medical Assistance

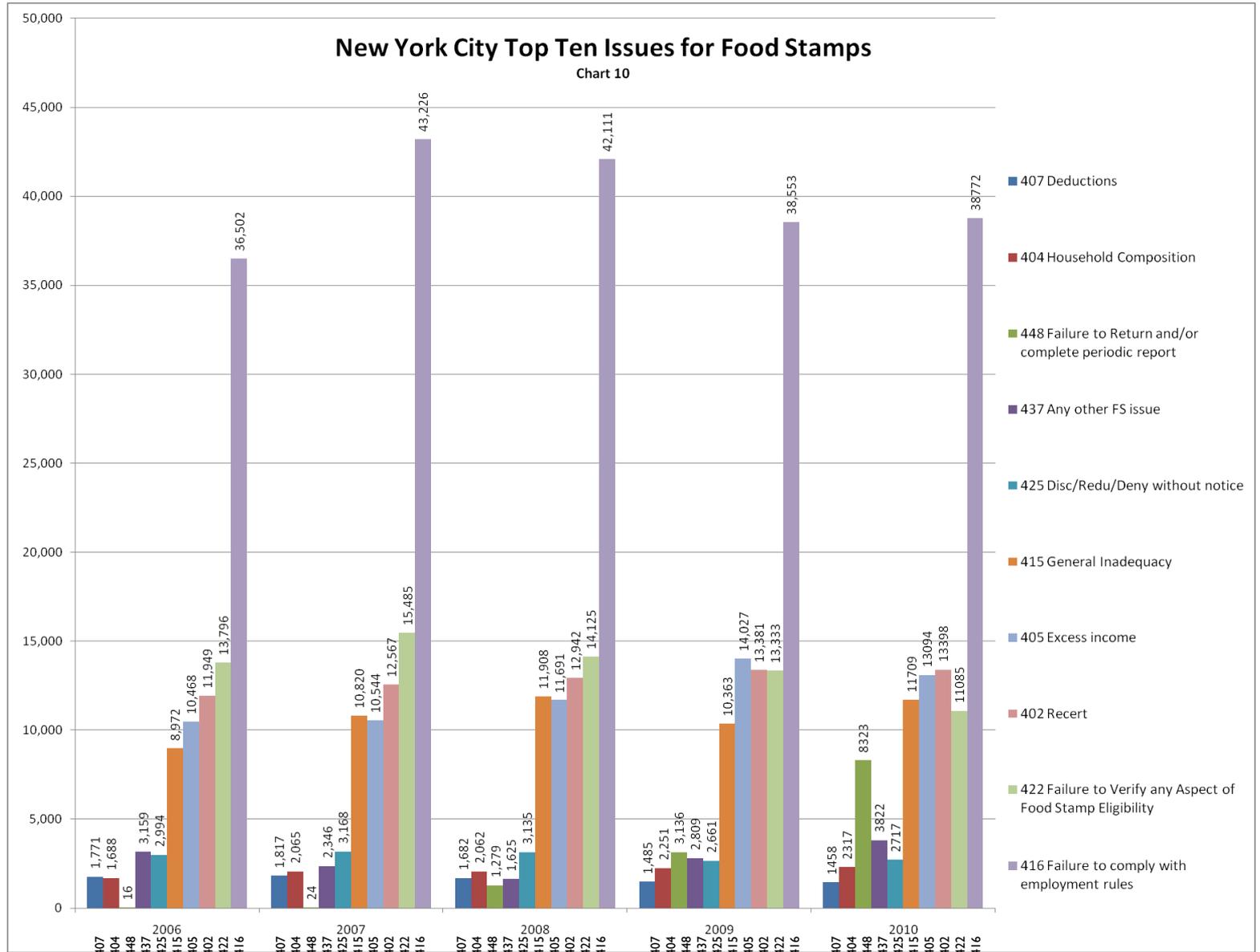
Chart 9



- 220 Recertification
- 229 Denial, reduction, discontinuance of a service under managed care
- 200 Medical Assistance HH composition
- 254 Medical Assistance Card invalid without notice or explanation
- 227 Surplus Income computation
- 246 Personal Care/ Home care services/ housekeeping services
- 219 Any Medical Assistance issue not identified by other code
- 207 Excess monthly income including person supported in whole/part by others or assumption of support
- 216 Failure to verify any factor relating to eligibility
- 225 Recertification/renewal-failure to appear/failure to provide documents

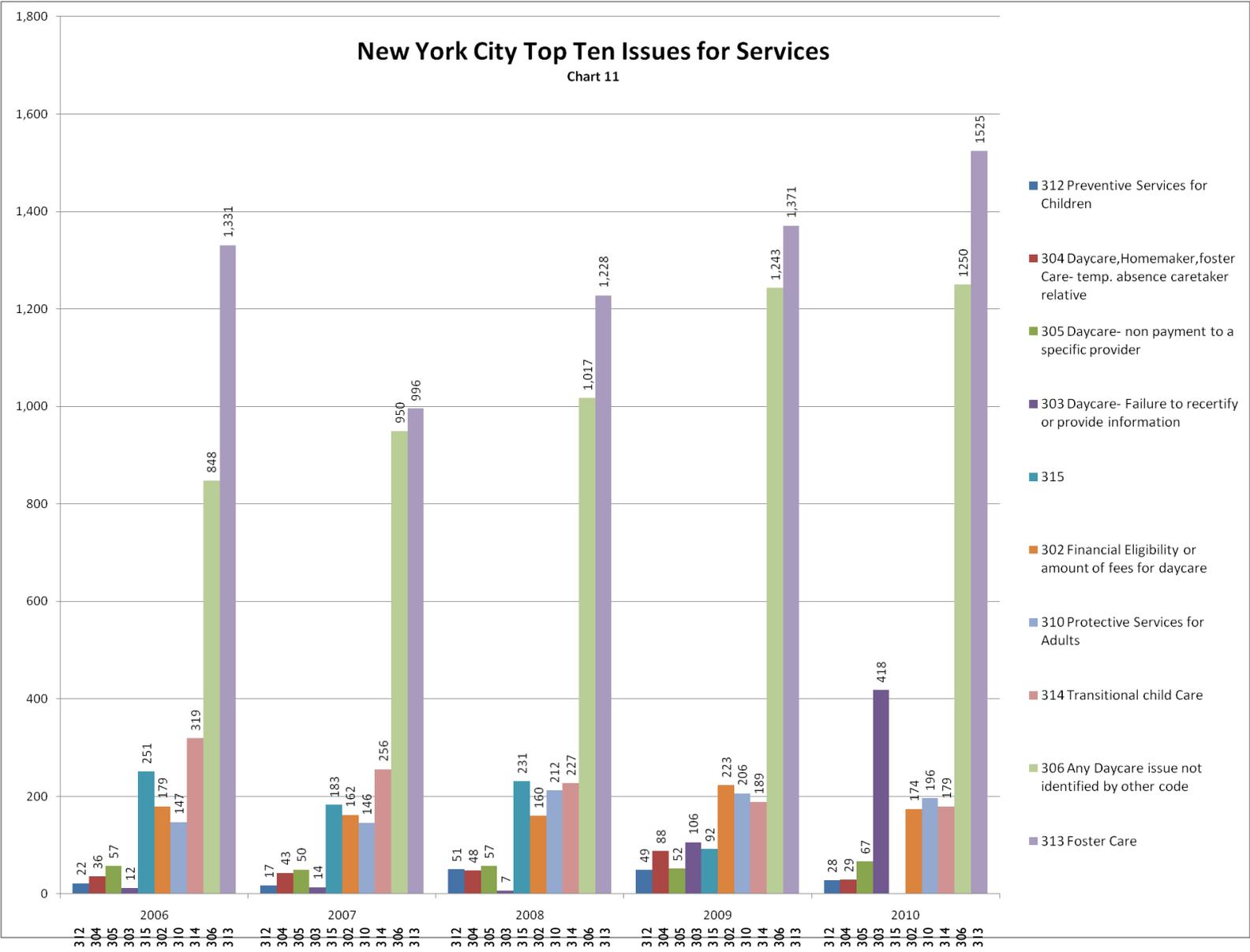
New York City Top Ten Issues for Food Stamps

Chart 10



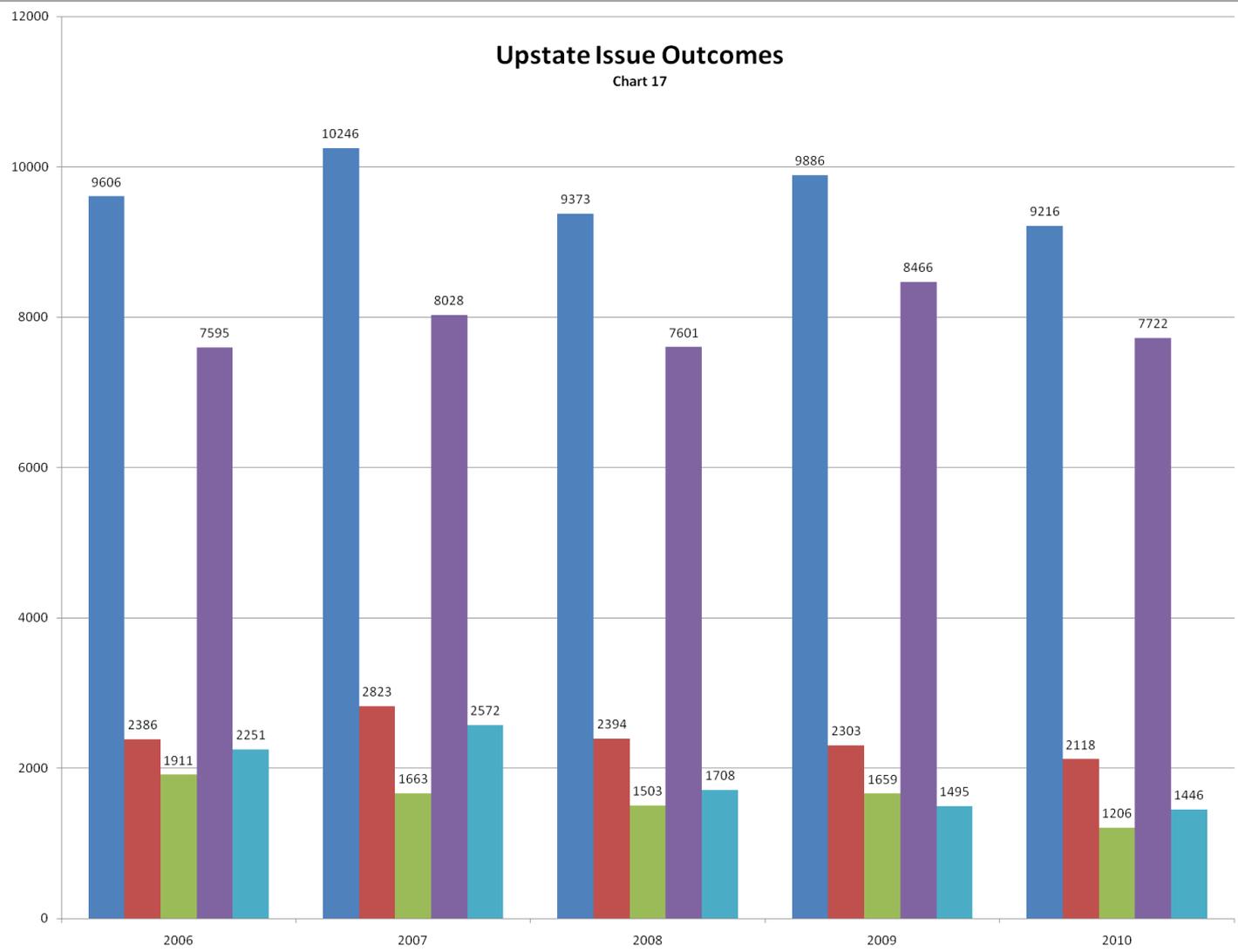
New York City Top Ten Issues for Services

Chart 11



Upstate Issue Outcomes

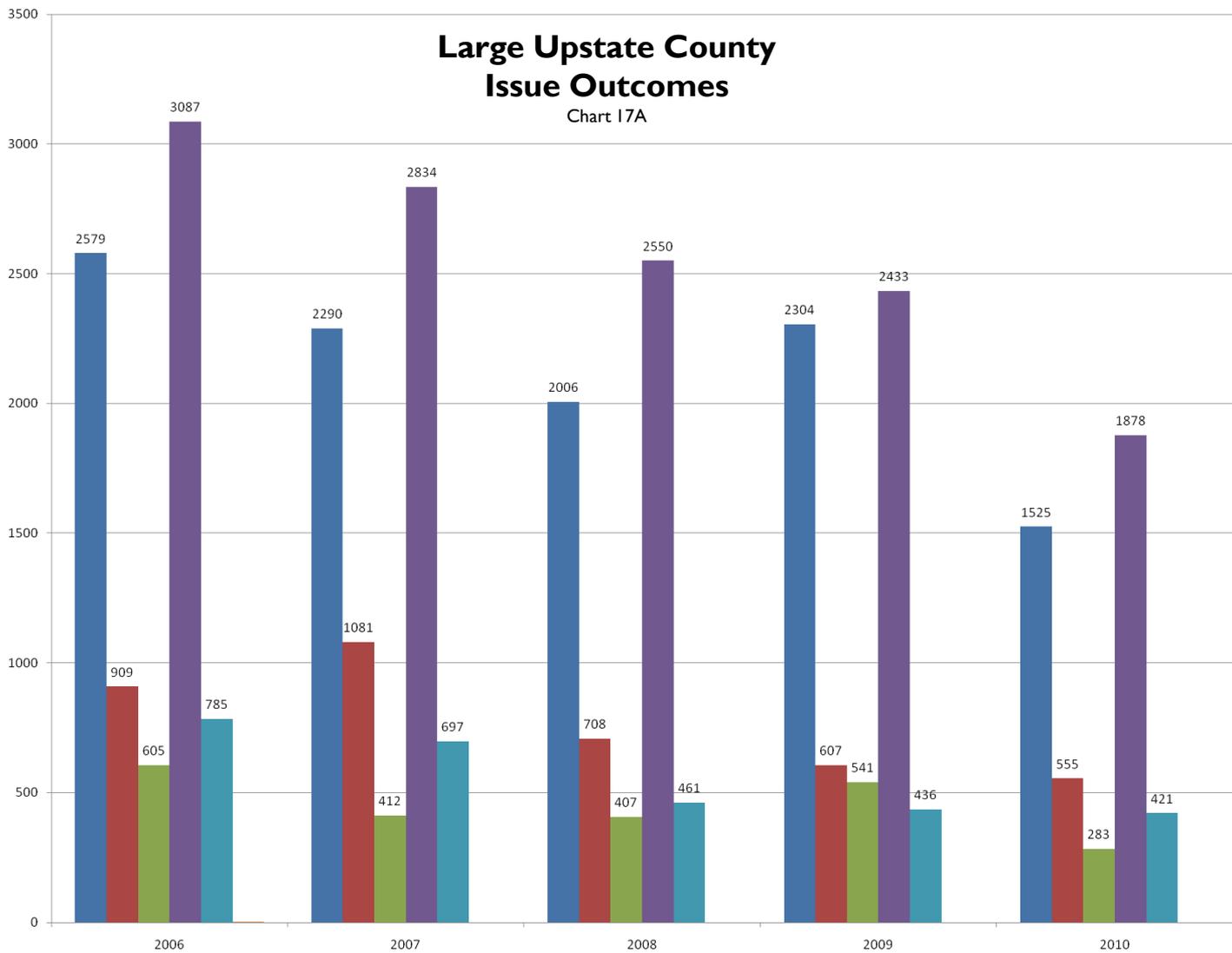
Chart 17



	2006	2007	2008	2009	2010
Affirmed	9606	10246	9373	9886	9216
Reversed	2386	2823	2394	2303	2118
Other	1911	1663	1503	1659	1206
Agency Withdrawal	7595	8028	7601	8466	7722
Correct When Made	2251	2572	1708	1495	1446

Large Upstate County Issue Outcomes

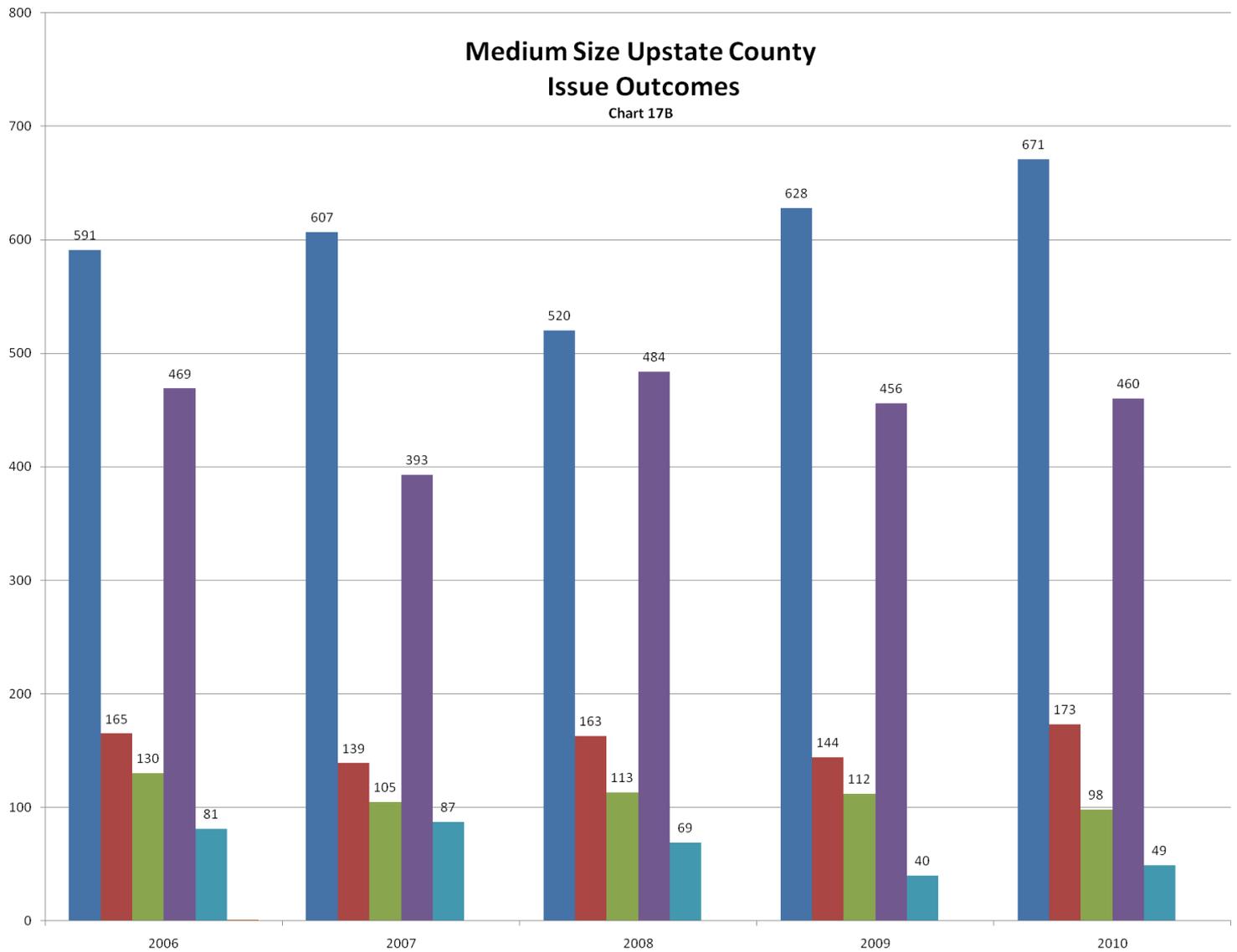
Chart 17A



	2006	2007	2008	2009	2010
Affirmed	2549	2290	2006	2304	1525
Reversed	909	1081	708	607	555
Other	605	412	407	541	283
Agency Withdrawal	3087	2834	2550	2433	1878
Correct When Made	785	697	461	436	421
	2579	2290	2006	2304	1525

Medium Size Upstate County Issue Outcomes

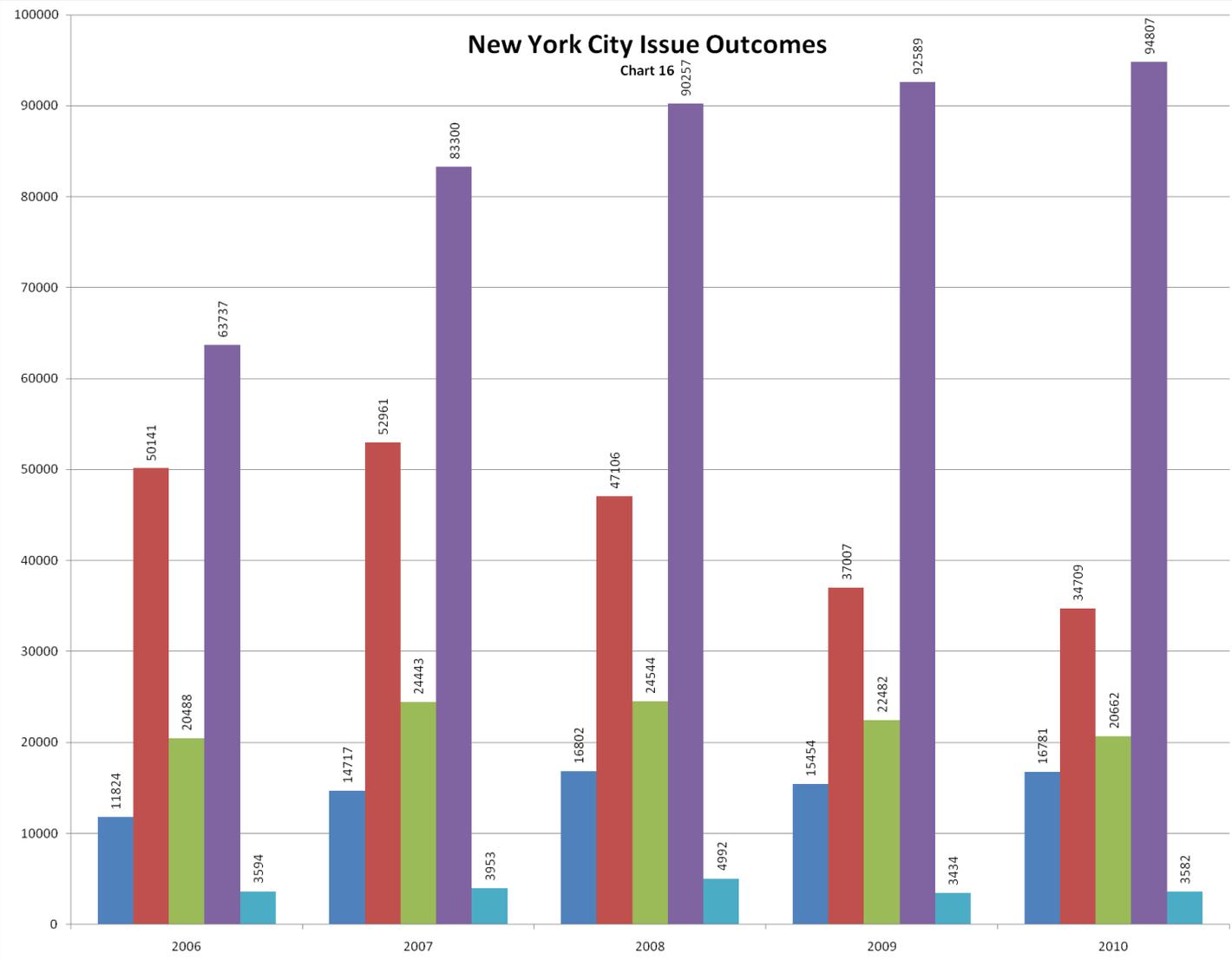
Chart 17B



	2006	2007	2008	2009	2010
Affirmed	591	607	520	628	671
Reversed	165	139	163	144	173
Other	130	105	113	112	98
Agency Withdrawal	469	393	484	456	460
Correct When Made	81	87	69	40	49

New York City Issue Outcomes

Chart 16



	2006	2007	2008	2009	2010
Affirmed	11824	14717	16802	15454	16781
Reversed	50141	52961	47106	37007	34709
Other	20488	24443	24544	22482	20662
Agency Withdrawal	63737	83300	90257	92589	94807
Correct When Made	3594	3953	4992	3434	3582

**2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
UPSTATE COUNTIES (INCLUDING LONG ISLAND)**

		705		126		021		150		700		653		103		128		133		004	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE	6	0.36%			5	0.63%	5	1.30%			2	1.24%	4	2.52%					1	1.52%
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	8	0.48%	10	0.68%	10	1.26%	1	0.26%	2	0.88%	2	1.24%	2	1.26%	2	1.32%			2	3.03%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	11	0.67%	14	0.95%	2	0.25%	2	0.52%	1	0.44%					1	0.66%				
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	8	0.48%	7	0.47%	3	0.38%	2	0.52%			2	1.24%	3	1.89%	1	0.66%			1	1.52%
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	1	0.06%															1	0.68%		
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	112	6.78%	109	7.36%	18	2.27%	14	3.64%	3	1.33%	5	3.11%	9	5.66%	6	3.97%	8	5.48%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	4	0.24%	2	0.14%					1	0.44%	2	1.24%	1	0.63%	1	0.66%				
10	AFFIRM: AGENCY AFFIRMED	815	49.36%	463	31.28%	404	50.88%	234	60.78%	83	36.73%	82	50.93%	77	48.43%	71	47.02%	44	30.14%	27	40.91%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	19	1.15%	18	1.22%	7	0.88%	3	0.78%	6	2.65%	1	0.62%	2	1.26%	2	1.32%				
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	430	26.04%	563	38.04%	238	29.97%	90	23.38%	73	32.30%	44	27.33%	40	25.16%	51	33.77%	71	48.63%	21	31.82%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	19	1.15%	23	1.55%	4	0.50%	3	0.78%	1	0.44%										
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT			1	0.07%																
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	3	0.18%	3	0.20%	3	0.38%			3	1.33%			1	0.63%	1	0.66%			1	1.52%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE									1	0.44%										
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	40	2.42%	24	1.62%	12	1.51%	9	2.34%	16	7.08%	1	0.62%	11	6.92%	2	1.32%	2	1.37%	2	3.03%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)											1	0.62%								
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)									1	0.44%	4	2.48%	1	0.63%	1	0.66%			1	1.52%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	1	0.06%	5	0.34%	8	1.01%			3	1.33%			1	0.63%	4	2.65%	2	1.37%	4	6.06%
35	OTHER: ISSUE IS MOOT	1	0.06%	4	0.27%	1	0.13%	1	0.26%			3	1.86%	1	0.63%			1	0.68%	2	3.03%
41	REMAND: AGENCY NOTICE DEFECTIVE	1	0.06%	1	0.07%			2	0.52%	1	0.44%										
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	1	0.06%	4	0.27%	6	0.76%					3	1.86%	3	1.89%			1	0.68%		
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1	0.06%	3	0.20%	1	0.13%					2	1.24%			1	0.66%			1	1.52%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	1	0.06%	2	0.14%	4	0.50%			1	0.44%	1	0.62%	2	1.26%	3	1.99%			1	1.52%
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	15	0.91%	11	0.74%	4	0.50%	2	0.52%	3	1.33%	3	1.86%			2	1.32%	2	1.37%	1	1.52%
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	108	6.54%	125	8.45%	27	3.40%	10	2.60%	8	3.54%	1	0.62%	1	0.63%			10	6.85%	1	1.52%
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	46	2.79%	88	5.95%	37	4.66%	7	1.82%	19	8.41%	2	1.24%			2	1.32%	4	2.74%		
	TOTAL:	1,651		1,480		794		385		226		161		159		151		146		66	

**2010 OUTCOMES FOR THE TOP FIVE REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
UPSTATE COUNTIES (INCLUDING LONG ISLAND)**

		705		126		021		150		700	
		Number	Percentage for Issue Code								
01	REVERSE: AGENCY NOTICE DEFECTIVE	6	0.36%			5	0.63%	5	1.30%		
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	8	0.48%	10	0.68%	10	1.26%	1	0.26%	2	0.88%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)	11	0.67%	14	0.95%	2	0.25%	2	0.52%	1	0.44%
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	8	0.48%	7	0.47%	3	0.38%	2	0.52%		
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	1	0.06%								
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	112	6.78%	109	7.36%	18	2.27%	14	3.64%	3	1.33%
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	4	0.24%	2	0.14%					1	0.44%
10	AFFIRM: AGENCY AFFIRMED	815	49.36%	463	31.28%	404	50.88%	234	60.78%	83	36.73%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	19	1.15%	18	1.22%	7	0.88%	3	0.78%	6	2.65%
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	430	26.04%	563	38.04%	238	29.97%	90	23.38%	73	32.30%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	19	1.15%	23	1.55%	4	0.50%	3	0.78%	1	0.44%
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT			1	0.07%						
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	3	0.18%	3	0.20%	3	0.38%			3	1.33%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE									1	0.44%

		705		126		021		150		700	
		FAILURE TO COMPLY WITH EMPLOYMENT REQUIREMENTS		FAILURE TO COMPLY WITH ELIGIBILITY REQUIREMENTS		BUDGETING EARNED INCOME		FAILURE TO PARTICIPATE IN REQUIRED DRUG/ALCOHOL REHABILITATION		EMPLOYABILITY EXEMPTION / RESTRICTION - MEDICAL	
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING										
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	40	2.42%	24	1.62%	12	1.51%	9	2.34%	16	7.08%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)										
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES									1	0.44%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	1	0.06%	5	0.34%	8	1.01%			3	1.33%
35	OTHER: ISSUE IS MOOT	1	0.06%	4	0.27%	1	0.13%	1	0.26%		
41	REMAND: AGENCY NOTICE DEFECTIVE	1	0.06%	1	0.07%			2	0.52%	1	0.44%
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	1	0.06%	4	0.27%	6	0.76%				
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1	0.06%	3	0.20%	1	0.13%				
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	1	0.06%	2	0.14%	4	0.50%			1	0.44%
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD										
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	15	0.91%	11	0.74%	4	0.50%	2	0.52%	3	1.33%
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT										
50	CWM: AGENCY CORRECT WHEN MADE	108	6.54%	125	8.45%	27	3.40%	10	2.60%	8	3.54%
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	46	2.79%	88	5.95%	37	4.66%	7	1.82%	19	8.41%
	TOTAL:	1,651		1,480		794		385		226	

		126		705		021		150		128	
		FAILURE TO COMPLY WITH ELIGIBILITY REQUIREMENTS		FAILURE TO COMPLY WITH EMPLOYMENT REQUIREMENTS		EARNED INCOME		FAILURE TO PARTICIPATE IN DRUG/ALCOHOL REHABILITATION		GENERAL INADEQUACY OF GRANT	
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING	10	1.67%	9	2.17%	3	1.01%	5	2.73%	2	2.44%
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)										
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)										
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES	1	0.17%			3	1.01%	1	0.55%	4	4.88%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	6	1.00%			2	0.68%	1	0.55%	1	1.22%
35	OTHER: ISSUE IS MOOT										
41	REMAND: AGENCY NOTICE DEFECTIVE	2	0.33%			3	1.01%				
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR					1	0.34%			2	2.44%
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(ININSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)					3	1.01%			2	2.44%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY										
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	4	0.67%	2	0.48%	1	0.34%				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT										
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	52	8.68%	51	12.29%	8	2.70%	8	4.37%		
50	CWM: AGENCY CORRECT WHEN MADE	44	7.35%	12	2.89%	21	7.09%	4	2.19%	1	1.22%
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	1	0.17%			1	0.34%				
	TOTAL:	599		415		296		183		82	

		126		705		021		134		653	
		FAILURE TO COMPLY WITH ELIGIBILITY REQUIREMENTS		FAILURE TO COMPLY WITH EMPLOYMENT REQUIREMENTS		BUDGETING EARNED INCOME		WHEREABOUTS UNKNOWN		EVICTION/DISPOSSESS /FORECLOSURE	
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING										
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	1	0.88%	2	1.79%	2	5.26%				
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)									1	3.23%
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES									2	6.45%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING										
35	OTHER: ISSUE IS MOOT	1	0.88%							2	6.45%
41	REMAND: AGENCY NOTICE DEFECTIVE			1	0.89%						
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	2	1.77%	1	0.89%	1	2.63%			1	3.23%
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)										
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY					1	2.63%				
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD										
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT									1	3.23%
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT										
50	CWM: AGENCY CORRECT WHEN MADE	6	5.31%	4	3.57%	2	5.26%				
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	1	0.88%								
	TOTAL:	113		112		38		34		31	

**2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
UPSTATE COUNTIES (INCLUDING LONG ISLAND)**

		705		126		021		150		700		653		103		128		133		004	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE	6	0.36%			5	0.63%	5	1.30%			2	1.24%	4	2.52%					1	1.52%
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	8	0.48%	10	0.68%	10	1.26%	1	0.26%	2	0.88%	2	1.24%	2	1.26%	2	1.32%			2	3.03%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	11	0.67%	14	0.95%	2	0.25%	2	0.52%	1	0.44%					1	0.66%				
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	8	0.48%	7	0.47%	3	0.38%	2	0.52%			2	1.24%	3	1.89%	1	0.66%			1	1.52%
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	1	0.06%															1	0.68%		
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	112	6.78%	109	7.36%	18	2.27%	14	3.64%	3	1.33%	5	3.11%	9	5.66%	6	3.97%	8	5.48%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	4	0.24%	2	0.14%					1	0.44%	2	1.24%	1	0.63%	1	0.66%				
10	AFFIRM: AGENCY AFFIRMED	815	49.36%	463	31.28%	404	50.88%	234	60.78%	83	36.73%	82	50.93%	77	48.43%	71	47.02%	44	30.14%	27	40.91%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	19	1.15%	18	1.22%	7	0.88%	3	0.78%	6	2.65%	1	0.62%	2	1.26%	2	1.32%				
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	430	26.04%	563	38.04%	238	29.97%	90	23.38%	73	32.30%	44	27.33%	40	25.16%	51	33.77%	71	48.63%	21	31.82%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	19	1.15%	23	1.55%	4	0.50%	3	0.78%	1	0.44%										
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT			1	0.07%																
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	3	0.18%	3	0.20%	3	0.38%			3	1.33%			1	0.63%	1	0.66%			1	1.52%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE									1	0.44%										
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	40	2.42%	24	1.62%	12	1.51%	9	2.34%	16	7.08%	1	0.62%	11	6.92%	2	1.32%	2	1.37%	2	3.03%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)											1	0.62%								
33	OTHER: IMPROPER FH REQUEST (REQ.PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES									1	0.44%	4	2.48%	1	0.63%	1	0.66%			1	1.52%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	1	0.06%	5	0.34%	8	1.01%			3	1.33%			1	0.63%	4	2.65%	2	1.37%	4	6.06%
35	OTHER: ISSUE IS MOOT	1	0.06%	4	0.27%	1	0.13%	1	0.26%			3	1.86%	1	0.63%			1	0.68%	2	3.03%
41	REMAND: AGENCY NOTICE DEFECTIVE	1	0.06%	1	0.07%			2	0.52%	1	0.44%										
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	1	0.06%	4	0.27%	6	0.76%					3	1.86%	3	1.89%			1	0.68%		
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1	0.06%	3	0.20%	1	0.13%					2	1.24%			1	0.66%			1	1.52%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	1	0.06%	2	0.14%	4	0.50%			1	0.44%	1	0.62%	2	1.26%	3	1.99%			1	1.52%
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	15	0.91%	11	0.74%	4	0.50%	2	0.52%	3	1.33%	3	1.86%			2	1.32%	2	1.37%	1	1.52%
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	108	6.54%	125	8.45%	27	3.40%	10	2.60%	8	3.54%	1	0.62%	1	0.63%			10	6.85%	1	1.52%
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	46	2.79%	88	5.95%	37	4.66%	7	1.82%	19	8.41%	2	1.24%			2	1.32%	4	2.74%		
	TOTAL:	1,651		1,480		794		385		226		161		159		151		146		66	

*Top ten Upstate issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*

**FOOD STAMPS
UPSTATE COUNTIES (INCLUDING LONG ISLAND)**

		405		415		422		416		402		428		404		437		418		425	
		DISC/REDU/DENY BASED UPON EXCESS INCOME		BUDGETARY COMPUTATION OR GENERAL INADEQUACY INCLUDING RETRO BENEF		FAILURE TO VERIFY ANY ASPECT OF FOOD STAMP ELIGIBILITY		FAILURE TO COMPLY WITH EMPLOYMENT RULES/CONTESTING WORK REQUIREME		FAILURE TO REPORT FOR AND/OR COMPLETE RECERTIFICATION		INELIGIBILITY OF A PERSON OR GROUP BECAUSE OF STATUS		FS HOUSEHOLD COMPOSITION/CHANGES; MIXED HH; PARENTS OR SIBLINGS		ANY OTHER FOOD STAMP ISSUE NOT IDENTIFIED BY OTHER CODE		DISTRICT OF RESPONSIBILITY, AND/OR MOVED OUT OF STATE		DISC/REDU/DENY OF FOOD STAMPS - NO NOTICE	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE	2	0.29%			3	1.78%	1	0.75%												
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	15	2.14%	7	2.33%	2	1.18%	1	0.75%	2	1.96%	1	1.79%			2	5.13%				
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1	0.14%													1	2.56%				
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	4	0.57%	1	0.33%	1	0.59%	2	1.49%					2	4.35%						
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD					1	0.59%														
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	15	2.14%	11	3.67%	20	11.83%	6	4.48%	5	4.90%			3	6.52%	3	7.69%			1	9.09%
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.14%					1	0.75%												
10	AFFIRM: AGENCY AFFIRMED	387	55.29%	144	48.00%	46	27.22%	55	41.04%	21	20.59%	29	51.79%	23	50.00%	16	41.03%	3	14.29%		
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	8	1.14%	3	1.00%	4	2.37%	4	2.99%	3	2.94%					1	2.56%				
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	175	25.00%	97	32.33%	61	36.09%	37	27.61%	53	51.96%	18	32.14%	15	32.61%	13	33.33%	14	66.67%	5	45.45%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	4	0.57%	4	1.33%	2	1.18%	1	0.75%	1	0.98%	1	1.79%	1	2.17%						
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	3	0.43%			1	0.59%											1	4.76%	1	9.09%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	6	0.86%			2	1.18%	4	2.99%	2	1.96%	1	1.79%								
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET; PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)			1	0.33%																
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	3	0.43%	3	1.00%	2	1.18%			2	1.96%					1	2.56%	1	4.76%	1	9.09%
35	OTHER: ISSUE IS MOOT			3	1.00%			1	0.75%	1	0.98%										
41	REMAND: AGENCY NOTICE DEFECTIVE																			1	9.09%
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	6	0.86%	5	1.67%					2	1.96%			1	2.17%			1	4.76%	1	9.09%
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	2	0.29%	2	0.67%	2	1.18%													1	9.09%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	2	0.29%	2	0.67%																
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			1	0.33%																
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2	0.29%	3	1.00%	3	1.78%	1	0.75%	1	0.98%	1	1.79%			1	2.56%				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	19	2.71%	4	1.33%	12	7.10%	13	9.70%	5	4.90%	5	8.93%	1	2.17%	1	2.56%	1	4.76%		
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	45	6.43%	9	3.00%	7	4.14%	7	5.22%	3	2.94%										
	TOTAL:	700		300		169		134		102		56		46		39		21		11	

*Top ten Upstate issues for 2005-2009

**2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
MEDICAL ASSISTANCE
UPSTATE COUNTIES (INCLUDING LONG ISLAND)**

		207		216		227		225		206		229		215		219		252		218	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
	EXCESS MONTHLY INCOME																				
	FAILURE TO VERIFY ANY FACTOR RELATING TO ELIGIBILITY																				
	SURPLUS INCOME COMPUTATION																				
	RECERTIFICATION, FAILURE TO APPEAR OR PROVIDE DOCUMENTS																				
	EXCESS RESOURCES																				
	DENY/REDU/DISC OF A SERVICE UNDER MANAGED CARE																				
	CHRONIC CARE BUDGETING: DISC/REDU/NAD																				
	ANY MEDICAL ASSISTANCE ISSUE NOT IDENTIFIED BY OTHER CODE																				
	ISSUE RELATING TO COVERAGE/PAYMENT NOT IDENTIFIED BY OTHER CODE																				
	FAMILY PLANNING BENEFIT PROGRAM (FPBP)																				
01	REVERSE: AGENCY NOTICE DEFECTIVE	5	0.46%	1	0.15%											1	1.72%				
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	10	0.91%	11	1.62%			2	0.99%	3	2.04%	2	1.37%	4	4.65%			2	4.17%		
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)			1	0.15%			1	0.49%			1	0.68%								
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	7	0.64%	1	0.15%			1	0.49%	4	2.72%	1	0.68%	2	2.33%						
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	18	1.65%	32	4.71%	3	1.38%	6	2.96%	5	3.40%	11	7.53%	1	1.16%	4	6.90%				
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	2	0.18%	2	0.29%			1	0.49%	1	0.68%										
10	AFFIRM: AGENCY AFFIRMED	586	53.56%	221	32.55%	138	63.59%	33	16.26%	52	35.37%	96	65.75%	47	54.65%	20	34.48%	15	31.25%	2	50.00%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	11	1.01%	7	1.03%	2	0.92%	2	0.99%	5	3.40%					1	1.72%	1	2.08%	1	25.00%
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	342	31.26%	278	40.94%	61	28.11%	126	62.07%	56	38.10%	5	3.42%	11	12.79%	20	34.48%	23	47.92%		
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	5	0.46%	3	0.44%	2	0.92%	2	0.99%	1	0.68%	2	1.37%	1	1.16%			1	2.08%		
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	1	0.09%					2	0.99%												
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING															5	8.62%				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	30	2.74%	20	2.95%	3	1.38%	4	1.97%	2	1.36%	2	1.37%	2	2.33%	3	5.17%	3	6.25%	1	25.00%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ.PREMATURE: NO AGENCY ACTION YET; PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES			1	0.15%							1	0.68%	1	1.16%						
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	4	0.37%	1	0.15%			1	0.49%	1	0.68%	1	0.68%	1	1.16%						
35	OTHER: ISSUE IS MOOT	5	0.46%	1	0.15%			6	2.96%	7	4.76%	4	2.74%	3	3.49%						
41	REMAND: AGENCY NOTICE DEFECTIVE											2	1.37%			1	1.72%	1	2.08%		
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	8	0.73%	6	0.88%					1	0.68%										
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)			2	0.29%	1	0.46%					1	0.68%	2	2.33%						
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY			1	0.15%	1	0.46%					1	0.68%	1	1.16%			1	2.08%		
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			1	0.15%							1	0.68%								
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	5	0.46%	12	1.77%	1	0.46%	4	1.97%	2	1.36%	5	3.42%	2	2.33%						
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	25	2.29%	35	5.15%	1	0.46%	6	2.96%	3	2.04%	4	2.74%	6	6.98%	2	3.45%				
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	30	2.74%	42	6.19%	4	1.84%	6	2.96%	4	2.72%	6	4.11%	2	2.33%	1	1.72%	1	2.08%		
	TOTAL:	1,094		679		217		203		147		146		86		58		48		4	

*Top ten Upstate issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
NEW YORK CITY

		705		126		021		133		149		700		103		128		004		726	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
		FAILURE TO COMPLY WITH EMPLOYMENT REQUIREMENTS		FAILURE TO COMPLY WITH ELIGIBILITY REQUIREMENTS		BUDGETING EARNED INCOME		FAILURE TO RECERTIFY		FAILURE TO COOPERATE WITH DRUG/ALCOHOL SCREENING/ASSESSMENT		EMPLOYABILITY EXEMPTION / RESTRICTION - MEDICAL		RECOVERY OF OVERPAYMENT - NON FRAUD/AGENCY ERROR		GENERAL INADEQUACY OF GRANT, INCLUDING RETROACTIVE BENEFITS		SHELTER ALLOWANCE		SUPPORTIVE SERVICES/FAILURE TO PROVIDE, MAKE REFERRAL TO, OR DI	
01	REVERSE: AGENCY NOTICE DEFECTIVE	23	0.07%	28	0.25%	7	0.12%	3	0.10%	5	0.27%	5	0.28%	20	1.16%			2	0.18%	1	0.19%
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	41	0.13%	19	0.17%	15	0.26%	6	0.20%	4	0.22%	10	0.55%	1	0.06%			1	0.09%	1	0.19%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1,009	3.29%	313	2.82%	615	10.57%	94	3.07%	99	5.36%	36	2.00%	119	6.93%	23	1.39%	54	4.78%	22	4.11%
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	170	0.55%	58	0.52%	54	0.93%	31	1.01%	16	0.87%	5	0.28%	9	0.52%	6	0.36%	14	1.24%	8	1.50%
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	305	0.99%	73	0.66%	120	2.06%	29	0.95%	16	0.87%	3	0.17%	60	3.49%	1	0.06%	27	2.39%	15	2.80%
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2,836	9.24%	862	7.76%	94	1.62%	294	9.59%	203	10.99%	62	3.44%	9	0.52%	8	0.49%	25	2.21%	11	2.06%
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	11	0.04%	3	0.03%	1	0.02%			1	0.05%							1	0.09%		
10	AFFIRM: AGENCY AFFIRMED	3,003	9.78%	843	7.59%	533	9.16%	194	6.33%	251	13.59%	342	18.96%	10	0.58%	73	4.43%	45	3.99%	37	6.92%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	34	0.11%	12	0.11%	14	0.24%	3	0.10%					4	0.23%			2	0.18%		
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	3,943	12.84%	1,484	13.36%	725	12.47%	677	22.09%	213	11.53%	32	1.77%	296	17.24%	24	1.46%	56	4.96%	16	2.99%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	5	0.02%	1	0.01%	1	0.02%									1	0.06%				
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT	6	0.02%	1	0.01%			1	0.03%												
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	15,693	51.11%	5,545	49.91%	2,876	49.45%	1,504	49.07%	773	41.85%	74	4.10%	1,076	62.67%	43	2.61%	248	21.97%	64	11.96%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE	496	1.62%	801	7.21%	280	4.81%	21	0.69%	59	3.19%	528	29.27%	45	2.62%	744	45.12%	313	27.72%	171	31.96%
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING	5	0.02%					1	0.03%			4	0.22%			1	0.06%			1	0.19%
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	1,492	4.86%	281	2.53%	156	2.68%	76	2.48%	59	3.19%	178	9.87%	19	1.11%	4	0.24%	16	1.42%		
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)	1	0.00%	2	0.02%	1	0.02%	2	0.07%			1	0.06%	2	0.12%	3	0.18%	2	0.18%	1	0.19%
33	OTHER: IMPROPER FH REQUEST (REQ.PREMATURE: NO AGENCY ACTION YET; PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)	27	0.09%	6	0.05%	4	0.07%	2	0.07%	1	0.05%	14	0.78%	1	0.06%	10	0.61%	8	0.71%	4	0.75%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	155	0.50%	40	0.36%	103	1.77%	22	0.72%	6	0.32%	67	3.71%	25	1.46%	129	7.82%	78	6.91%	33	6.17%
35	OTHER: ISSUE IS MOOT	60	0.20%	40	0.36%	20	0.34%	8	0.26%	3	0.16%	33	1.83%	2	0.12%	61	3.70%	39	3.45%	18	3.36%
41	REMAND: AGENCY NOTICE DEFECTIVE	1	0.00%	1	0.01%													1	0.09%		
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	5	0.02%	12	0.11%	6	0.10%			2	0.11%	13	0.72%			12	0.73%	6	0.53%	9	1.68%
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	54	0.18%	54	0.49%	71	1.22%	5	0.16%	3	0.16%	142	7.87%	5	0.29%	241	14.61%	62	5.49%	44	8.22%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	20	0.07%	37	0.33%	25	0.43%	1	0.03%	6	0.32%	67	3.71%	4	0.23%	75	4.55%	51	4.52%	31	5.79%
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	27	0.09%	40	0.36%	39	0.67%			5	0.27%	74	4.10%	10	0.58%	114	6.91%	41	3.63%	23	4.30%
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	97	0.32%	82	0.74%	26	0.45%	5	0.16%	10	0.54%	58	3.22%			55	3.34%	32	2.83%	21	3.93%
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.00%	5	0.05%	4	0.07%					16	0.89%			21	1.27%	5	0.44%	4	0.75%
50	CWM: AGENCY CORRECT WHEN MADE	1,173	3.82%	447	4.02%	22	0.38%	84	2.74%	111	6.01%	36	2.00%								
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	14	0.05%	20	0.18%	4	0.07%	2	0.07%	1	0.05%	4	0.22%								
	TOTAL:	30,707		11,110		5,816		3,065		1,847		1,804		1,717		1,649		1,129		535	

*Top ten issues New York City issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*

**FOOD STAMPS
NEW YORK CITY**

		405		415		402		422		416		437		425		404		407		418	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code						
01	REVERSE: AGENCY NOTICE DEFECTIVE	18	0.51%	2	0.06%	36	1.93%	8	0.45%	4	0.58%	4	0.85%	23	5.05%	1	0.36%	1	0.47%	1	1.64%
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	18	0.51%	13	0.40%	3	0.16%	7	0.40%			1	0.21%	7	1.54%	1	0.36%	1	0.47%		
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)	277	7.90%	65	1.98%	168	9.03%	85	4.81%	110	16.06%	38	8.07%	23	5.05%	15	5.34%	24	11.37%	1	1.64%
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	31	0.88%	7	0.21%	36	1.93%	3	0.17%	32	4.67%	1	0.21%	74	16.26%	1	0.36%			2	3.28%
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	79	2.25%	12	0.37%	123	6.61%	45	2.55%	9	1.31%	25	5.31%	29	6.37%	3	1.07%	14	6.64%	2	3.28%
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	84	2.40%	49	1.50%	184	9.89%	57	3.23%	126	18.39%	3	0.64%	7	1.54%	6	2.14%			5	8.20%
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.03%			2	0.11%														
10	AFFIRM: AGENCY AFFIRMED	583	16.63%	249	7.60%	46	2.47%	38	2.15%	111	16.20%	18	3.82%	6	1.32%	10	3.56%	12	5.69%	2	3.28%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	1	0.03%			1	0.05%	2	0.11%	1	0.15%			3	0.66%						
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	156	4.45%	135	4.12%	116	6.23%	196	11.10%	20	2.92%	28	5.94%	11	2.42%	21	7.47%	12	5.69%	6	9.84%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY			1	0.03%	1	0.05%														
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT	2	0.06%																		
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	1,196	34.12%	149	4.55%	636	34.18%	785	44.45%	202	29.49%	139	29.51%	34	7.47%	33	11.74%	100	47.39%	26	42.62%
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE	562	16.03%	1,495	45.65%	182	9.78%	368	20.84%	8	1.17%	91	19.32%	197	43.30%	102	36.30%	11	5.21%	8	13.11%
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING			1	0.03%																
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	30	0.86%	4	0.12%	48	2.58%	29	1.64%	2	0.29%	7	1.49%	1	0.22%			3	1.42%	2	3.28%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)	1	0.03%	4	0.12%	2	0.11%					4	0.85%								
33	OTHER: IMPROPER FH REQUEST (REQ. PREMATURE: NO AGENCY ACTION YET; PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)	2	0.06%	4	0.12%	4	0.21%					68	14.44%	4	0.88%	1	0.36%	2	0.95%		
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	19	0.54%	36	1.10%	37	1.99%	6	0.34%			10	2.12%	12	2.64%	7	2.49%	7	3.32%	1	1.64%
35	OTHER: ISSUE IS MOOT	51	1.46%	30	0.92%	79	4.25%	16	0.91%	1	0.15%	10	2.12%	8	1.76%	9	3.20%	9	4.27%		
41	REMAND: AGENCY NOTICE DEFECTIVE	2	0.06%																		
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	18	0.51%	9	0.27%	2	0.11%	3	0.17%					2	0.44%						
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)	149	4.25%	457	13.95%	18	0.97%	30	1.70%	4	0.58%	6	1.27%	4	0.88%	23	8.19%	6	2.84%	2	3.28%
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY	35	1.00%	183	5.59%	25	1.34%	18	1.02%			3	0.64%	3	0.66%	14	4.98%	1	0.47%	2	3.28%
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	101	2.88%	228	6.96%	16	0.86%	31	1.76%			10	2.12%	2	0.44%	25	8.90%	8	3.79%	1	1.64%
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	72	2.05%	115	3.51%	83	4.46%	36	2.04%	5	0.73%	2	0.42%	5	1.10%	9	3.20%				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	5	0.14%	17	0.52%			2	0.11%			1	0.21%								
50	CWM: AGENCY CORRECT WHEN MADE	8	0.23%	8	0.24%	12	0.64%			50	7.30%	2	0.42%								
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	4	0.11%	2	0.06%	1	0.05%	1	0.06%												
	TOTAL:	3,505		3,275		1,861		1,766		685		471		455		281		211		61	

*Top ten New York City issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
MEDICAL ASSISTANCE
NEW YORK CITY

		225		207		246		227		216		245		219		252		254		200	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE	23	0.79%	15	1.29%	25	3.52%	24	4.96%									3	3.70%		
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	16	0.55%	63	5.40%	90	12.68%	39	8.06%	2	0.92%			3	1.89%	5	5.88%	2	2.47%	1	16.67%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)	229	7.83%	48	4.12%	42	5.92%	14	2.89%	5	2.29%	3	1.68%	12	7.55%	2	2.35%	4	4.94%	1	16.67%
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	6	0.21%	14	1.20%	17	2.39%	17	3.51%					1	0.63%			7	8.64%		
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	5	0.17%	16	1.37%	2	0.28%	2	0.41%	1	0.46%			6	3.77%			4	4.94%		
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	1,593	54.48%	49	4.20%	180	25.35%	13	2.69%	23	10.55%	22	12.29%	23	14.47%	8	9.41%	7	8.64%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.03%			2	0.28%														
10	AFFIRM: AGENCY AFFIRMED	493	16.86%	547	46.91%	184	25.92%	240	49.59%	9	4.13%	79	44.13%	21	13.21%	8	9.41%	1	1.23%		
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	4	0.14%	4	0.34%																
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	231	7.90%	179	15.35%	53	7.46%	53	10.95%	101	46.33%			56	35.22%	19	22.35%	17	20.99%	2	33.33%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	1	0.03%											1	0.63%						
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	88	3.01%	27	2.32%	12	1.69%	6	1.24%	13	5.96%			10	6.29%	2	2.35%	5	6.17%		
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE	5	0.17%	25	2.14%	14	1.97%	11	2.27%	32	14.68%	1	0.56%	4	2.52%	10	11.76%	26	32.10%		
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	67	2.29%	20	1.72%	10	1.41%	10	2.07%	6	2.75%	3	1.68%	6	3.77%	4	4.71%	3	3.70%		
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)	1	0.03%					1	0.21%							1	1.18%				
33	OTHER: IMPROPER FH REQUEST (REQ. PREMATURE: NO AGENCY ACTION YET; PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)	3	0.10%			4	0.56%	2	0.41%									1	1.23%		
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	4	0.14%	4	0.34%	4	0.56%							1	0.63%	1	1.18%			1	16.67%
35	OTHER: ISSUE IS MOOT	3	0.10%	11	0.94%	7	0.99%	2	0.41%	2	0.92%	2	1.12%	2	1.26%	2	2.35%	1	1.23%		
41	REMAND: AGENCY NOTICE DEFECTIVE							1	0.21%												
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE			32	2.74%	12	1.69%	15	3.10%	12	5.50%	23	12.85%	3	1.89%	7	8.24%			1	16.67%
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)	3	0.10%	12	1.03%	3	0.42%	5	1.03%	3	1.38%	15	8.38%	1	0.63%	3	3.53%				
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY					1	0.14%	3	0.62%	1	0.46%										
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			7	0.60%	8	1.13%	8	1.65%	2	0.92%	9	5.03%	1	0.63%	3	3.53%				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2	0.07%	4	0.34%	5	0.70%	3	0.62%	4	1.83%	17	9.50%			2	2.35%				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT					1	0.14%														
50	CWM: AGENCY CORRECT WHEN MADE	120	4.10%	37	3.17%	27	3.80%	7	1.45%	1	0.46%			4	2.52%	2	2.35%				
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	26	0.89%	52	4.46%	7	0.99%	8	1.65%	1	0.46%	5	2.79%	4	2.52%	6	7.06%				
	TOTAL:	2,924		1,166		710		484		218		179		159		85		81		6	

*Top ten New York City issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
MEDIUM SIZE UPSTATE COUNTY

		126		705		021		134		653		702		128		150		133		004	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE			1	0.89%	1	2.63%			1	3.23%										
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE			1	0.89%					2	6.45%	1	6.67%								
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)															1	9.09%				
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION																			1	12.50%
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	12	10.62%	5	4.46%			4	11.76%	1	3.23%	2	13.33%	2	15.38%			1	10.00%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
10	AFFIRM: AGENCY AFFIRMED	51	45.13%	64	57.14%	25	65.79%	5	14.71%	17	54.84%	8	53.33%	9	69.23%	6	54.55%	3	30.00%	1	12.50%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	1	0.88%	2	1.79%	1	2.63%	1	2.94%												
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	37	32.74%	31	27.68%	3	7.89%	24	70.59%	3	9.68%	1	6.67%	2	15.38%	2	18.18%	4	40.00%	2	25.00%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	1	0.88%																		
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION					2	5.26%														
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	1	0.88%	2	1.79%	2	5.26%													1	12.50%
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)									1	3.23%										
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)									2	6.45%									1	12.50%
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING																			1	12.50%
35	OTHER: ISSUE IS MOOT	1	0.88%							2	6.45%									1	12.50%
41	REMAND: AGENCY NOTICE DEFECTIVE			1	0.89%																
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	2	1.77%	1	0.89%	1	2.63%			1	3.23%										
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT (INSUFFICIENT DOCUMENTS, TESTIMONY, ETC. BUT ALL OR PART OF CASE RECORD PRESENT)																				
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY					1	2.63%														
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT									1	3.23%										
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	6	5.31%	4	3.57%	2	5.26%					2	13.33%			2	18.18%	1	10.00%		
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	1	0.88%									1	6.67%					1	10.00%		
	TOTAL:	113		112		38		34		31		15		13		11		10		8	

*Top ten Upstate issues for 2005-2009

**2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
FOOD STAMPS
MEDIUM SIZE UPSTATE COUNTY**

		405		415		422		418		437		402		404		425		416		400	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
1	REVERSE: AGENCY NOTICE DEFECTIVE	1	2.56%																		
2	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	1	2.56%			1	6.25%														
3	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)																				
4	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	1	2.56%																		
5	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
6	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2	5.13%	1	5.26%	1	6.25%			1	25.00%										
7	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
10	AFFIRM: AGENCY AFFIRMED	22	56.41%	16	84.21%	5	31.25%	1	20.00%	3	75.00%	2	50.00%	3	100.00%			1	100.00%		
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD																				
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	7	17.95%	2	10.53%	6	37.50%	3	60.00%			2	50.00%			1	50.00%				
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY					1	6.25%														
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	1	2.56%													1	50.00%				
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	1	2.56%																		
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ.PREMATURE: NO AGENCY ACTION YET - PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)																				
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING																				
35	OTHER: ISSUE IS MOOT																				
41	REMAND: AGENCY NOTICE DEFECTIVE																				
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	1	2.56%					1	20.00%												
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)																				
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY																				
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT																				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	1	2.56%			1	6.25%														
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	1	2.56%			1	6.25%														
	TOTAL:	39		19		16		5		4		4		3		2		1		0	

*Top ten Upstate issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
MEDICAL ASSISTANCE
MEDIUM SIZE UPSTATE COUNTY

		207		216		227		225		229		206		219		252		254		218	
		EXCESS MONTHLY INCOME		FAILURE TO VERIFY ANY FACTOR RELATING TO ELIGIBILITY		SURPLUS INCOME COMPUTATION		RECERTIFICATION, FAILURE TO APPEAR OR PROVIDE DOCUMENTS		DENY/REDU/DISC OF A SERVICE UNDER MANAGED CARE		EXCESS RESOURCES		ANY MEDICAL ASSISTANCE ISSUE NOT IDENTIFIED BY OTHER CODE		ISSUE RELATING TO COVERAGE/PAYMENT NOT IDENTIFIED BY OTHER CODE		MEDICAL ASSISTANCE CARD INVALID WITHOUT NOTICE OR EXPLANATION		FAMILY PLANNING BENEFIT PROGRAM (FPBP)	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
1	REVERSE: AGENCY NOTICE DEFECTIVE																				
2	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE											1	33.33%								
3	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)																				
4	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION																				
5	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
6	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	1	2.22%	5	23.81%									1	33.33%						
7	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	2.22%																		
10	AFFIRM: AGENCY AFFIRMED	31	68.89%	4	19.05%	11	73.33%	1	11.11%	5	71.43%	1	33.33%	1	33.33%						
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD											1	33.33%								
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	8	17.78%	10	47.62%	2	13.33%	4	44.44%					1	33.33%	1	50.00%				
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY							1	11.11%												
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION							2	22.22%												
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)					1	6.67%									1	50.00%				
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES																				
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING																				
35	OTHER: ISSUE IS MOOT							1	11.11%	1	14.29%										
41	REMAND: AGENCY NOTICE DEFECTIVE																				
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	3	6.67%	1	4.76%																
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)			1	4.76%					1	14.29%										
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY																				
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT																				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	1	2.22%			1	6.67%														
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND																				
	TOTAL:	45		21		15		9		7		3		3		2		0		0	

*Top ten Upstate issues for 2005-2009

**2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
PUBLIC ASSISTANCE
LARGE UPSTATE COUNTY**

		126		705		021		150		128		133		004		702		134		653	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code						
01	REVERSE: AGENCY NOTICE DEFECTIVE					1	0.34%	1	0.55%	2	2.44%									1	7.14%
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	1	0.17%											2	5.41%						
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(ININSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	10	1.67%	5	1.20%	2	0.68%			1	1.22%			1	2.70%			1	5.26%		
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	3	0.50%	3	0.72%	1	0.34%	2	1.09%												
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			1	0.24%							1	2.00%								
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	62	10.35%	32	7.71%	11	3.72%	7	3.83%	4	4.88%	3	6.00%			8	26.67%	2	10.53%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	2	0.33%	2	0.48%																
10	AFFIRM: AGENCY AFFIRMED	162	27.05%	163	39.28%	142	47.97%	109	59.56%	26	31.71%	15	30.00%	18	48.65%	13	43.33%	1	5.26%	5	35.71%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	12	2.00%	6	1.45%	3	1.01%	2	1.09%	2	2.44%							1	5.26%		
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	221	36.89%	126	30.36%	89	30.07%	42	22.95%	35	42.68%	24	48.00%	10	27.03%	6	20.00%	11	57.89%	6	42.86%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	5	0.83%	3	0.72%				1	0.55%											
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.17%			1	0.34%														
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION																				
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE																				
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING	10	1.67%	9	2.17%	3	1.01%	5	2.73%	2	2.44%	1	2.00%					1	5.26%		
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)																				
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ.PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)	1	0.17%			3	1.01%	1	0.55%	4	4.88%			2	5.41%						
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	6	1.00%			2	0.68%	1	0.55%	1	1.22%			2	5.41%					1	7.14%
35	OTHER: ISSUE IS MOOT																				
41	REMAND: AGENCY NOTICE DEFECTIVE	2	0.33%			3	1.01%							1	2.70%					1	7.14%
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE					1	0.34%			2	2.44%										
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(ININSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)					3	1.01%			2	2.44%										
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY																				
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD	4	0.67%	2	0.48%	1	0.34%								1	3.33%					
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT																				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	52	8.68%	51	12.29%	8	2.70%	8	4.37%			4	8.00%			1	3.33%	2	10.53%		
50	CWM: AGENCY CORRECT WHEN MADE	44	7.35%	12	2.89%	21	7.09%	4	2.19%	1	1.22%	1	2.00%	1	2.70%	1	3.33%				
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	1	0.17%			1	0.34%					1	2.00%								
	TOTAL:	599		415		296		183		82		50		37		30		19		14	

*Top ten Upstate issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
MEDICAL ASSISTANCE
LARGE UPSTATE COUNTY

		207		216		206		219		218		225		227		252		229		254	
		Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code	Number	Percentage for Issue Code
01	REVERSE: AGENCY NOTICE DEFECTIVE	1	0.42%	1	0.46%																
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	2	0.84%	1	0.46%	1	2.33%	1	2.44%												
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)											1	3.57%								
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	2	0.84%	2	0.92%							1	3.57%								
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	12	5.04%	24	11.06%	4	9.30%	3	7.32%			3	10.71%	3	11.11%	1	6.25%	7	58.33%		
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
10	AFFIRM: AGENCY AFFIRMED	112	47.06%	53	24.42%	9	20.93%	13	31.71%	3	8.33%	5	17.86%	11	40.74%	2	12.50%	1	8.33%	1	8.33%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	14	5.88%	8	3.69%	4	9.30%	3	7.32%	6	16.67%			1	3.70%	1	6.25%				
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	64	26.89%	91	41.94%	16	37.21%	14	34.15%	19	52.78%	13	46.43%	8	29.63%	8	50.00%	3	25.00%	7	58.33%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY																				
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	1	0.42%							1	2.78%			1	3.70%						
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE															1	6.25%			1	8.33%
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	2	0.84%	5	2.30%					1	2.78%			1	3.70%						
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES)																				
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	2	0.84%					2	4.88%	3	8.33%										
35	OTHER: ISSUE IS MOOT	2	0.84%	3	1.38%	4	9.30%	1	2.44%	3	8.33%	1	3.57%			1	6.25%			3	25.00%
41	REMAND: AGENCY NOTICE DEFECTIVE																				
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDUR	4	1.68%						1	2.44%											
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)								1	2.44%				1	3.70%						
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY																				
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			1	0.46%																
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2	0.84%	4	1.84%							1	3.57%			1	6.25%				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	7	2.94%	13	5.99%	3	6.98%	1	2.44%			3	10.71%								
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	11	4.62%	11	5.07%	2	4.65%	1	2.44%					1	3.70%	1	6.25%	1	8.33%		
	TOTAL:	238		217		43		41		36		28		27		16		12		12	

*Top ten Upstate issues for 2005-2009

2010 OUTCOMES FOR THE TOP TEN REQUESTED FAIR HEARING ISSUES*
FOOD STAMPS
LARGE UPSTATE COUNTY

		405		416		422		437		415		404		402		425		418		400	
		DISCONTINUANCE/REDUCTION/DENIAL BASED UPON EXCESS INCOME	FAILURE TO COMPLY WITH EMPLOYMENT RULES	FAILURE TO VERIFY ANY ASPECT OF FOOD STAMP ELIGIBILITY (NON-RE-CERTIFICATION)	ANY OTHER FOOD STAMP ISSUE NOT IDENTIFIED BY OTHER CODE	BUDGETARY COMPUTATION OR GENERAL INADEQUACY, INCLUDING RETROACTIVE BENEFITS	FS HOUSEHOLD COMPOSITION (MIXED HOUSEHOLD)	FAILURE TO REPORT FOR AND/OR COMPLETE RE-CERTIFICATION	DISCONTINUANCE/REDUCTION/DENIAL OF FOOD STAMPS- WITHOUT NOTICE	DISTRICT OF RESPONSIBILITY, AND/OR MOVED OUT OF STATE (INCLUDING IDD OR CENTER OF RESPONSIBILITY - NPA VS PA)	FAILURE TO PROCESS APPLICATION OR CHANGES IN CIRCUMSTANCES INCLUDING DELAYED ISSUANCE	Number	Percentage for Issue Code								
01	REVERSE: AGENCY NOTICE DEFECTIVE	1	0.39%			2	0.87%									1	5.88%				
02	REVERSE: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE DEFECTIVE	2	0.78%			1	0.44%					1	1.64%							2	20.00%
03	REVERSE: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)					2	0.87%	2	0.91%	1	0.66%										
04	REVERSE: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY FOR THEIR ACTION	1	0.39%	3	1.20%	3	1.31%	1	0.46%	1	0.66%	2	3.28%	2	3.45%	1	5.88%				
05	REVERSE: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD			1	0.40%																
06	REVERSE: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	10	3.91%	20	8.00%	25	10.92%	4	1.83%	7	4.64%	5	8.20%	2	3.45%	2	11.76%			1	10.00%
07	REVERSE: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT	1	0.39%	2	0.80%											1	5.88%				
10	AFFIRM: AGENCY AFFIRMED	89	34.77%	86	34.40%	40	17.47%	26	11.87%	35	23.18%	18	29.51%	11	18.97%	1	5.88%			2	20.00%
20	WITHDRAWAL: AGENCY IS NOT PREPARED TO PROCEED AND/OR DOES NOT HAVE APPELLANT'S CASE RECORD	5	1.95%	6	2.40%	7	3.06%	8	3.65%	8	5.30%	1	1.64%	1	1.72%			1	9.09%		
21	WITHDRAWAL: AGENCY REEVALUATED POSITION AND/OR SETTLED THE ISSUE WITH APPELLANT	100	39.06%	93	37.20%	108	47.16%	111	50.68%	70	46.36%	28	45.90%	35	60.34%	7	41.18%	10	90.91%	4	40.00%
22	WITHDRAWAL: APPELLANT SUBMITTED VERIFICATION/DOCUMENTS AFTER AGENCY DETERMINATION BUT BEFORE OR AT FH, ACCEPTED BY AGENCY	1	0.39%	1	0.40%	1	0.44%	1	0.46%	2	1.32%	1	1.64%								
23	WITHDRAWAL: AGENCY FAILURE TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
24	WITHDRAWAL: AGENCY RESOLVED ISSUES TO CLIENT SATISFACTION	1	0.39%											1	1.72%						
25	WITHDRAWAL: AGENCY STIPULATED SETTLE A NON-NOTICE-OF-INTENT-BASED ISSUE									1	0.66%										
30	OTHER: APPELLANT HAS NO STANDING TO REQUEST A HEARING																				
31	OTHER: COMMISSIONER HAS NO JURISDICTION TO HEAR ISSUE (EITHER SUBJECT MATTER OR 60 DAY SOL)	3	1.17%	5	2.00%	1	0.44%							1	1.72%	1	5.88%				
32	OTHER: COMMISSIONER HAS NO AUTHORITY TO GRANT RELIEF REQUESTED (PAYMENT ON CLOSED CASE, VALIDITY OF AGENCY LIEN, ETC.)																				
33	OTHER: IMPROPER FH REQUEST (REQ PREMATURE: NO AGENCY ACTION YET: PREVIOUS FH ON SAME ISSUE: NO CHANGE IN CIRCUMSTANCES															1	5.88%				
34	OTHER: CLIENT WITHDREW ON ISSUE AT HEARING	3	1.17%	1	0.40%	2	0.87%	8	3.65%	7	4.64%	1	1.64%								
35	OTHER: ISSUE IS MOOT	4	1.56%	2	0.80%	8	3.49%	50	22.83%	6	3.97%	1	1.64%	1	1.72%	1	5.88%			1	10.00%
41	REMAND: AGENCY NOTICE DEFECTIVE																				
42	REMAND: AGENCY VERIFICATION AND/OR ELIGIBILITY DETERMINATION PROCEDURE	3	1.17%			2	0.87%			3	1.99%										
43	REMAND: AGENCY HEARING PRESENTATION DEFICIENT(INSUFFICIENT DOCUMENTS, TESTIMONY, ETC.BUT ALL OR PART OF CASE RECORD PRESENT)	1	0.39%			2	0.87%			2	1.32%										
44	REMAND: AGENCY EITHER MISAPPLIED LAW, REGULATION OR POLICY OR THERE WAS NO AUTHORITY			1	0.40%	1	0.44%			1	0.66%										
45	REMAND: AGENCY FAILED TO PRODUCE APPELLANT'S CASE RECORD																				
46	REMAND: FACTUAL ISSUES FOUND IN FAVOR OF APPELLANT	2	0.78%	2	0.80%	2	0.87%	1	0.46%	2	1.32%					1	5.88%				
47	REMAND: AGENCY FAILED TO SEND REQUESTED DOCUMENTS TO APPELLANT																				
50	CWM: AGENCY CORRECT WHEN MADE	10	3.91%	18	7.20%	9	3.93%	4	1.83%	1	0.66%	2	3.28%	4	6.90%						
51	CWM: AGENCY WAS CORRECT WHEN MADE - REMAND	19	7.42%	9	3.60%	13	5.68%	3	1.37%	4	2.65%	1	1.64%								
	TOTAL:	256		250		229		219		151		61		58		17		11		10	

*Top ten Upstate issues for 2005-2009

Cite as 90 S.Ct. 1011 (1970)

397 U.S. 254

Jack R. GOLDBERG, Commissioner of
Social Services of the City of
New York, Appellant,

v.

John KELLY et al.

No. 62.

Argued Oct. 13, 1969.

Decided March 23, 1970.

New York City residents receiving financial aid under federally-assisted program of Aid to Families with Dependent Children or under New York State's general Home Relief program brought suit challenging adequacy of procedures for notice and hearing in connection with termination of such aid. The three-judge United States District Court for the Southern District of New York, 294 F.Supp. 893, entered judgment in favor of plaintiffs, and defendant appealed. The Supreme Court, Mr. Justice Brennan, held that procedural due process requires that pretermination evidentiary hearing be held when public assistance payments to welfare recipient are discontinued, and further held that procedures followed by city of New York in terminating public assistance payments to welfare recipients were constitutionally inadequate in failing to permit recipients to appear personally with or without counsel before official who finally determined continued eligibility and failing to permit recipient to present evidence to that official orally or to confront or cross-examine adverse witnesses.

Affirmed.

Mr. Chief Justice Burger and Mr. Justice Black dissented.

For dissenting opinions of Mr. Chief Justice Burger and Mr. Justice Stewart see 397 U.S. 282, 285, 90 S.Ct. 1028, 1029.

1. Constitutional Law ¶318

Social Security and Public Welfare

¶2

Welfare benefits are a matter of statutory entitlement for persons qualified to receive them and their termination involves state action that adjudicates important rights, and procedural due process is applicable to termination of welfare benefits. U.S.C.A.Const. Amend. 14.

2. Constitutional Law ¶103

A constitutional challenge to termination of welfare benefits cannot be answered by argument that public assistance benefits are a "privilege" rather than a "right." U.S.C.A.Const. Amend. 14.

3. Constitutional Law ¶318

Relevant constitutional restraints apply to withdrawal of public assistance benefits. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ¶318

Extent to which procedural due process must be afforded welfare recipient is influenced by extent to which he may be condemned to suffer grievous loss and depends on whether recipient's interest in avoiding that loss outweighs governmental interest in summary adjudication. U.S.C.A.Const. Amend. 14.

5. Constitutional Law ¶318

Some governmental benefits may be administratively terminated without affording recipient a pretermination evidentiary hearing. U.S.C.A.Const. Amend. 14.

6. Constitutional Law ¶318

Procedural due process requires that pretermination evidentiary hearing be held when public assistance payments to welfare recipient are discontinued. U.S.C.A.Const. Amend. 14.

7. Social Security and Public Welfare

¶8

Governmental interests in conserving fiscal and administrative resources by stopping payments promptly on discovery of reason to believe that welfare

recipient is no longer eligible and by reducing number of evidentiary hearings actually held would not be sufficient to justify failure to provide pretermination evidentiary hearing and instead delay evidentiary hearing until after discontinuance of grants. U.S.C.A.Const. Amend. 14.

8. Constitutional Law ↻318

Due process does not require two hearings in connection with termination of public assistance benefits to welfare recipients, and if a state wishes to continue benefits until after a fair hearing there will be no need for a preliminary hearing. U.S.C.A.Const. Amend. 14.

9. Social Security and Public Welfare

↻8

Hearing prior to termination of public assistance benefits to welfare recipients has only function of producing an initial determination of validity of welfare department's grounds for discontinuance of payments in order to protect recipient against an erroneous termination of his benefits. U.S.C.A.Const. Amend. 14.

10. Social Security and Public Welfare

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Hearing prior to termination of public assistance benefits to welfare recipients need not provide complete record and comprehensive opinion that would serve primarily to facilitate judicial review and need not take form of judicial or quasi-judicial trial. U.S.C.A.Const. Amend. 14.

11. Constitutional Law ↻305

Fundamental requisite of due process of law is opportunity to be heard and hearing must be at meaningful time and in meaningful manner. U.S.C.A.Const. Amend. 14.

12. Constitutional Law ↻318

Due process would require that welfare recipient on proposed termination of public assistance benefits be given timely and adequate notice detailing reasons for proposed termination and an

effective opportunity to defend by confronting any adverse witnesses and by presenting his own argument and evidence orally. U.S.C.A.Const. Amend. 14.

13. Paupers ↻43

Social Security and Public Welfare

↻194

Seven days' notice provided by New York City on proposed termination of public assistance benefits to recipients of financial aid under federally-assisted program of Aid to Families With Dependent Children or under New York State's general Home Relief program was not constitutionally insufficient per se although there might be cases where fairness would require that longer time be given. U.S.C.A.Const. Amend. 14; Social Security Act, §§ 401-410 as amended 42 U.S.C.A. §§ 601-610; Social Services Law N.Y. §§ 157-166, 158, 343-362.

14. Social Security and Public Welfare

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Notice given by city of New York of proposed termination of public assistance payments to welfare recipients by employing both letter and personal conference with caseworker to inform recipient of precise questions raised about his continued eligibility satisfied constitutional requirements as to content or form of notice. U.S.C.A.Const. Amend. 14; Social Security Act, §§ 401-410 as amended 42 U.S.C.A. §§ 601-610; Social Services Law N.Y. §§ 157-166, 158, 343-362.

15. Social Security and Public Welfare

↻8

Procedures followed by city of New York in terminating public assistance payments to welfare recipients were constitutionally inadequate in failing to permit recipients to appear personally with or without counsel before official who finally determined continued eligibility and failing to permit recipient to present evidence to that official orally or to confront or cross-examine adverse witnesses. U.S.C.A.Const. Amend. 14; Social Security Act, §§ 401-410 as amended 42

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U.S.C.A. §§ 601-610; Social Services Law N.Y. §§ 157-166, 158, 343-362.

16. Constitutional Law ⇨305

Due process requirement of opportunity to be heard must be tailored to capacities and circumstances of those who are to be heard. U.S.C.A.Const. Amend. 14.

17. Constitutional Law ⇨318

It is not enough to satisfy due process that welfare recipient on proposed termination or public assistance payments be permitted to present his position to decisionmaker in writing or secondhand through caseworker; instead, recipient must be allowed to state his position orally and be given an opportunity to confront and cross-examine witnesses relied on by department. U.S.C.A. Const. Amend 14.

18. Administrative Law and Procedure

⇨489

Particularly where credibility and veracity are at issue, written submissions of person's position are wholly unsatisfactory basis for decision.

19. Constitutional Law ⇨318

Social Security and Public Welfare

⇨8

On proposed termination of public assistance payments to welfare recipient, recipient must be allowed to state his position orally but informal procedures will suffice and due process does not require a particular order of proof or mode of offering evidence. U.S.C.A.Const. Amend. 14.

20. Constitutional Law ⇨314

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. U.S.C.A.Const. Amend. 14.

21. Criminal Law ⇨662(1)

Witnesses ⇨216

It has been a relatively immutable principle that where governmental action seriously injures an individual and rea-

sonableness of that action depends on fact-findings, evidence used to prove government's case must be disclosed to individual so that he has opportunity to show that it is untrue.

22. Administrative Law and Procedure

⇨476

Rights of confrontation and cross-examination apply not only in criminal cases but also in all types of cases where administrative actions are under scrutiny.

23. Social Security and Public Welfare

⇨8

At hearing to be provided welfare recipient prior to termination of public assistance benefits, recipient must be allowed to retain an attorney if he so desires. U.S.C.A.Const. Amend. 14.

24. Social Security and Public Welfare

⇨8

Decisionmaker's conclusion as to welfare recipient's eligibility to public assistance payments must rest solely on legal rules and evidence adduced at pre-termination hearing and, to demonstrate compliance with that requirement, decisionmaker should state reasons for his determination and indicate evidence he relied on, though his statement need not amount to full opinion or even formal findings of fact and conclusions of law. U.S.C.A.Const. Amend. 14.

25. Social Security and Public Welfare

⇨8

An impartial decisionmaker is essential in hearing provided welfare recipient prior to termination of public assistance payments and, though prior involvement in some aspects of case will not necessarily bar welfare official from acting as decisionmaker, he should not have participated in making determination under review. U.S.C.A.Const. Amend. 14.

John J. Loflin, Jr., New York City, 1255
for appellant.

Lee A. Albert, New York City, for appellees.

Mr. Justice BRENNAN delivered the opinion of the Court.

The question for decision is whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment.

This action was brought in the District Court for the Southern District of New York by residents of New York City receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program.¹ Their complaint alleged that the New York State and New York City officials administering

these programs terminated, or were about to terminate, such aid without prior notice and hearing, thereby denying them due process of law.² At the time the suits were filed there was no requirement of prior notice or hearing of any kind before termination of financial aid. However, the State and city adopted procedures for notice and hearing after the suits were brought, and the plaintiffs, appellees here, then challenged the constitutional adequacy of those procedures.

The State Commissioner of Social Services amended the State Department of Social Services' Official Regulations to require that local social services officials proposing to discontinue or suspend a recipient's financial aid do so according to a procedure that conforms to either subdivision (a) or subdivision (b) of § 351.26 of the regulations as amended.³ The City of New York elected to

1. AFDC was established by the Social Security Act of 1935, 49 Stat. 627, as amended, 42 U.S.C. §§ 601-610 (1964 ed. and Supp. IV). It is a categorical assistance program supported by federal grants-in-aid but administered by the States according to regulations of the Secretary of Health, Education, and Welfare. See N. Y. Social Welfare Law §§ 343-362 (1966). We considered other aspects of AFDC in *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968), and in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

Home Relief is a general assistance program financed and administered solely by New York state and local governments. N. Y. Social Welfare Law §§ 157-165 (1966), since July 1, 1967, Social Services Law §§ 157-166. It assists any person unable to support himself or to secure support from other sources. *Id.*, § 158.

2. Two suits were brought and consolidated in the District Court. The named plaintiffs were 20 in number, including intervenors. Fourteen had been or were about to be cut off from AFDC, and six from Home Relief. During the course of this litigation most, though not all, of the plaintiffs either received a "fair hearing" (see *infra*, at 1015-1016) or were restored

to the rolls without a hearing. However, even in many of the cases where payments have been resumed, the underlying questions of eligibility that resulted in the bringing of this suit have not been resolved. For example, Mrs. Altagracia Guzman alleged that she was in danger of losing AFDC payments for failure to cooperate with the City Department of Social Services in suing her estranged husband. She contended that the departmental policy requiring such cooperation was inapplicable to the facts of her case. The record shows that payments to Mrs. Guzman have not been terminated, but there is no indication that the basic dispute over her duty to cooperate has been resolved, or that the alleged danger of termination has been removed. Home Relief payments to Juan DeJesus were terminated because he refused to accept counseling and rehabilitation for drug addiction. Mr. DeJesus maintains that he does not use drugs. His payments were restored the day after his complaint was filed. But there is nothing in the record to indicate that the underlying factual dispute in his case has been settled.

3. The adoption in February 1968 and the amendment in April of Regulation §

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promulgate a local procedure according to subdivision (b). That subdivision, so far as here pertinent, provides that the local procedure must include the giving of notice to the recipient of the reasons for a proposed discontinuance or suspension at least seven days prior to its effective date, with notice also that upon request the recipient may have the proposal reviewed by a local welfare official holding a position superior to that of the supervisor who approved the proposed discontinuance or suspension, and, further, that the recipient may submit, for purposes of the review, a written statement to demonstrate why his grant should not be discontinued or suspended. The decision by the reviewing official whether to discontinue or suspend aid must be made expeditiously, with written notice of the decision to the recipient. The section further expressly provides that "[a]ssistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date

of discontinuance or suspension, whichever occurs later."

Pursuant to subdivision (b), the New York City Department of Social Services promulgated Procedure No. 68-18. A caseworker who has doubts about the recipient's continued eligibility must first discuss them with the recipient. If the caseworker concludes that the recipient is no longer eligible, he recommends termination of aid to a unit supervisor. If the latter concurs, he sends the recipient a letter stating the reasons for proposing to terminate aid and notifying him that within seven days he may request that a higher official review the record, and may support the request with a written statement prepared personally or with the aid of an attorney or other person. If the reviewing official affirms the determination of ineligibility, aid is stopped immediately and the recipient is informed by letter of the reasons for the action. Appellees' challenge to this procedure emphasizes the absence of any provisions for the personal appearance of the recipient before the reviewing offi-

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351.26 coincided with or followed several revisions by the Department of Health, Education, and Welfare of its regulations implementing 42 U.S.C. § 602(a) (4), which is the provision of the Social Security Act that requires a State to afford a "fair hearing" to any recipient of aid under a federally assisted program before termination of his aid becomes final. This requirement is satisfied by a post-termination "fair hearing" under regulations presently in effect. See HEW Handbook of Public Assistance Administration (hereafter HEW Handbook), pt. IV, §§ 6200-6400. A new HEW regulation, 34 Fed.Reg. 1144 (1969), now scheduled to take effect in July 1970, 34 Fed.Reg. 13595 (1969), would require continuation of AFDC payments until the final decision after a "fair hearing" and would give recipients a right to appointed counsel at "fair hearings." 45 CFR § 205.10, 34 Fed.Reg. 1144 (1969); 45 CFR § 220.25, 34 Fed.Reg. 1356 (1969). For the safeguards specified at such "fair hearings" see HEW Handbook, pt. IV, §§ 6200-

6400. Another recent regulation now in effect requires a local agency administering AFDC to give "advance notice of questions it has about an individual's eligibility so that a recipient has an opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance." *Id.*, pt. IV, § 2300(d) (5). This case presents no issue of the validity or construction of the federal regulations. It is only subdivision (b) of § 351.26 of the New York State regulations and implementing procedure 68-18 of New York City that pose the constitutional question before us. Cf. *Shapiro v. Thompson*, 394 U.S. 618, 641, 89 S.Ct. 1322, 1335, 22 L.Ed.2d 600 (1969). Even assuming that the constitutional question might be avoided in the context of AFDC by construction of the Social Security Act or of the present federal regulations thereunder, or by waiting for the new regulations to become effective, the question must be faced and decided in the context of New York's Home Relief program, to which the procedures also apply.

cial, for oral presentation of evidence, and for confrontation and cross-examination of adverse witnesses.⁴ However, the letter does inform the recipient that he may request a post-termination "fair hearing."⁵ This is a proceeding before an independent state hearing officer at which the recipient may appear personally, offer oral evidence, confront and cross-examine the witnesses against him, and have a record made of the hearing. If the recipient prevails at the "fair hearing" he is paid all funds erroneously withheld.⁶ HEW Handbook, pt. IV, §§ 6200-6500; 18 NYCRR §§ 84.2-84.23. A recipient whose aid is not restored by a "fair hearing" decision may have judicial review. N.Y.Civil Practice Law

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4. These omissions contrast with the provisions of subdivision (a) of § 351.26, the validity of which is not at issue in this Court. That subdivision also requires written notification to the recipient at least seven days prior to the proposed effective date of the reasons for the proposed discontinuance or suspension. However, the notification must further advise the recipient that if he makes a request therefor he will be afforded an opportunity to appear at a time and place indicated before the official identified in the notice, who will review his case with him and allow him to present such written and oral evidence as the recipient may have to demonstrate why aid should not be discontinued or suspended. The District Court assumed that subdivision (a) would be construed to afford rights of confrontation and cross-examination and a decision based solely on the record. *Kelly v. Wyman*, 294 F. Supp. 893, 906-907 (1968).

5. N. Y. Social Welfare Law § 353(2) (1966) provides for a post-termination "fair hearing" pursuant to 42 U.S.C. § 602(a) (4). See n. 3, *supra*. Although the District Court noted that HEW had raised some objections to the New York "fair hearing" procedures, 294 F.Supp., at 898 n. 9, these objections are not at issue in this Court. Shortly before this suit was filed, New York State adopted a similar provision for a "fair hearing" in terminations of Home Relief. 18 NYCRR §§ 84.2-84.23. In both AFDC and Home Relief the "fair

and Rules, Art. 78 (1963). The recipient is so notified, 18 NYCRR § 84.16.

I

The constitutional issue to be decided, therefore, is the narrow one whether the Due Process Clause requires that the recipient be afforded an evidentiary hearing *before* the termination of benefits.⁷ The District Court held that only a pre-termination evidentiary hearing would satisfy the constitutional command, and rejected the argument of the state and city officials that the combination of the post-termination "fair hearing" with the informal pre-termination review disposed of all due process claims. The court said: "While post-termination review is

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hearing" must be held within 10 working days of the request, § 84.6, with decision within 12 working days thereafter, § 84.15. It was conceded in oral argument that these time limits are not in fact observed.

6. Current HEW regulations require the States to make full retroactive payments (with federal matching funds) whenever a "fair hearing" results in a reversal of a termination of assistance. HEW Handbook, pt. IV, §§ 6200(k), 6300 (g), 6500 (a); see 18 NYCRR § 358.8. Under New York State regulations retroactive payments can also be made, with certain limitations, to correct an erroneous termination discovered before a "fair hearing" has been held. 18 NYCRR § 351.27. HEW regulations also authorize, but do not require, the State to continue AFDC payments without loss of federal matching funds pending completion of a "fair hearing." HEW Handbook, pt. IV, § 6500(b). The new HEW regulations presently scheduled to become effective July 1, 1970, will supersede all of these provisions. See n. 3, *supra*.

7. Appellant does not question the recipient's due process right to evidentiary review *after* termination. For a general discussion of the provision of an evidentiary hearing prior to termination, see Comment, The Constitutional Minimum for the Termination of Welfare Benefits: The Need for and Requirements of a Prior Hearing, 68 Mich.L.Rev. 112 (1969).

relevant, there is one overpowering fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets. * * * Suffice it to say that to cut off a welfare recipient in the face of * * * 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it." *Kelly v. Wyman*, 294 F.Supp. 893, 899, 900 (1968). The court rejected the argument that the need to protect the public's tax revenues supplied the requisite "overwhelming consideration." "Against the justified desire to protect public funds must be weighed the individual's overpowering need in this unique situation not to be wrongfully deprived of assistance. * * * While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process. Under all the circumstances, we hold that due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result." *Id.*, at 901. Although state officials were party defendants in the action, only the Commissioner of Social Services of the City of New York appealed. We noted probable jurisdiction, 394 U.S. 971, 89 S.Ct. 1469, 22 L.Ed.2d 751 (1969), to decide im-

portant issues that have been the subject of disagreement in principle between the three-judge court in the present case and that convened in *Wheeler v. Montgomery*, 397 U.S. 280, 90 S.Ct. 1026, 25 L.Ed.2d 307. We affirm.

[1-4] Appellant does not contend that procedural due process is not applicable to the termination of welfare benefits. ¹²⁶² Such benefits are a matter of statutory entitlement for persons qualified to receive them.⁸ Their termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'" *Shapiro v. Thompson*, 394 U.S. 618, 627 n. 6, 89 S.Ct. 1322, 1327 (1969). Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to disqualification for unemployment compensation, *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); or to denial of a tax exemption, *Speiser v. Randall*, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958); or to discharge from public employment, *Slochower v. Board of Higher Education*, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692 (1956).⁹ The extent to

8. It may be realistic today to regard welfare entitlements as more like "property" than a "gratuity." Much of the existing wealth in this country takes the form of rights that do not fall within traditional common-law concepts of property. It has been aptly noted that

"[s]ociety today is built around entitlement. The automobile dealer has his franchise, the doctor and lawyer their professional licenses, the worker his union membership, contract, and pension rights, the executive his contract and stock options; all are devices to aid security and independence. Many of the most important of these entitlements now flow from government: subsidies to farmers and businessmen, routes for airlines and channels for television stations; long term contracts for defense, space, and education; social se-

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curity pensions for individuals. Such sources of security, whether private or public, are no longer regarded as luxuries or gratuities; to the recipients they are essentials, fully deserved, and in no sense a form of charity. It is only the poor whose entitlements, although recognized by public policy, have not been effectively enforced."

Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 *Yale L.J.* 1245, 1255 (1965). See also Reich, *The New Property*, 73 *Yale L.J.* 733 (1964).

9. See also *Goldsmith v. United States Board of Tax Appeals*, 270 U.S. 117, 46 S.Ct. 215, 70 L.Ed. 494 (1926) (right of a certified public accountant to practice before the Board of Tax Appeals); *Hornsby v. Allen*, 326 F.2d 605 (C.A.5th

¹²⁶³ which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 647, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly, as we said in *Cafeteria & Restaurant Workers Union, etc. v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748-1749, 6 L.Ed.2d 1230 (1961), "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." See also *Hannah v. Larche*, 363 U.S. 420, 440, 442, 80 S.Ct. 1502, 1513, 1514, 4 L.Ed.2d 1307 (1960).

[5, 6] It is true, of course, that some governmental benefits may be administratively terminated without affording

the recipient a pre-termination evidentiary hearing.¹⁰ ¹²⁶⁴ But we agree with the District Court that when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process. Cf. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969). For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.¹¹ Cf. *Nash v. Florida Industrial Commission*, 389 U.S. 235, 239, 88 S.Ct. 362, 366, 19 L.Ed.2d 438 (1967). Thus the crucial factor in this context—a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely

Cir. 1964) (right to obtain a retail liquor store license); *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (C.A. 5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961) (right to attend a public college).

10. One Court of Appeals has stated: "In a wide variety of situations, it has long been recognized that where harm to the public is threatened, and the private interest infringed is reasonably deemed to be of less importance, an official body can take summary action pending a later hearing." *R. A. Holman & Co. v. SEC*, 112 U.S.App.D.C. 43, 47, 299 F.2d 127, 131, cert. denied, 370 U.S. 911, 82 S.Ct. 1257, 8 L.Ed.2d 404 (1962) (suspension of exemption from stock registration requirement). See also, for example, *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950) (seizure of mislabeled vitamin product); *North American Cold Storage Co. v. Chicago*, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (1908) (seizure of food not fit

for human use); *Yakus v. United States*, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944) (adoption of wartime price regulations); *Gonzalez v. Freeman*, 118 U.S. App.D.C. 180, 334 F.2d 570 (1964) (disqualification of a contractor to do business with the Government). In *Cafeteria & Restaurant Workers Union, etc. v. McElroy*, *supra*, 367 U.S. at 896, 81 S.Ct. at 1749, summary dismissal of a public employee was upheld because "[i]n [its] proprietary military capacity, the Federal Government, * * * has traditionally exercised unfettered control," and because the case involved the Government's "dispatch of its own internal affairs." Cf. *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940).

11. Administrative determination that a person is ineligible for welfare may also render him ineligible for participation in state-financed medical programs. See N. Y. Social Welfare Law § 366 (1966).

affects his ability to seek redress from the welfare bureaucracy.¹²

Moreover, important governmental interests are promoted by affording recipients a pre-termination evidentiary hearing. From its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty.¹³ This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to "promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it; pre-termination evidentiary hearings are indispensable to that end.

Appellant does not challenge the force of these considerations but argues that they are outweighed by countervailing governmental interests in conserving fiscal and administrative resources. These interests, the argument goes, justify the delay of any evidentiary hearing until after discontinuance of the grants. Summary adjudication protects the public fisc by stopping payments promptly upon

discovery of reason to believe that a recipient is no longer eligible. Since most terminations are accepted without challenge, summary adjudication also conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held.

[7] We agree with the District Court, however, that these governmental interests are not overriding in the welfare context. The requirement of a prior hearing doubtless involves some greater expense, and the benefits paid to ineligible recipients pending decision at the hearing probably cannot be recouped, since these recipients are likely to be judgment-proof. But the State is not without weapons to minimize these increased costs. Much of the drain on fiscal and administrative resources can be reduced by developing procedures for prompt pre-termination hearings and by skillful use of personnel and facilities. Indeed, the very provision for a post-termination evidentiary hearing in New York's Home Relief program is itself cogent evidence that the State recognizes the primacy of the public interest in correct eligibility determinations and therefore in the provision of procedural safeguards. Thus, the interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens. As the District Court correctly concluded, "[t]he stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed

12. His impaired adversary position is particularly telling in light of the welfare bureaucracy's difficulties in reaching correct decisions on eligibility. See Comment, Due Process and the Right to a

Prior Hearing in Welfare Cases, 37 Ford. L.Rev. 604, 610-611 (1969).

13. See, e. g., Reich, *supra*, n. 8, 74 Yale L. J., at 1255.

of the case against him so that he may contest its basis and produce evidence in rebuttal." 294 F.Supp., at 904-905.

II

[8-10] We also agree with the District Court, however, that the pre-termination hearing need not take the form of a judicial or quasi-judicial trial. We bear in mind that the statutory "fair hearing" will provide the recipient with a full administrative review.¹⁴ Accordingly, the pre-termination hearing has one function only: to produce an initial determination of the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits. Cf. *Snia-dach v. Family Finance Corp.*, 395 U.S. 337, 343, 89 S.Ct. 1820, 1823, 23 L.Ed.2d 349 (1969) (Harlan, J., concurring). Thus, a complete record and a comprehensive opinion, which would serve primarily to facilitate judicial review and to guide future decisions, need not be provided at the pre-termination stage. We recognize, too, that both welfare authorities and recipients have an interest in relatively speedy resolution of questions of eligibility, that they are used to dealing with one another informally, and that some welfare departments have very burdensome caseloads. These considerations justify the limitation of the pre-termination hearing to minimum procedural safeguards, adapted to the particular characteristics of welfare recipients, and to the limited nature of the controversies to be resolved. We wish to add that we, no less than the dissenters, recognize the importance of not imposing upon the States or the Federal

14. Due process does not, of course, require two hearings. If, for example, a State simply wishes to continue benefits until after a "fair" hearing there will be no need for a preliminary hearing.

15. This case presents no question requiring our determination whether due process requires only an opportunity for

Government in this developing field of law any procedural requirements beyond those demanded by rudimentary due process.

[11, 12] "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914). The hearing must be "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed. 2d 62 (1965). In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.¹⁵

[13, 14] We are not prepared to say that the seven-day notice currently provided by New York City is constitutionally insufficient *per se*, although there may be cases where fairness would require that a longer time be given. Nor do we see any constitutional deficiency in the content or form of the notice. New York employs both a letter and a personal conference with a caseworker to inform a recipient of the precise questions raised about his continued eligibility. Evidently the recipient is told the legal and factual bases for the Department's doubts. This combination is prob-

written submission, or an opportunity both for written submission and oral argument, where there are no factual issues in dispute or where the application of the rule of law is not intertwined with factual issues. See *FCC v. WJR*, 337 U.S. 265, 275-277, 69 S.Ct. 1097, 1103-1104, 93 L.Ed. 1353 (1949).

ably the most effective method of communicating with recipients.

[15] The city's procedures presently do not permit recipients to appear personally with or without counsel before the official who finally determines continued eligibility. Thus a recipient is not permitted to present evidence to that official orally, or to confront or cross-examine adverse witnesses. These omissions are fatal to the constitutional adequacy of the procedures.

¹²⁶⁹ [16-19] The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.¹⁶ It is not enough that a welfare recipient may present his position to the decision maker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence. Cf. HEW Handbook, pt. IV, § 6400(a).

16. "[T]he prosecution of an appeal demands a degree of security, awareness, tenacity, and ability which few de-

[20-22] In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E. g., *ICC v. Louisville & N. R. Co.*, 227 U.S. 88, 93-94, 33 S.Ct. 185, 187-188, 57 L.Ed. 431 (1913); *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 103-104, 83 S.Ct. 1175, 1180-1181, 10 L.Ed. 2d 224 (1963). What we said in *Greene v. McElroy*, 360 U.S. 474, 496-497, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959), is particularly pertinent here: ¹²⁷⁰

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * * but also in all types of cases where administrative * * * actions were under scrutiny."

Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.

pendent people have." *Wedemeyer & Moore, The American Welfare System*, 54 *Calif.L.Rev.* 326, 342 (1966).

[23] "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." *Powell v. Alabama*, 287 U.S. 45, 68-69, 53 S.Ct. 55, 64, 77 L.Ed. 158 (1932). We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires. Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the ¹²⁷¹ interests of the recipient. We do not anticipate that this assistance will unduly prolong or otherwise encumber the hearing. Evidently HEW has reached the same conclusion. See 45 CFR § 205.10, 34 Fed.Reg. 1144 (1969); 45 CFR § 220.25, 34 Fed.Reg. 13595 (1969).

[24, 25] Finally, the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. *Ohio Bell Tel. Co. v. PUC*, 301 U.S. 292, 57 S.Ct. 724, 81 L.Ed. 1093 (1937); *United States v. Abilene & S. R. Co.*, 265 U.S. 274, 288-289, 44 S.Ct. 565, 569-570, 68 L.Ed. 1016 (1924). To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, cf. *Wichita R. & Light Co. v. PUC*, 260 U.S. 48, 57-59, 43 S.Ct. 51, 54-55, 67 L.Ed. 124 (1922), though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. Cf. *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 45-46, 70 S.Ct. 445, 451-452, 94 L.Ed. 616 (1950).

1. This figure includes all recipients of Old-age Assistance, Aid to Families with Dependent Children, Aid to the Blind, Aid to the Permanently and Totally Disabled, and general assistance. In this case appellants are AFDC and general assistance recipients. In New York State alone

We agree with the District Court that prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as a decision maker. He should not, however, have participated in making the determination under review.

Affirmed.

Mr. Justice BLACK, dissenting.

In the last half century the United States, along with many, perhaps most, other nations of the world, has moved far toward becoming a welfare state, that is, a nation that for one reason or another taxes its most ¹²⁷² affluent people to help support, feed, clothe, and shelter its less fortunate citizens. The result is that today more than nine million men, women, and children in the United States receive some kind of state or federally financed public assistance in the form of allowances or gratuities, generally paid them periodically, usually by the week, month, or quarter.¹ Since these gratuities are paid on the basis of need, the list of recipients is not static, and some people go off the lists and others are added from time to time. These ever-changing lists put a constant administrative burden on government and it certainly could not have reasonably anticipated that this burden would include the additional procedural expense imposed by the Court today.

The dilemma of the ever-increasing poor in the midst of constantly growing affluence presses upon us and must inevitably be met within the framework of our democratic constitutional government, if our system is to survive as such. It was largely to escape just such pressing economic problems and attendant government repression that people from

there are 951,000 AFDC recipients and 108,000 on general assistance. In the Nation as a whole the comparable figures are 6,080,000 and 391,000. U. S. Bureau of the Census, Statistical Abstract of the United States: 1969 (90th ed.), Table 435, p. 297.

Cite as 90 S.Ct. 1011 (1970)

Europe, Asia, and other areas settled this country and formed our Nation. Many of those settlers had personally suffered from persecutions of various kinds and wanted to get away from governments that had unrestrained powers to make life miserable for their citizens. It was for this reason, or so I believe, that on reaching these new lands the early settlers undertook to curb their governments by confining their powers ¹²⁷³ within written boundaries, which eventually became written constitutions.² They wrote their basic charters as nearly as men's collective wisdom could do so as to proclaim to their people and their officials an emphatic command that: "Thus far and no farther shall you go; and where we neither delegate powers to you, nor prohibit your exercise of them, we the people are left free."³

Representatives of the people of the Thirteen Original Colonies spent long, hot months in the summer of 1787 in Philadelphia, Pennsylvania, creating a government of limited powers. They divided it into three departments—Legislative, Judicial, and Executive. The Judicial Department was to have no part whatever in making any laws. In fact proposals looking to vesting some power in the Judiciary to take part in the legislative process and veto laws were of-

ferred, considered, and rejected by the Constitutional Convention.⁴ In my judgment ¹²⁷⁴ there is not one word, phrase, or sentence from the beginning to the end of the Constitution from which it can be inferred that judges were granted any such legislative power. True, *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803), held, and properly, I think, that courts must be the final interpreters of the Constitution, and I recognize that the holding can provide an opportunity to slide imperceptibly into constitutional amendment and law making. But when federal judges use this judicial power for legislative purposes, I think they wander out of their field of vested powers and transgress into the area constitutionally assigned to the Congress and the people. That is precisely what I believe the Court is doing in this case. Hence my dissent.

The more than a million names on the relief rolls in New York,⁵ and the more than nine million names on the rolls of all the 50 States were not put there at random. The names are there because state welfare officials believed that those people were eligible for assistance. Probably in the officials' haste to make out the lists many names were put there erroneously in order to alleviate immediate suffering, and undoubtedly some people are drawing relief who are not entitled

2. The goal of a written constitution with fixed limits on governmental power had long been desired. Prior to our colonial constitutions, the closest man had come to realizing this goal was the political movement of the Levellers in England in the 1640's. J. Frank, *The Levellers* (1955). In 1647 the Levellers proposed the adoption of *An Agreement of the People* which set forth written limitations on the English Government. This proposal contained many of the ideas which later were incorporated in the constitutions of this Nation. *Id.* at 135-147.

3. This command is expressed in the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are re-

served to the States respectively, or to the people."

4. It was proposed that members of the judicial branch would sit on a Council of Revision which would consider legislation and have the power to veto it. This proposal was rejected. J. Elliot, 1 *Elliot's Debates* 160, 164, 214 (*Journal of the Federal Convention*); 395, 398 (*Yates' Minutes*); vol. 5, pp. 151, 161-166, 344-349 (*Madison's Notes*) (Lippincott ed. 1876). It was also suggested that The Chief Justice would serve as a member of the President's executive council, but this proposal was similarly rejected. *Id.*, vol. 5, pp. 442, 445, 446, 462.

5. See n. 1, *supra*.

under the law to do so. Doubtless some draw relief checks from time to time who know they are not eligible, either because they are not actually in need or for some other reason. Many of those who thus draw undeserved gratuities are without sufficient property to enable the government to collect back from them any money they wrongfully receive. But the Court today holds that it would violate the Due Process Clause of the Fourteenth Amendment to stop paying those people weekly or monthly allowances unless the government first affords them a full ¹²⁷⁵“evidentiary hearing” even though welfare officials are persuaded that the recipients are not rightfully entitled to receive a penny under the law. In other words, although some recipients might be on the lists for payment wholly because of deliberate fraud on their part, the Court holds that the government is helpless and must continue, until after an evidentiary hearing, to pay money that it does not owe, never has owed, and never could owe. I do not believe there is any provision in our Constitution that should thus paralyze the government’s efforts to protect itself against making payments to people who are not entitled to them.

Particularly do I not think that the Fourteenth Amendment should be given such an unnecessarily broad construction. That Amendment came into being primarily to protect Negroes from discrimination, and while some of its language can and does protect others, all know that the chief purpose behind it was to protect ex-slaves. Cf. *Adamson v. California*, 332 U.S. 46, 71–72, and n. 5, 67 S.Ct. 1672, 1686, 91 L.Ed. 1903 (1947) (dissenting opinion). The Court, however, relies upon the Fourteenth Amendment and in effect says that failure of the government to pay a promised charitable instalment to an individual deprives that individual of *his own property*, in violation of the Due Process Clause of the Fourteenth Amendment. It somewhat strains credulity to say that the govern-

ment’s promise of charity to an individual is property belonging to that individual when the government denies that the individual is honestly entitled to receive such a payment.

I would have little, if any, objection to the majority’s decision in this case if it were written as the report of the House Committee on Education and Labor, but as an opinion ostensibly resting on the language of the Constitution I find it woefully deficient. Once the verbiage is pared away it is obvious that this Court today adopts the views of the District Court “that to cut off a welfare recipient in the face of * * * ‘brutal need’ without a prior ¹²⁷⁶hearing of some sort is unconscionable,” and therefore, says the Court, unconstitutional. The majority reaches this result by a process of weighing “the recipient’s interest in avoiding” the termination of welfare benefits against “the governmental interest in summary adjudication.” *Ante*, at 1018. Today’s balancing act requires a “pre-termination evidentiary hearing,” yet there is nothing that indicates what tomorrow’s balance will be. Although the majority attempts to bolster its decision with limited quotations from prior cases, it is obvious that today’s result doesn’t depend on the language of the Constitution itself or the principles of other decisions, but solely on the collective judgment of the majority as to what would be a fair and humane procedure in this case.

This decision is thus only another variant of the view often expressed by some members of this Court that the Due Process Clause forbids any conduct that a majority of the Court believes “unfair,” “indecent,” or “shocking to their consciences.” See, *e. g.*, *Rochin v. California*, 342 U.S. 165, 172, 72 S.Ct. 205, 209, 96 L.Ed. 183 (1952). Neither these words nor any like them appear anywhere in the Due Process Clause. If they did, they would leave the majority of Justices free to hold any conduct unconstitutional that they should conclude

on their own to be unfair or shocking to them.⁶ Had the drafters of the Due Process Clause meant to leave judges such ambulatory power to declare laws unconstitutional, the chief value of a written constitution, as the Founders saw it, would have been lost. In fact, if that view of due process is correct, the Due Process Clause could easily swallow up all other parts of the Constitution. And truly the Constitution would always be "what the judges say it is" at a given moment, not what the Founders wrote into the document.⁷ A written constitution, designed to guarantee protection against governmental abuses, including those of judges, must have written standards that mean something definite and have an explicit content. I regret very much to be compelled to say that the Court today makes a drastic and dangerous departure from a Constitution written to control and limit the government and the judges and moves toward a constitution designed to be no more and no less than what the judges of a particular social and economic philosophy declare on the one hand to be fair or on the other hand to be shocking and unconscionable.

The procedure required today as a matter of constitutional law finds no precedent in our legal system. Reduced to its simplest terms, the problem in this case is similar to that frequently encountered when two parties have an ongoing legal relationship that requires one party to

make periodic payments to the other. Often the situation arises where the party "owing" the money stops paying it and justifies his conduct by arguing that the recipient is not legally entitled to payment. The recipient can, of course, disagree and go to court to compel payment. But I know of no situation in our legal system in which the person alleged to owe money to another is required by law to continue making payments to a judgment-proof claimant without the benefit of any security or bond to insure that these payments can be recovered if he wins his legal argument. Yet today's decision in no way obligates the welfare recipient to pay back any benefits wrongfully received during the pretermination evidentiary hearings or post any bond, and in all "fairness" it could not do so. These recipients are by definition too poor to post a bond or to repay the benefits that, as the majority assumes, must be spent as received to insure survival.

The Court apparently feels that this decision will benefit the poor and needy. In my judgment the eventual result will be just the opposite. While today's decision requires only an administrative, evidentiary hearing, the inevitable logic of the approach taken will lead to constitutionally imposed, time-consuming delays of a full adversary process of administrative and judicial review. In the next case the welfare recipients are bound to argue that cutting off benefits before judicial review of the agency's decision is also a denial of due process. Since, by hypoth-

6. I am aware that some feel that the process employed in reaching today's decision is not dependent on the individual views of the Justices involved, but is a mere objective search for the "collective conscience of mankind," but in my view that description is only a euphemism for an individual's judgment. Judges are as human as anyone and as likely as others to see the world through their own eyes and find the "collective conscience" remarkably similar to their own. Cf. *Griswold v. Connecticut*, 381 U.S. 479, 518-519, 85 S.Ct. 1678, 1700-1701, 14 L.Ed.2d 510 (1965) (Black, J., dissenting);

Snidach v. Family Finance Corp., 395 U.S. 337, 350-351, 89 S.Ct. 1820, 1827, 23 L.Ed.2d 349 (1969) (Black, J., dissenting).

7. To realize how uncertain a standard of "fundamental fairness" would be, one has only to reflect for a moment on the possible disagreement if the "fairness" of the procedure in this case were propounded to the head of the National Welfare Rights Organization, the president of the national Chamber of Commerce, and the chairman of the John Birch Society.

esis, termination of aid at that point may still "deprive an *eligible* recipient of the very means by which to live while he waits," *ante*, at 1018, I would be surprised if the weighing process did not compel the conclusion that termination without full judicial review would be unconscionable. After all, at each step, as the majority seems to feel, the issue is only one of weighing the government's pocketbook against the actual survival of the recipient, and surely that balance must always tip in favor of the individual. Similarly today's decision requires only the opportunity to have the benefit of counsel at the administrative hearing, but it is difficult to believe that the same reasoning process would not require the appointment of counsel, for otherwise the right to counsel is a meaningless one since these people are too poor to hire their own advocates. Cf. *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 796, 9 L.Ed.2d 799 (1963). Thus the end result of today's decision may well be that the government, once it decides to give welfare benefits, cannot reverse that decision until the recipient has had the benefits of full administrative and judicial review, including, of course, the opportunity to present his case to this Court. Since this process will usually entail a delay of several years, the inevitable result of such a constitutionally imposed burden will be that the government will not put a claimant on the rolls initially until it has made an exhaustive investigation to determine his eligibility. While this Court will perhaps have insured that no needy person will be taken off the rolls without a full "due process" proceeding, it will also have insured that many will never get on the rolls, or at least that they will remain destitute during the lengthy proceedings followed to determine initial eligibility.

For the foregoing reasons I dissent from the Court's holding. The operation of a welfare state is a new experiment

for our Nation. For this reason, among others, I feel that new experiments in carrying out a welfare program should not be frozen into our constitutional structure. They should be left, as are other legislative determinations, to the Congress and the legislatures that the people elect to make our laws.



397 U.S. 280

Mae WHEELER et al., Appellants,

v.

John MONTGOMERY, Director of the
State Department of Social
Welfare, et al.

No. 14.

Argued Oct. 13, 1969.

Decided March 23, 1970.

Recipients of old-age benefits subject to California welfare termination provisions brought class action for declaratory and injunctive relief involving constitutionality of welfare termination provisions. A three-judge District Court for the Northern District of California, 296 F.Supp. 138, dismissed the action, and Supreme Court noted probable jurisdiction. The Supreme Court, Mr. Justice Brennan, held that state welfare termination regulations, which did not afford recipient an evidentiary hearing at which he could personally appear to offer oral evidence and confront and cross-examine the witnesses against him, did not satisfy requirements of due process clause.

Reversed.

Mr. Chief Justice Burger, Mr. Justice Black and Mr. Justice Stewart dissented, see 90 S.Ct. 1028.

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State welfare termination regulations, which did not afford recipient an

tion. Such response rises no higher than to claim such matters to be uncomplicated.

[16] Although to term this aspect of the case as a right to an "accounting" may be technically inaccurate, Bokum is entitled to have the case fully adjudicated and to the entry of a judgment reflecting its right to a specific amount for all monies recoverable under the court's decision. The case is remanded for further proceedings in such regard and in all other respects is

Affirmed. No costs are awarded.



Maria ALMENARES et al., Plaintiffs-Appellees,

v.

George K. WYMAN, Commissioner of Social Services for the State of New York, individually and in his official capacity, and Jule Sugarman, Commissioner of Social Services for the City of New York, individually, in his official capacity, and on behalf of all other local commissioners of social services in the State of New York, individually and in their official capacities, Defendants-Appellants.

No. 383, Docket 71-2038.

United States Court of Appeals,
Second Circuit.

Argued Nov. 12, 1971.

Decided Dec. 10, 1971.

Certiorari Denied Feb. 22, 1972.

See 92 S.Ct. 962.

Appeal from an order of the United States District Court for the Southern District of New York, Lawrence W. Pierce, J., 334 F.Supp. 512, granting an injunction in an action by AFDC recipients. The Court of Appeals, Friendly, Chief Judge, held, inter alia, that it was competent for Department of Health,

Education and Welfare to determine that objectives of federally assisted program of Aid to Families with Dependent Children could be better attained by a single state hearing prior to taking of action terminating, suspending or reducing benefits rather than having such a hearing conducted by a subdivision of state subject to review at a state hearing after action had been taken; and, although state was required to bring itself into compliance with federal regulations, a proper balancing of interests called for postponing of date of injunction for a reasonable time, on condition that constitutionally valid procedures be followed in interval.

Order affirmed as modified but injunction temporarily stayed on conditions.

1. Courts ⇐299(3)

Assuming that complaint wherein plaintiffs alleged that hearing procedures employed by defendants with respect to review of local agency action terminating, suspending or reducing Aid to Families with Dependent Children (AFDC) failed to meet due process requirements stated a substantial constitutional claim, where plaintiffs also alleged total or serious curtailments in benefits which had been fixed to provide minimum needed for subsistence, right or immunity allegedly infringed was one of personal liberties, not dependent for its existence on infringement of property rights, so as to come within jurisdictional statute implementing Civil Rights Act. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

2. Courts ⇐234

A claim that a state or one of its municipalities has terminated Aid to Families with Dependent Children (AFDC) without a required due process hearing would be substantial so as to come within jurisdictional statute implementing Civil Rights Act, even though regulations have been revamped so that on their face they comply with due process requirements, since claim would be

of unconstitutionality as applied. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

3. Courts ⇨299(3)

Complaint wherein plaintiffs alleged that hearing procedures employed by defendants with respect to review of local agency action terminating, suspending or reducing Aid to Families with Dependent Children (AFDC) failed to meet due process requirements asserted a substantial constitutional claim so as to come within jurisdictional statute implementing Civil Rights Act provided other conditions were met. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

4. Courts ⇨263, 326

Statutory claim against State Commissioner of Social Services that state review procedures with respect to termination or reduction of Aid to Families with Dependent Children (AFDC) by local agencies were in conflict with those prescribed by Department of Health, Education and Welfare (HEW) was "pendent" to constitutional claim against City Commissioner of Social Services that procedures were in violation of due process, and statutory claim was cognizable in a federal court irrespective of requirement of statute concerning jurisdictional amount. 28 U.S.C.A. § 1331(a).

5. Courts ⇨263

Doctrine of pendent jurisdiction is sufficiently broad to support a claim against a person not a party to primary, jurisdiction-granting claim.

6. Federal Civil Procedure ⇨181

Regardless of whether constitutional claim that state review procedures with respect to termination or reduction in Aid to Families with Dependent Children (AFDC) by local agencies were in violation of due process requirements was appropriate for class action treatment, district court had power to permit plaintiffs to proceed on behalf of their class for declaratory and injunctive relief on their pendent statutory claim that procedures were in conflict with federal regulations, where plaintiffs and all members of their class shared one es-

sentia thing in common, i. e., their benefits had been or would be terminated, reduced or suspended prior to a state hearing unless relief was afforded. Fed. Rules Civ.Proc., rule 23(b) (2), 28 U.S.C.A.

7. Courts ⇨263

Once plaintiffs met requirements of jurisdictional statute implementing Civil Rights Act, this was sufficient to vest district court with subject matter jurisdiction, not merely over plaintiffs' primary claim, but also over their own pendent claims, all which arose from a common nucleus of operative facts, whether against defendant to primary claim or another. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

8. Federal Civil Procedure ⇨165

Rule governing maintenance of a class action is applicable to a pendent claim so long as claim meets test of a "common nucleus of operative facts" with primary claim as well as those of rule itself. Fed.Rules Civ.Proc. rule 23(b) (2), 28 U.S.C.A.

9. Federal Civil Procedure ⇨161

With respect to a class action, where damages or some other relief requiring an examination of collateral facts is required, it could well be an abuse of trial court's discretion to utilize principle of pendent jurisdiction to include class claims not otherwise assertable in a federal court, even though they arise from same nucleus of operative facts as primary claim, as where each class member's claim is small, and factual issues surrounding it are complex. Fed.Rules Civ.Proc. rule 23(b) (2), 28 U.S.C.A.

10. Courts ⇨282(1)

A plaintiff asserting a constitutional claim normally is not required to exhaust similar state judicial remedies before resorting to federal courts.

11. Courts ⇨263

Fact that plaintiffs, who alleged that state review procedures with respect to termination or reduction of Aid to Families with Dependent Children (AFDC) by local agencies failed to meet

due process requirements, did not exhaust their state remedy in an administrative hearing was not a basis for concluding that pendent jurisdiction over their claim was lacking, where a state hearing could not have remedied the very evil of which plaintiffs complained, namely, termination and reduction of benefits before a proper hearing, and it was doubtful that termination or reduction could be made subject of judicial proceedings until review by state. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

12. Courts ⇨260.4

A decision to abstain from deciding due process claims pending proceedings of state court relating to issues of state law does not mean that federal court lacks jurisdiction of constitutional claims. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

13. Courts ⇨260.4

Presence of pendent statutory claim that actions of defendants in terminating or reducing Aid to Families with Dependent Children (AFDC) benefits prior to a state fair hearing was in violation of federal regulations fulfilled principle purpose of abstention by making it unnecessary to decide primary constitutional claim that defendants' actions were in violation of due process. 28 U.S.C.A. § 1343(3); 42 U.S.C.A. § 1983.

14. Courts ⇨101

While plaintiffs' statutory attack was on a state regulation permitting reduction or discontinuance of Aid to Families with Dependent Children (AFDC) after a due process hearing by a local agency, where their due process attack was not on a state statute or regulation but rather on application of a local regulation, a three-judge court was not required. 28 U.S.C.A. § 2281.

15. Social Security and Public Welfare

⇨194

District court was not required to pass on failure of New York to comply with regulations of Department of Health, Education and Welfare in respect to review of actions of local agen-

cies in terminating, suspending or reducing Aid to Families with Dependent Children until Department had conducted a conformity hearing. Social Security Act, § 1116 as amended 42 U.S.C.A. § 1316.

16. Social Security and Public Welfare

⇨194

While it would have been improper for district court to have declared regulations of Department of Health, Education and Welfare (HEW) invalid, insofar as they required hearings by state agency before benefits could be adversely affected, without affording HEW an opportunity to defend them, and even though it would have been advisable to request HEW to submit a brief, district court was not required to reject a challenge to validity of regulations without HEW's being a party, at least in a situation where challengers conceded question to be solely one of law.

17. Social Security and Public Welfare

⇨194

It was competent for Department of Health, Education and Welfare to determine that objectives of federally assisted program of Aid to Families with Dependent Children could be better attained by a single state hearing prior to taking of action terminating, suspending or reducing benefits rather than having such a hearing conducted by a subdivision of state subject to review at a state hearing after action had been taken. Social Security Act, §§ 402(a) (3, 4), 1002(a) (4), 1102 as amended 42 U.S.C.A. §§ 602(a) (3, 4), 1202(a) (4), 1302.

18. Injunction ⇨190

Although state was required to bring itself into compliance with hearing requirements of federal regulations governing Aid to Families with Dependent Children, a proper balancing of interests called for postponing of date of injunction for a reasonable time, on condition that constitutionally valid procedures would be followed in interval. Social Security Act, §§ 402(a) (3, 4), 1002(a) (4), 1102 as amended 42 U.S.C.A. §§ 602(a) (3, 4), 1202(a) (4), 1302.

Henry A. Freedman, New York City (Steven J. Cole, Center on Social Welfare Policy and Law, Lorenzo Casanova and Gerald McIntyre, Bronx Legal Services Corp. B, New York City, of counsel), for plaintiffs-appellees.

Emilio P. Gautier, New York City, Louis B. York, Manhattan Legal Services Corp., John C. Gray, Jr. and Robert J. Jaffe, Brooklyn, N. Y., Brooklyn Legal Services Corp. B, of counsel), for intervenors.

Stephen P. Seligman, Asst. Atty. Gen. (Samuel A. Hirshowitz, First Asst. Atty. Gen., and Louis J. Lefkowitz, Atty. Gen., State of N. Y., of counsel), for defendant-appellant Wyman.

Yvette G. Harmon, New York City (J. Lee Rankin, Corp. Counsel, City of New York, of counsel), for defendant-appellant Sugarman.

Before FRIENDLY, Chief Judge, FEINBERG, Circuit Judge, and DAVIS, Associate Judge.*

FRIENDLY, Chief Judge:

I.

This case begins where *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), ends. The Court there held that local social service agencies must provide welfare recipients an opportunity for a hearing affording basic due process rights before termi-

nating benefits. Plaintiffs here allege that the hearing procedures actually employed by defendants with respect to review of local agency action terminating, suspending or reducing their Aid to Families with Dependent Children (AFDC) benefits failed to meet the due process requirements enunciated in *Goldberg*, and further that the procedures are in conflict with those prescribed by the United States Department of Health, Education and Welfare (HEW) subsequent to *Goldberg*, 45 C.F.R. § 205.10, 36 Fed.Reg. 3034 (1971), implementing the "fair hearing" requirement of the Social Security Act, 42 U.S.C. §§ 602(a) (4), and 1202(a) (4), through its rule making power, 42 U.S.C. § 1302.

After the decision in *Goldberg* and for the purpose of complying with it, the New York State Department of Social Services modified its regulation governing hearing procedures by providing for a local agency hearing affording basic due process rights. 18 N.Y.C.R.R. § 351.26.¹ Plaintiffs do not challenge the constitutionality of this regulation. The New York City Department of Social Services (City) also modified its announced procedures. At the time of the events here in question, the City's hearing procedures were set forth in Procedure No. (P.No.) 71-21, replaced by P. No. 71-35 (effective September 30, 1971)² which provided that "in cases

* Of the United States Court of Claims, sitting by designation.

1. Since the district court in *Kelly v. Wyman*, 294 F.Supp. 893 (S.D.N.Y.1968), aff'd sub nom. *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), upheld the constitutionality of one option of the New York State procedure, 18 N.Y.C.R.R. § 351.26(a) (1968), providing for local social service pre-termination agency hearings which, the district court concluded, met the minimum requirements of due process, the State simply repealed the optional procedure used by New York City which the courts had struck down, 18 N.Y.C.R.R. § 351.16(b) (1968). At the same time, the State made minor modifications

in the valid option to satisfy earlier HEW complaints.

2. The record is silent on the City's procedure between March 23, 1970, the date of the Court's decision in *Goldberg*, and April 26, 1971, the effective date of P.No. 71-21. P.No. 71-35 which replaces P.No. 71-21 leaves the details of the local hearings unchanged. One notable difference between them can be found in the "Purpose" sections. P.No. 71-21, after announcing that the procedure is designed to protect clients' rights, states that it "in no way limits client's right to request a [State] Fair Hearing, in accordance with existing policy and requires that assistance be continued until completion of the ad-

where it is proposed that assistance be reduced, suspended or discontinued," and prior to such action, the affected recipient must be afforded an opportunity for a local agency hearing which, at least on the face of the Procedure, would seem to comport with the constitutional requirements enunciated by the *Goldberg* majority for cases of discontinuance.³ In the event of adverse action the affected recipient is entitled to a post-reduction, suspension or discontinuance State "fair hearing" which affords due process procedural safeguards. See *Goldberg v. Kelly*, *supra*, 397 U.S. at 259-60, 90 S.Ct. 1011, 25 L.Ed.2d 287; see also N.Y. Social Welfare Law § 353 (*McKinney* 1966); 18 N.Y.C.R.R. §§ 84.2-84.23.

Even prior to the decision in *Goldberg v. Kelly*, *supra*, HEW had been reconsidering its regulation dealing with state "fair hearings" under the various "categorical assistance" programs to which the Federal Government contributes.⁴ On February 13, 1971, HEW published new regulations effective April 14, 1971, 45 C.F.R. § 205.10, 36 Fed.Reg. 3034 (1971). These directed that each State plan under the categorical assistance pro-

gram must contain provisions whereby, *inter alia*:

grams must contain provisions whereby, *inter alia*:

- (1) Every claimant would be informed in writing at the time of his application for assistance and at the time of any action affecting his claim, of his right to a fair hearing and the method for obtaining one;
- (2) An opportunity for a hearing *before the State agency* shall be granted to any individual requesting a hearing because his claim has been denied or not acted upon with reasonable promptness or "because he is aggrieved by any other agency action affecting receipt, suspension, reduction, or termination of such assistance or by agency policy as it affects his situation";
- (3) Notice of proposed action must be given fifteen days in advance;
- (4) Assistance must be continued "until the fair hearing decision is rendered and through a period consistent with the State's established policies for issuance of payments unless a determination is

ministrative review." This could certainly be read as requiring continuation of benefits until the completion of a State fair hearing. Clearly, the City has not so interpreted it, and such an interpretation would be in conflict with existing State regulations. The "Purpose" section of P.No. 71-35, possibly with this difficulty in mind, makes clear that benefits are affected after an adverse decision by the City's reviewing officer.

3. This statement of conformity with *Goldberg* is subject to one important qualification. The Procedure did not require notification to the client where "Discontinuance of assistance or reduction of client's budget is mandated by law." Many of the difficulties that have arisen apparently stem from the Department's seeking to avail itself of this exception in cases where there was a dispute whether on the facts the legal mandate had been triggered—a situation obviously within the reach of *Goldberg* when discontinuance is proposed.

The City procedures provide for seven days advance notice, a period held constitutionally sufficient in *Goldberg*, 397

U.S. at 268, 90 S.Ct. 1011, 25 L.Ed.2d 287.

4. At the time of the *Goldberg* decision the "fair hearing" requirement of the Social Security Act, 42 U.S.C. § 602(a)(4), as implemented by HEW regulations then in effect, was satisfied by a post-termination hearing. 397 U.S. at 275, n. 3, 90 S.Ct. 1011, 25 L.Ed.2d 287. Prior to the Court's decision (and as noted therein, *id.*) HEW proposed a regulation, largely embodying the due process requirements enunciated in *Goldberg*, requiring a state "fair hearing" prior to termination, reduction or suspension of benefits. 45 C.F.R. § 205.10, 34 Fed.Reg. 1144 (1969). That regulation was scheduled to take effect in July 1970; it was revoked, however, before taking effect when a new regulation was published for comment in May 1970. 45 C.F.R. § 205.10, 35 Fed.Reg. 3448 (1970). After several months of study by HEW, and extensive comments by "interested organizations, agencies, and individuals," the new regulation was published.

made by the State agency, in accordance with criteria issued by the Social and Rehabilitation Service, that the issue is one of State agency policy and not one of fact or judgment relating to the individual case, including a question whether the State agency rules or policies were correctly applied to the facts of the particular case."

Concededly the City and State of New York, have not complied with so much of the regulation as forbids discontinuance, suspension or reduction of benefits until after an adverse decision at the State fair hearing; they take such action once the City has acted, with the claimant entitled to review by the State agency but with his benefits affected in the meanwhile.⁵

The plaintiffs in this action are three women recipients of AFDC benefits. Maria Almenares received a letter from the City dated July 12, 1971, advising that on July 16, her semi-monthly grant of \$120.50 would be reduced to \$6.35 because of non-payment of rent, which she alleged she was withholding pursuant to N.Y. Real Property Action and Procedure Law, McKinney's Consol.Laws c. 81, § 755, and receipt of support money from her husband, the extent of which she denied; allegedly no opportunity for a hearing, State or local, was offered. Cresencia Garcia received notice dated April 14, 1971, that her grant would be reduced as of May 16—in fact, she alleges that, without further notice, the reduction became effective on May 1—from \$117 semi-monthly to \$93.60 because of alleged endorsement of checks

which she claimed she had not received. Local agency review was not had until July 9, after assistance had already been reduced; the decision was adverse but Mrs. Garcia claimed the hearing did not afford due process because the hearing examiner was not impartial and because she was denied the right to confront the evidence against her. Janet Rodriguez received notice early in July, 1971, that her semi-monthly grant of \$117.30 would be suspended (later modified to a reduction to \$27.45) because she had been working, a fact which she denied. No pre-termination or pre-reduction hearing, State or local, was afforded since, as the City now asserts, discontinuance or reduction was "mandated by law," see note 3, *supra*. Before decision of the motion for a preliminary injunction, eight other recipients of AFDC benefits were allowed to intervene. Allegedly four had suffered or were threatened with termination and four with substantial reductions of their grants. Six had been advised of their right to a City hearing and four had received this; the others claimed they had not been so advised. All those who had received hearings alleged that these did not comply with due process. Five of the eight allegedly had assistance reduced or terminated prior to any hearing.

The complaint was brought against George K. Wyman, Commissioner of Social Services of the State of New York, and Jule Sugarman, Commissioner of Social Services for the City.⁶ Plaintiffs sought to represent all recipients of public assistance benefits under the federally aided AFDC and Aid to the Aged, Blind and Disabled (AABD) programs.⁷

5. After the bringing of this action by AFDC recipients in the Southern District of New York, the New York State Commissioner of Social Services brought an action in the Northern District seeking a declaration that the HEW regulation was unauthorized insofar as it required review by a state rather than a local agency before benefits under a categorical assistance program could be adversely affected.

6. The complaint alleged that Sugarman was also sued "on behalf of all other local commissioners of social services in the State of New York."

7. Although plaintiffs and intervenors receive only AFDC benefits, and not AABD benefits, the district court found plaintiffs representative of recipients in the latter program as well. Since HEW's hearing regulation, 45 C.F.R. § 205.10, 36 Fed.Reg. 3034 (1971), applies equally

They contended that the actions of the City with respect to their AFDC benefits were in violation of due process, as explicated in *Goldberg v. Kelly*, *supra*, and also that termination or reduction of their benefits prior to decision in a State fair hearing violated the HEW regulations. On a motion for a preliminary injunction, the district court held, in an opinion filed November 3, 1971, that the complaint stated colorable constitutional claims over which it had jurisdiction pursuant to 28 U.S.C. § 1343(3); that consequently it had "pendent" jurisdiction over the claim of violation of the HEW regulation, without need to consider jurisdictional amount; that the claim relating to violation of the HEW regulations might properly be prosecuted as a class action under F.R.Civ.P. 23(b) (2) for injunctive and declaratory relief against the two named defendants but not against other local administrators, see note 6, *supra*; and that the HEW regulations were valid. It entered an order which restrained defendants from terminating, suspending or reducing AFDC or AABD benefits "until an opportunity is afforded for a fair hearing comporting with the requirements of 45 C.F.R. § 205.10, 36 Fed.Reg. 3034 (1971) insofar as it applies to the issues raised by the plaintiffs in this case, or until this Court determines that defendant Wyman or his successor in office has promulgated regulations implementing the federal regulation, insofar as it applies to the issues in this case, and that defendant Wyman or his successor has developed a suitable method to monitor local compliance with such regulation." The order also directed the defendants to resume full assistance to all recipients under the AFDC and AABD programs whose assistance had been reduced, suspended or terminated since April 14, 1971, and had requested a fair hearing from the New York State Department of

to both federally-aided programs, it was within the district court's discretion to permit plaintiffs to represent both groups so long as the requirements of F.R.Civ.P. 23 were otherwise met.

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Social Services but had not yet had a decision thereon.

On November 8, we heard a motion by defendant Wyman requesting a stay of the injunction pending appeal.⁸ He represented that a change from local to state disposition at the first instance would create serious administrative difficulties and that the court's order would require restoration or prevent withdrawal of benefits in thousands of cases where termination or reduction had been or would be effected in full compliance with constitutional standards. We granted a stay, first pending expedited hearing of the appeal on November 12, and then pending decision, on condition that the plaintiffs and intervenors should continue to receive full benefits.

II.

Like other cases in the welfare area, this one raises a congeries of jurisdictional issues, arising mainly from the fact that the jurisdictional amount requirement, 28 U.S.C. § 1331(a), is inapplicable to claims under the Civil Rights Act but is to "general federal question" claims.

[1] The first question is whether, assuming for the moment that the complaint stated a substantial constitutional claim, the "right or immunity" allegedly infringed is, in the language of Mr. Justice Stone in *Hague v. C. I. O.*, 307 U.S. 496, 531, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), which we followed in *Eisen v. Eastman*, 421 F.2d 560 (2 Cir. 1969), "one of personal liberty, not dependent for its existence upon the infringement of property rights," so as to come within the jurisdictional statute, 28 U.S.C. § 1343(3), implementing the Civil Rights Act, 42 U.S.C. § 1983. Judge Smith's opinion in *Johnson v. Harder*, 438 F.2d 7 (2 Cir. 1971), see also *Campagnuolo v. Harder*, 440 F.2d 1225 (2 Cir. 1971), opens up the problems with respect to

8. Defendant Sugarman also appealed but filed no brief and took no position concerning the stay.

the viability of Justice Stone's test in welfare cases arising from the Supreme Court's unexplicated assumption of § 1343(3) jurisdiction not only in *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968), the only such case which, at the time of the *Eisen* decision, appeared to create any difficulty, but in many subsequent ones. See *e. g.*, *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *Goldberg v. Kelly*, *supra*; *Rosado v. Wyman*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 49 (1970); *Lewis v. Martin*, 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d 561 (1970). While it is not hard to view total or substantial withdrawal of benefits from families living near the edge of subsistence as coming within Justice Stone's formulation, as we suggested in *Eisen*, see 421 F.2d at 564, and held in *Johnson v. Harder*, *supra*, that principle would not necessarily cover every adverse alteration of benefits, no matter how small in amount or limited in duration. We find it unnecessary here to work out the puzzle arising from the Court's unquestioning assumption of § 1343(3) jurisdiction in all welfare cases that have come before it and its apparent continued adherence to the personal-property rights distinction in other suits alleging unconstitutional state action, see *Abernathy v. Carpenter*, 208 F.Supp. 793 (W.D.Mo.1962), *aff'd per curiam*, 373 U.S. 241, 83 S.Ct. 1295, 10 L.Ed.2d 409 (1963); *Alterman Transportation Lines v. Public Service Comm'n*, 259 F.Supp. 486 (M.D.Tenn.

1966), *aff'd per curiam*, 386 U.S. 262, 87 S.Ct. 1023, 18 L.Ed.2d 39 (1967); and *Hornbeak v. Hamm*, 283 F.Supp. 549 (M.D.Ala.), *aff'd per curiam*, 393 U.S. 9, 89 S.Ct. 47, 21 L.Ed.2d 14 (1968). Cf. *Harrison v. Brooks*, 446 F.2d 404 (1 Cir. 1971). For some of the plaintiffs and intervenors did allege total or serious curtailments in benefits which had been fixed to provide the minimum needed for subsistence.

[2, 3] The second jurisdictional question is the one we assumed for purposes of deciding the first, to wit, whether the complaint asserted a substantial constitutional claim⁹ so as to afford jurisdiction under 28 U.S.C. § 1343(3) if other conditions were met. It is too clear for argument that a claim that a state or one of its municipalities had terminated AFDC benefits without the kind of hearing required by *Goldberg* would be substantial, even though their regulations had been revamped so that on their face they complied with that decision; the claim would be of unconstitutionality as applied. What is not so clear is that *Goldberg* requires a hearing in advance of action when benefits are simply *reduced*. The Chief Justice raised this question in a dissent joined by Mr. Justice Black, see *Wheeler v. Montgomery*, 397 U.S. 282, 284-85, 90 S.Ct. 1026, 25 L.Ed.2d 307 (1970). While the majority did not then answer the question, two months later the Court, in reversing and remanding a judgment which invalidated a reduction of benefits in advance of a *Goldberg* type hearing, recognized that the question might—or might not—

9. We regard this as essential for jurisdiction under § 1343(3) in the circumstances here presented, since in our view the Social Security Act is not an "Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." Cf. *Rachel v. Georgia*, 384 U.S. 780, 792, 86 S.Ct. 1783, 16 L.Ed.2d 925 (1966); *City of Greenwood v. Peacock*, 384 U.S. 808, 825, 86 S.Ct. 1800, 16 L.Ed.2d 944 (1966).

Plaintiffs' reliance on 28 U.S.C. § 1343 (4) is foreclosed so far as this circuit is concerned. *McCall v. Shapiro*, 416 F.2d

246 (2 Cir. 1969). Their invocation of 28 U.S.C. § 1337 is even more patently without merit since the Social Security Act is not an act "regulating commerce or protecting trade and commerce against restraints and monopolies." And the ritual incantation of the Declaratory Judgment Act, 28 U.S.C. § 2201, as a basis for jurisdiction, so often encountered in welfare and other cases, comes at least twenty years too late. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 70 S.Ct. 876, 94 L.Ed. 1194 (1950).

receive a different answer. *Daniel v. Goliday*, 398 U.S. 73, 90 S.Ct. 1722, 26 L.Ed.2d 57 (1970). Whatever the ultimate answer may be, the constitutional question remains substantial, all that is here required. See *Merriweather v. Burson*, 439 F.2d 1092, 1093 (5 Cir. 1971). Moreover, as indicated above, at least some of the claims here at issue involve total or nearly total discontinuance.

[4] We thus reach the question whether the district court properly held the statutory claim to be "pendent"¹⁰ to the constitutional claim so as to be cognizable irrespective of the requirement of 28 U.S.C. § 1331 concerning jurisdictional amount.¹¹ The state does not seriously question that the constitutional and statutory claims have the "common nucleus of law and fact" demanded by *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), or that, absent a jurisdictional barrier, a plaintiff having a constitutional claim of the sort here asserted would "ordinarily be expected" also to try his statutory claim "in one judicial proceeding." *Id.*

[5] Its principal contention against pendency is rather that the constitutional claims lay only against Sugarman, the City Commissioner, because of the City's alleged violations of the State-approved procedures, and thus would not support a pendent statutory claim against Wyman, the State Commissioner. The district court answered this by concluding that under both state and federal statutes, N.Y. Social Services Law, McKinney's Consol.Laws, c. 55, §§ 20(2) (b), (3) (a) and (3) (f), 34(3) (d) and (e), and 42

U.S.C. § 602(a) (3) and § 1382(a) (3), the State Commissioner is responsible for the conduct and procedures of local officials. While this may well be so, we need not base decision on that ground. For as we have recently held, the doctrine of pendent jurisdiction is sufficiently broad to support a claim within the limits of *Gibbs* against a person not a party to the primary, jurisdiction-granting claim. See *Astor-Honor, Inc. v. Grosset & Dunlap, Inc.*, 441 F.2d 627 (2 Cir. 1971); *Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800 (2 Cir. 1971), at 809.

[6] Given this, there is no doubt that the record plaintiffs and intervenors should have been allowed to litigate their own statutory claims against the named defendants irrespective of jurisdictional amount. However, a further problem here arises from the ruling permitting plaintiffs to maintain the statutory claim as a class action. In contrast to *Rosado v. Wyman*, *supra*, where both the constitutional and statutory claims were allowed to be maintained as class actions, and apparently the class of plaintiffs on both issues was coextensive, here, as we read the district court's opinion, it granted such status only to the statutory claims, which it held to meet squarely the criterion of F.R.Civ.P. 23(b) (2), namely, that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Whether or not the constitutional claims were appropriate for class action treatment, an issue we need not decide,^{11a} the *Gibbs* test for pendency,

10. We use the quotation marks because there is a certain anomaly in applying this word to a federal claim. However, the usage has the highest sanction. See *Rosado v. Wyman*, 397 U.S. 397, 405, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970).

11. In view of our holding on this point we are not required to determine whether the claims of plaintiffs and other members of their class concerning the invalidity of the New York procedures

in light of the HEW regulation constitute "a single title or right in which they have a common and undivided interest," *Snyder v. Harris*, 394 U.S. 332, 335, 89 S.Ct. 1053, 1056, 22 L.Ed.2d 319 (1969), so as to permit aggregation.

11a. It could be strongly argued that class action treatment was allowable, particularly for all welfare recipients aggrieved by the City's Procedure referred to in fn. 3. On the other hand, the class for

requiring a "common nucleus of operative facts," is satisfied since plaintiffs and all members of their class share one essential thing in common—their benefits have been or will be terminated, reduced or suspended prior to a State hearing unless relief is afforded.

The effect of permitting the "pendent" statutory claim to proceed as a class action is, however, to adjudicate the claims of some persons, who, in the absence of an affirmative holding on the point concerning jurisdictional amount noted on fn. 11, *supra*, could not themselves have invoked the jurisdiction of the federal courts. Whether, in light of this, the district court should have permitted the plaintiffs to maintain their statutory claim as a class action "involves two discrete inquiries: whether the court has the 'power' to hear the [pendent] claim; and whether, assuming the power, the court should, as a matter of 'discretion,' hear the [pendent] claim." *Leather's Best, Inc. v. S.S. Mormaclynx, supra*, 451 F.2d at 809.

[7, 8] The question of the court's power revolves around two bodies of law: on the one hand, there are the traditional statutory jurisdictional requirements;¹² on the other, there are the expanding principles of ancillary and pendent jurisdiction. To be sure, before an action can be brought in the federal

this or any other constitutional claim would have had to be limited to New York City welfare recipients, since the papers did not allege *Goldberg* violations elsewhere in the State, whereas the class designated on the statutory claim was state-wide. Consequently, even if the district court were thought to have granted class action status to the constitutional claims, and to have done so with propriety, we would be left with a problem not dissimilar to that hereafter considered.

12. Clearly, as a constitutional matter, the court has the power to permit this. While the pendent claim here is federal, and thus within one of the constitutional heads of jurisdiction, the same result would follow even if the pendent claim presented a question of state law and

courts, the requirements of some jurisdictional statute must be met. Here the named plaintiffs satisfied this under 28 U.S.C. § 1343(3). This is sufficient to vest the court with subject-matter jurisdiction not merely over their primary claim, but also over their own pendent claims—all those arising from the "common nucleus of operative facts"—whether against the defendant to the primary claim or another. We see no valid distinction in the *power* of the court to join additional plaintiffs.¹³ Neither do we perceive any inherent limitation that makes Rule 23 *per se* inapplicable to a pendent claim so long as the claim meets the *Gibbs* test of a "common nucleus of operative facts" with the primary claim as well as those of Rule 23 itself. F.R. Civ.P. 23(c) (4) provides that "When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues . . ." here the validity of the HEW regulation and the consequent invalidity of the New York procedures. Though no cases have been found permitting a class action to be maintained solely on a pendent claim where the primary claim had not been allowed to be so maintained, nothing in the language of the rule forbids this. Those decisions imposing jurisdictional requirements on members of the designated class all involve interpretations of some jurisdictional statute and not the

diversity of citizenship was absent. Chief Justice Marshall in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat) 738, 821-22, 6 L.Ed. 204 (1824), interpreted the constitutional scope of a "case" as including all questions, state or federal. See *United Mine Workers v. Gibbs, supra*. The presence of additional parties over whom federal jurisdiction would not otherwise exist does not change this. See, *e. g.*, *Phelps v. Oaks*, 117 U.S. 236, 6 S.Ct. 714, 29 L.Ed. 888 (1886); *Dery v. Wyer*, 265 F.2d 804 (2 Cir. 1959); *Walmac Co. v. Isaacs*, 220 F.2d 108 (1 Cir. 1955).

13. See *Wilson v. American Chain & Cable Co.*, 364 F.2d 558 (3 Cir. 1966); *Newman v. Freeman*, 262 F.Supp. 106 (E.D. Pa.1966).

rule itself.¹⁴ Without doubt, a court must be alert to possibilities of abuse, such as when the parties to the primary claim do not appear to be the real parties in interest on the pendent claim, or their interest is inconsequential in comparison to the interests of the class. Pendent jurisdiction cannot be invoked merely to circumvent established jurisdictional requirements. Cf. *Sheldon v. Sill*, 49 U.S. (8 How.) 440, 12 L.Ed. 1147 (1850). But we find no evidence of such a situation here. Barring such evidence, we consider those decisions imposing jurisdictional requirements on class members to be inapposite and independent jurisdiction over the pendent claim unnecessary.

Having held that the district court had the power to permit plaintiffs to proceed on behalf of their class for declaratory and injunctive relief on their pendent claim, we now turn to the question of discretion. We note at the outset that the pendent claim here, like that in *Rosado v. Wyman*, *supra*, is a federal and not a state claim. At least some of the policies found relevant in *Gibbs*, against unnecessary decisions of state

law and avoiding cases where state issues predominate, "whether in terms of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought," 383 U.S. at 726, 86 S.Ct. at 1139, 16 L.Ed.2d 218, are thus not operative. The pendent claim here is one which should rightly be heard in a federal forum since it involves the interpretation of a federal statute and the validity of nationally applicable federal regulations, and concerns a welfare program relying heavily on federal funds. Under the circumstances of this case, determination that plaintiffs are entitled to relief on their pendent claim concerning the invalidity of existing procedures would mean that all other members of the class should receive identical treatment without further inquiry; indeed, it is not too much to expect that the defendants would accord this voluntarily. Unless this were to be done, more suits for similar relief would be commenced; nothing could be more wasteful of judicial time.¹⁵

[9] Our holding here is thus severely limited. With respect to a class action under F.R.Civ.P. 23(b) (3), where dam-

14. In *Snyder v. Harris*, 394 U.S. 332, 89 S.Ct. 1053, 22 L.Ed.2d 319 (1969), the Court, in two cases brought as class actions pursuant to F.R.Civ.P. 23(b) (3), reaffirmed the traditional test permitting aggregation of claims only when the right asserted is "common and undivided." The Court made clear that it was interpreting the amount in controversy language of 28 U.S.C. § 1332 (and by implication § 1331), a threshold requirement for invoking subject-matter jurisdiction, and thus is not controlling here where subject-matter jurisdiction exists under 28 U.S.C. § 1343(3). However, Mr. Justice Black's opinion for the Court, relied upon in *Clark v. Paul Gray, Inc.*, 306 U.S. 583, 59 S.Ct. 744, 83 L.Ed. 1001 (1939), a case in which it is not clear whether joinder or a class action was involved. In following the rule for aggregation later reaffirmed in *Snyder*, the Court in *Clark* also held that each plaintiff must satisfy the jurisdictional amount requirement, even though at least one plaintiff satisfied it and thus subject-matter jurisdiction had attached. While *Snyder v. Harris*, *supra*, does not

speak directly to this point, a number of courts have concluded that each member of the class, rather than just the record plaintiffs, must satisfy the amount in controversy requirement in a situation where aggregation is not allowable. But these cases involve interpretations of the jurisdictional statutes and not of Rule 23. See *Alvarez v. Pan American Life Ins. Co.*, 375 F.2d 992, 996-97 (5 Cir.), cert. denied, 389 U.S. 827, 88 S.Ct. 74, 19 L.Ed.2d 82 (1967); *Zahn v. Int'l Paper Co.*, 53 F.R.D. 430 (D.Vt.1971), leave to appeal granted. We express no view on this subject since in the instant case, no independent basis for jurisdiction over the class action was required. Compare 3B Moore, *Federal Practice* ¶ 23.95 at 23-1851-52 with *Wright, Federal Courts* 312 (1970).

15. While no factual issue would exist on the merits of the statutory claim, the courts would be forced to sort out insubstantial due process claims to determine whether jurisdiction was properly invoked under § 1343(3), even though the merits of these constitutional claims would never be decided.

ages or some other relief requiring examination of collateral facts is required, it could well be an abuse of a trial court's discretion to utilize the principle of pendent jurisdiction to include class claims not otherwise assertable in a federal court, even though they arise from the same nucleus of operative facts as the primary claim.^{15a} This would certainly be true where each class member's claim is small, and the factual issues surrounding it are complex. See *Snyder v. Harris*, *supra*, 394 U.S. at 339-40, 89 S.Ct. 1053, 22 L.Ed.2d 319 (Congressional policy, at least in cases raising questions of state law, is to remit cases involving lesser amounts to the state courts).

[10-13] The State argues also that the due process claims cannot afford a basis for pendent jurisdiction against either defendant since plaintiffs had not exhausted their state remedies. So far as concerns *administrative* remedies, namely, State fair hearings, see *Eisen v. Eastman*, *supra*, 421 F.2d at 567-69, it suffices to say that these could not have remedied the very evil of which plaintiffs complain, namely, termination and reduction of benefits before a proper hearing. It is doubtful that the City's actions could be made the subject of judicial proceedings under Article 78 of the New York Civil Practice Law and Rules until review by the State; in any event, a plaintiff asserting a constitutional claim normally is not required to exhaust similar state judicial remedies before resorting to the federal courts. *Bacon v. Rutland R. R.*, 232 U.S. 134, 34 S.Ct. 283, 58 L.Ed. 538 (1914). The State fares no better on its argument with respect to abstention. To be sure, if plaintiff's allegations are correct, the state courts presumably would hold the City's actions to be invalid under its own regulations and federal constitutional decision could thus be avoided. *Cf. Reetz*

^{15a}. We do not read the district court's order as giving class action status to so much of the complaint as sought damages for the class as distinguished from restitution of benefits unlawfully withheld.

v. Bozanich, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970); *Askew v. Hargrave*, 401 U.S. 476, 91 S.Ct. 856, 28 Ed.2d 196 (1971). But a decision to abstain from deciding the due process claims pending such proceedings relating to issues of state law would not mean that the federal court lacked jurisdiction of the constitutional claims. *Cf. Rosado v. Wyman*, *supra*, 397 U.S. at 407, 90 S.Ct. 1207, 25 L.Ed.2d 442. Furthermore, in the context of this case, the presence of the pendent statutory claim fulfills a principal purpose of abstention by making it unnecessary to decide the constitutional claim.

[14] A final point, not pressed by the State, which we must nevertheless consider is whether the case was one requiring the convening of a three-judge court under 28 U.S.C. § 2281. Plaintiffs, rather untypically, not only did not request this but sought to avoid it, claiming that they "do not seek to enjoin as unconstitutional a state-wide statute or regulation." *Cf. Ex parte Collins*, 277 U.S. 565, 48 S.Ct. 585, 72 L.Ed. 990 (1928). Presumably what they meant was that their *due process* attack was not upon such a statute or regulation but rather on the application of a New York City regulation. While their statutory attack was upon a state regulation permitting the reduction or discontinuance of assistance after a *Goldberg*-type hearing by a local agency, that did not require a three-judge court under *Swift & Co. v. Wickham*, 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965).

III.

The State advances three contentions relating to the merits of the decision on the pendent claim, although the first two of these also have a distinct jurisdictional flavor.

[15] The first is that the district court should not have passed upon New

See *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 564-65 (2 Cir. 1968); Advisory Committee's Note, Proposed Rules of Civil Procedure, 39 F.R.D. 98, 107 (1965).

York's failure to comply with the HEW regulations until HEW had conducted a conformity hearing pursuant to 42 U.S.C. § 1316.¹⁶ A similar contention was rejected in *Rosado v. Wyman*, *supra*, 397 U.S. at 405-07, 90 S.Ct. 1207, 25 L.Ed.2d 442. The State argues that the statement in *Rosado* that "HEW has no procedures whereby welfare recipients may trigger *and participate in* the Department's review of state welfare programs" (italics supplied) is no longer correct with respect to the italicized phrase in light of *National Welfare Rights Organization v. Finch*, 429 F.2d 725 (D.C. Cir. 1970), and HEW's new regulation permitting such participation, 45 C.F.R. § 213.15 (1971). However, the important point is the inability of welfare recipients to trigger such a proceeding, along with the natural reluctance of HEW to embark on a course that could lead to withdrawal of federal aid. 42 U.S.C. § 604.¹⁷

[16] The State's next point is that the judge should have awaited decision in the action brought by Wyman in the Northern District of New York to have the HEW regulations declared invalid insofar as they require hearings by a State agency before benefits can be adversely affected. We readily agree that it would have been improper for the district court to have held the regulations invalid without affording HEW an opportunity to defend them, and even that it would have been advisable to request HEW to submit a brief. But it does not follow that the district court may not reject a challenge to the validity of HEW's regulation without HEW's being a party, at least in a situation like this where the challenger concedes the question to be solely one of law.

16. A determination by HEW adverse to the State after such a hearing would be reviewable by this court at the State's request, 42 U.S.C. § 1316(a) (3).

17. The suggestion in *Rosado*, 397 U.S. at 406-07, 90 S.Ct. 1207, 1215, 25 L.Ed. 2d 442, that district courts obtain the views of HEW whenever possible was limited to cases where HEW "has not

[17] When we come at long last to the State's attack upon the validity of the HEW regulation, we join the district judge in finding it unimpressive. The State's general position is that HEW has no legitimate concern with the distribution of functions between the State and its subdivisions in the administration of federally assisted programs so long as the right results are achieved.¹⁸ More specifically, the State cites 42 U.S.C. § 602(a) which provides that "A State plan for aid and services to needy families with children must . . . (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan," and claims that the requirement for a State hearing before any adverse action deprives the State of the benefit of the latter option. But it is surely consistent with § 602(a) (3) for HEW, under the broad rule-making authority accorded by 42 U.S.C. § 1302, to determine that State supervision must include the conduct of hearings prior to adverse action. This is especially so in light of § 602(a) (4) which requires a State plan to "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness." It was competent for HEW to determine that the objectives of the federally assisted programs could be better attained by a single state hearing prior to the taking of action rather than having such a hearing conducted by a subdivision of the

set forth its views, either in a regulation or published opinion." Here it has done the former.

18. Even if we were to accept this position, it would not carry the day, since the HEW regulations contain substantive provisions differing from the City regulations, e. g., requiring 15 rather than 7 days advance notice.

state subject to review in a state hearing after action had been taken.¹⁹

IV.

The sole remaining issue is whether the State should be accorded some further time to bring itself into compliance with the HEW regulation.

Although the application here was for a preliminary injunction, there seems to be nothing preliminary about the order that was issued.²⁰ There was no suggestion that the parties return to the court with further evidence or argument which might lead to modification of the injunction. Doubtless this was because the district judge, properly in our view, regarded the issue of the validity of the HEW regulation and the consequent invalidity of the State procedure as being solely one of law which he had determined not simply preliminarily but finally. Cf. F.R. Civ.P. 65(a) (2). What remained was to see that the named plaintiffs received their due.

[18] We do not condone the State's conduct when, after having been given 60 days to follow the HEW regulations of February 13, 1971, it neither brought itself into compliance nor initiated any proceedings to contest the validity of the regulations until this action prodded it into doing so. On the other hand, we cannot blind ourselves to the fact that some time will be required to transfer the large apparatus of local hearing ma-

chinery to what has been a rather small State system, and that immediate enforcement of the injunction would thus require payment of millions of much needed dollars to recipients whose benefits have been terminated or reduced after proceedings that fully met the constitutional standards prescribed in *Goldberg v. Kelly*, primarily because the hearing was had before what is the wrong tribunal under the new HEW regulations. This seems to us to run counter to the teaching of *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 592, 88 L. Ed. 754 (1944), that "The historic injunctive process was designed to deter, not to punish." Although the State must bring itself into compliance with the federal regulations, and soon, a proper balancing of the interests calls for postponing the date of the injunction for a reasonable time, on condition that constitutionally valid procedures be followed in the interval.

We therefore affirm the order of the district court but stay its effectiveness until a date 60 days after the filing of this opinion and such further period, if any, as the district court, in its discretion to be exercised upon motion,²¹ may allow. During that period the defendants shall be subject to an injunction in the form attached as Appendix A. The injunction issued by the district court is correspondingly modified so that the date in the second paragraph of the in-

19. An HEW memorandum, dated February 13, 1971, set forth the rationale of the single-hearing requirement, as follows:

1. Holding one hearing, rather than a local hearing followed by a State hearing, will, in our view, be less costly in time and money.

2. Greater impartiality, objectivity and uniformity in the application of State policies is assured when the hearing is not before the agency that made the decision being appealed.

3. The individual and those appearing on his behalf will be subject to only one hearing.

4. This hearing process is closely akin to that which would be required under the Family Assistance Plan.

5. The State agency should be better able to interpret State policies and to determine whether they were correctly applied to the individual's situation, especially when the claimant challenges the correctness of the local agency's application of those policies.

6. A single hearing can be a means for improving hearing procedures and for shortening the time for the total process which, in some States, now exceeds the Federal standard of 60 days.

20. The State's motion for a stay referred to the decree as a "preliminary permanent injunction." While this is a new animal to us, the description is not inapt.

21. Notice of any such motion shall be given to HEW as well as to counsel for the plaintiffs and intervenors.

junction shall be the date when the injunction becomes effective rather than April 14, 1971. Nothing herein shall be deemed to affect adversely the rights of any person to the ultimate restitution, in this action or elsewhere, of benefits of which he has been unconstitutionally deprived. Plaintiffs may recover their costs. It is so ordered.

APPENDIX A

It is hereby ordered that George K. Wyman, Commissioner of Social Services for the State of New York, his successors in office, agents and employees, including local social services officials administering AFDC and AABD programs, insofar as said officials have actual notice of this order, and Jule Sugarman, Commissioner of Social Services for the City of New York, his successors in office, agents and employees, are

(1) Restrained from terminating, suspending or reducing public assistance benefits in the federally-aided programs of Aid to Families with Dependent Children and Aid to the Aged, Blind and Disabled, unless and until an opportunity is afforded for a local social services agency hearing comporting with the requirements of 18 N.Y.C.R.R. § 351.26 and *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), it being understood that such a hearing must be accorded when a recipient contends that a State law, rule or policy has been incorrectly applied to the facts of the particular case;

(2) Directed to resume full assistance for all recipients under the AFDC and AABD programs who have had their assistance reduced, suspended or terminated by a local social services agency since April 14, 1971 and have requested a fair hearing from the New York State Department of Social Services and have not yet received a decision from such hearing, but only where such adverse action by the local social

services agency was taken without written notice of intent to take such action informing said recipients of the right to a hearing comporting with the requirements of 18 N.Y.C.R.R. § 351.26 or where said recipients have requested such a hearing and none has been provided (including cases where a recipient contends that a state law, rule or policy has been incorrectly applied to the facts of the particular case); and

(3) Directed to resume full assistance for all recipients under the AFDC and AABD programs who have had their assistance reduced, suspended or terminated since April 14, 1971, and who have requested a State fair hearing after an adverse ruling following a local social services hearing and have not had a decision from said State fair hearing within the time limits set forth in 18 N.Y.C.R.R. Part 84, pending the decision in said State fair hearing.



UNITED STATES of America,
Plaintiff-Appellee,

v.

Edward Lee THOMAS, Defendant-
Appellant.

No. 71-1262
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Jan. 17, 1972.

Rehearing Denied Feb. 7, 1972.

Defendant was convicted of refusal to be inducted into the armed forces under the Selective Service Act, and from the judgment of the United States District Court for the Southern District of

* [1] Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of*

New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

Social Services Law¹

§22. Appeals and fair hearings; judicial review.

1. Any person described in subdivision three of this section, or any individual authorized to act on behalf of any such person, may appeal to the department from decisions of social services officials or failures to make decisions upon grounds specified in subdivision five of this section. The department shall review the case and give such person an opportunity for a fair hearing thereon. The department may also, on its own motion, review any decision made or any case in which a decision has not been made by a social services official within the time specified by law or regulations of the department. The department may make such additional investigation as it may deem necessary, and the commissioner shall make such decision as is justified and is in conformity with the provisions of this chapter, the regulations of the department, a comprehensive annual services program plan then in effect pursuant to title twenty of the federal social security act and any other applicable provisions of law.
2. In connection with any appeal pursuant to this section, with or without a fair hearing, the commissioner may designate and authorize one or more appropriate members of his staff to consider and decide such appeals. Any staff member so designated and authorized shall have authority to decide such appeals on behalf of the commissioner with the same force and effect as if the commissioner had made the decisions. Fair hearings held in connection with such appeals shall be held on behalf of the commissioner by members of his staff who are employed for such purposes or who have been designated and authorized by him therefor. The provisions of this subdivision shall apply to fair hearings conducted pursuant to subdivision eight of section four hundred twenty-two² of this chapter, and to any hearing required pursuant to this chapter concerning the denial, suspension or revocation of any permit, certificate or license, and to any hearing held pursuant to section four hundred fifty-five³ of this chapter.
3. Persons entitled to appeal to the department pursuant to this section shall include:
 - (a) Applicants for or recipients of aid to dependent children, emergency assistance for families with dependent children, home relief, veteran assistance, medical assistance for needy persons and any service authorized or required to be made available in the geographic area in which such person resides, pursuant to the provisions of this chapter;

¹ Please note: The footnotes in this document are not found in the Statute. They have been added for this presentation.

² SSL Section 422.8 relates to the placement of an individual on the Statewide Central Register of Child Abuse and Maltreatment.

³ SSL Section 455 relates to the denial, discontinuance and amount of adoption subsidies.

- (b) Applicants for or participants in the food stamp program, pursuant to section ninety-five of this chapter and regulations of the department;
 - (c) Applicants for or recipients of emergency assistance for aged, blind and disabled persons, pursuant to title eight of article five of this chapter, so long as such emergency assistance is available pursuant to such law;
 - (d) Aggrieved persons described in section four hundred of this chapter;
 - (e) Aggrieved persons, agencies or social services districts described in section three hundred seventy-two-e⁴ of this chapter;
NB Effective until June 30, 2012
 - (e) Aggrieved persons, agencies or social services districts described in sections one hundred fifty-three-d⁵, three hundred seventy-two-e and three hundred ninety-eight-b⁶ of this chapter;
NB Effective June 30, 2012
 - (f) Other persons entitled to an opportunity for fair hearings pursuant to regulations of the department.
4. (a) Except as provided in paragraph (c) of subdivision two of section four hundred twenty-four-a⁷ of this chapter and in paragraph (b) of this subdivision, any appeal pursuant to this section must be requested within sixty days after the date of the action or failure to act complained of.
- (b) Unless a different period is mandated by federal law or regulations, a person is allowed to request a fair hearing on any action of a social services district relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. For purposes of this paragraph, such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

⁴ SSL Section 372-e deals with an authorized agency's denial of or failure to act upon an adoption application.

⁵ SSL Section 153-d, currently repealed, relates to limitations on reimbursement for foster care and preventive services.

⁶ SSL Section 398-b, currently repealed, relates to child welfare services utilization review.

⁷ SSL Section 424-a(2)(c) provides for a hearing due to certain negative actions taken against a child care provider based on his or her listing in the Central Register of Child Abuse and Maltreatment.

5. Grounds for such appeals shall be specified in regulations of the department, but shall include at least the following:
 - (a) Denial of any application.
 - (b) Failure to act upon any application within thirty days after filing, except applications for home relief, or failure to comply with laws and regulations requiring that priority be given to certain applications for assistance, or failure to act on any application for home relief within forty-five days after filing.
 - (c) Inadequacy in amount or manner of payment of assistance.
 - (d) Discontinuance in whole or in part of assistance, or termination of a service authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.
 - (e) Failure to permit a parent or guardian to visit the child or failure to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state consolidated services plan, to the child and to the parent or guardian, pursuant to an instrument executed under section three hundred eighty-four-a⁸ of this chapter.
 - (f) Failure to provide adoption services or assistance to a prospective adoptive parent on behalf of a child freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act⁹ pursuant to section three hundred seventy-two-b¹⁰ of this chapter and the local social services district's consolidated services plan.
6. In scheduling fair hearings on appeals concerning applications for emergency assistance pursuant to section three hundred fifty-j or title eight of article five of this chapter, the department shall give priority to the hearing and determination of such appeals.
7. For the purposes of this section, except subdivision nine, social services officials shall include the persons described in subdivision fourteen of section two of this chapter and also the head of any bureau of the department which exercises responsibility pursuant to this chapter for determining eligibility for and furnishing public assistance and care to persons in family care pursuant to section one hundred thirty-eight-a of this chapter, or for determining eligibility for and furnishing medical assistance pursuant to subdivision two, three or four of section three

⁸ SSL Section 384-a deals with the transfer of custody and care of a child by a parent or guardian to an authorized agency.

⁹ Family Court Act Section 1086 et seq. deal with permanency hearings for children placed out of their homes.

¹⁰SSL Section 372-b concerns the provision of adoption services to prospective adoptive parents.

hundred sixty-five of this chapter, or for determining eligibility for and furnishing services pursuant to section two hundred fifty-three of this chapter.

8. The department shall promulgate such regulations, not inconsistent with federal or state law, as may be necessary to implement the provisions of this section. Such regulations shall require that a copy of all decisions made concerning appeals pursuant to this section shall be sent to each party to such appeals and their representatives, if any.
9.
 - (a) All decisions of the commissioner pursuant to this section shall be binding upon the social services districts involved and shall be complied with by the social services officials thereof.
 - (b) Any aggrieved party to an appeal, including a social services official provided an application by any such social services official has not been determined by any federal agency to be in violation of federal law, may apply for review as provided in article seventy-eight of the civil practice law and rules.
 - (c) The provisions of paragraph (a) shall be applicable to a social services official after the decision of the commissioner becomes final and binding unless a court stays such decision. No such stay shall be issued by any court unless the social services official establishes that irreputable harm will result if a stay is not granted, and the probability that he will succeed on the merits. In an action or proceeding to review a decision of the commissioner, the applicant or recipient and his representative, if any, shall be served with copies of all pleadings and shall be allowed to intervene in such action or proceeding as a matter of right. Notwithstanding any provision of the civil practice law and rules or any other law to the contrary, any application by a social services official for a stay in a proceeding commenced by such official pursuant to this section shall be determined by the appropriate appellate division, and not by a justice of the supreme court. Whenever the commissioner has sustained an appeal by a recipient of public assistance or care with respect to benefits which were continued pending the fair hearing decision, the appellate division shall not stay the fair hearing decision prior to the initial determination of the proceeding initiated pursuant to this section for the review of such fair hearing decision.
 - (d) Every person entitled to a benefit pursuant to a decision of the commissioner under this section, shall be advised to contact the department in a manner specified by department regulations, in the event that a local social services district does not comply with such decision.
10. In connection with every determination of an appeal pursuant to this section, the department shall inform every party thereto, and his representative, if any, of the availability of judicial review and the time limitation thereon.

11. The provisions of subdivisions three and four of section twenty of this chapter shall be applicable to state reimbursement otherwise payable to any social services district in the event of the failure of a social services official to comply with a commissioner's determination upon an appeal within the time required by regulations of the department or such additional time as the commissioner may allow. In the event that the court stays any such determination in a proceeding pursuant to article seventy-eight of the civil practice law and rules, state reimbursement shall not be withheld or denied pursuant to this subdivision for non-compliance during such stay. Nothing in this subdivision shall limit the power of a court in a proceeding pursuant to article seventy-eight of the civil practice law and rules to order a social services official to comply with a commissioner's determination upon an appeal.

12. Every applicant or recipient of public assistance and care shall be informed in writing, through the distribution of an informational pamphlet, at the time of application and at the time of any action affecting his receipt of assistance or care:
 - (a) of his right to an appeal or fair hearing;
 - (b) of the method by which he may obtain an appeal or fair hearing;
 - (c) of his right to representation by legal counsel, or by a relative, friend, or other spokesmen, or that he may represent himself;
 - (d) of the availability of community legal services to assist him in the appeal or fair hearings process;
 - (e) of the nature of the procedures to be followed throughout an appeal or fair hearing;
 - (f) of the types of information he may wish to submit at an appeal or fair hearing;
 - (g) of any additional information which would clarify the appeals and fair hearings procedure for applicants and recipients of public assistance and care, and would assist such persons in more adequate preparation for such hearings.

13. Whenever under other provisions of this chapter an applicant or recipient of public assistance or care may appeal to the department a decision of a social services official, or the failure of such official to act on his application within the required period, and may request a fair hearing thereon, if such applicant or recipient requires legal services in connection with such an appeal and fair hearing and such services are not otherwise available to him, the social services official shall, upon request, make provision for payment for such legal services if required by federal law or regulations.

14. To provide an analysis of the outcome of the fair hearings process within the office of temporary and disability assistance to identify inadequacies and potential improvements in the functioning of the fair hearings system, such office shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this article to be filed with the governor and the legislature prior to the fifteenth day of December of each year, a report containing with respect to income maintenance programs, including the family assistance program, the safety net assistance program, the medical assistance program and any other program, the number of affirmations and reversals by local districts and by program including a breakdown by local districts of the number of fair hearings requested by program and the number of fair hearings held by program, formal requests by local districts and recipients for reconsideration or rehearing of appeals, and a summary of court actions on hearing decisions.

PART 358**FAIR HEARINGS: FAMILY ASSISTANCE, SAFETY NET ASSISTANCE, MEDICAL ASSISTANCE, EMERGENCY ASSISTANCE TO AGED, BLIND OR DISABLED PERSONS, EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH CHILDREN, FOOD STAMPS, FOOD ASSISTANCE, HOME ENERGY ASSISTANCE, AND SERVICES FUNDED THROUGH THE DEPARTMENT OF FAMILY ASSISTANCE**

(Statutory authority: Social Services Law, art. 5, title 9-B, §§ 20, 22, 34[3][f], 95, 131[1], 355[3], 358, 410-x[3]; L. 1971, ch. 110, § 83; L. 1997, ch. 436)

Subpart 358-1 Scope and Effective Date

Subpart 358-2 Definitions

Subpart 358-3 Rights and Obligations of Applicants and Recipients and Sponsors of Aliens

Subpart 358-4 Rights and Obligations of Social Services Agencies

Subpart 358-5 The Fair Hearing Process

Subpart 358-6 Decision and Compliance

Historical Note

Part filed Feb. 15, 1968; repealed, new (§§ 358.1-358.27) filed April 21, 1972; Part (*Fair Hearings: Aid to Dependent Children, Home Relief, Medical Assistance, Emergency Assistance to Aged, Blind, or Disabled Persons, Emergency Assistance to Needy Families with Children, Food Stamps, Home Energy Assistance and Services*, §§ 358.1-358.28) repealed, new (Subparts 358-1 — 358-6) filed Dec. 23, 1988; amds. filed: April 15, 1994; Aug. 29, 1997 as emergency measure; Nov. 26, 1997 as emergency measure; Jan. 23, 1998 as emergency measure; Feb. 2, 1998; Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006. Amended Part title.

SUBPART 358-1**SCOPE AND EFFECTIVE DATE**

(Statutory authority: Social Services Law, §§ 20[3][d], 22[8], 34[3][f], 95[10])

Sec.

358-1.1	General
358-1.2	Applicant/recipient
358-1.3	Social services agencies

Historical Note

Subpart (§§ 358-1.1 — 358-1.4) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-1.1 General.

These regulations govern the fair hearing process and establish the rights and obligations of applicants, recipients, and social services agencies when an applicant or recipient seeks review of a social services agency action or determination regarding that individual's assistance or benefits under public assistance programs, medical assistance, food stamp, food assistance, and the home energy assistance (HEAP) programs and under various service programs as defined in section 358-2.20 of this Part and any program or service administered through the New York State Office of Temporary and Disability Assistance (OTDA) as described in 18 NYCRR Part 385.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 29, 1997 as emergency measure; Nov. 26, 1997 as emergency measure; Jan. 23, 1998 as emergency measure; Feb. 2, 1998; Aug. 19, 2003; June 5, 2007 eff. June 20, 2007.

§ 358-1.2 Applicant/recipient.

For applicants and recipients, these regulations govern the following:

(a) *Notice.* These regulations set forth what information you are entitled to receive if you have been accepted for or denied public assistance, medical assistance, HEAP, food stamp benefits or services or if there is to be a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services which you are receiving or if there is an increase in the public assistance, medical assistance or food stamp benefits you are receiving or if there is to be a change in the calculation of such assistance or benefits or if you are involuntarily discharged from a tier II facility as defined in Part 900 of this Title.

(b) *Timing.* These regulations set forth the time periods within which you are obligated to request a fair hearing and/or conference if your application for public assistance, medical assistance, HEAP, food stamp benefits or services is not acted upon in a timely manner, or if you have been denied public assistance, medical assistance, food stamp benefits or services or if there is to be a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services you are receiving, or if there is an increase in the public assistance, medical assistance or food stamp benefits you are receiving, or if there is to be a change in the calculation of such assistance or benefits; or if you are told that you have received an over-issuance of food stamp benefits.

(c) *Procedures.* These regulations set forth what you are required to do to have an action of a social services agency reviewed when you are denied public assistance, medical assistance, food stamp benefits, HEAP or services, or when there is a discontinuance, reduction, or suspension in the public assistance, medical assistance, food stamp benefits or services which you are receiving, or when there is an increase in the public assistance, medical assistance or food stamps which you are receiving, or if you are involuntarily discharged from a tier II facility as defined in Part 900 of this Title, or if the social services agency has not acted in a timely manner or if there is a change in the calculation of such assistance or benefits, or if you are told that you have received an over-issuance of food stamp benefits; how to ask for a conference and fair hearing; how to exercise your right to have your public assistance, medical assistance, food stamp benefits or services continued until a hearing decision is issued; how to request another hearing date if you are unable to attend the fair hearing on the day it is scheduled to be held; how to get an interpreter if you do not speak English or if you are deaf; and who you may bring to a conference, or fair hearing.

(d) *Decision.* These regulations set forth what you should do if the social services agency which is a party to the fair hearing does not comply with your fair hearing decision.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: April 5, 1993; Aug. 19, 2003 eff. Sept. 3, 2003.
Amended (d).

§ 358-1.3 Social services agencies.

For social services agencies, these regulations govern the following:

- (a) notices to be sent to applicants and recipients of covered programs or services;
- (b) agency conferences;
- (c) information and documents to be provided to applicants/recipients, or their representatives, who have requested a fair hearing;
- (d) the fair hearing process; and
- (e) compliance with fair hearing decisions.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-1.4

Historical Note

Sec. filed Dec. 23, 1988; repealed, filed Aug. 19, 2003 eff. Sept. 3, 2003.

SUBPART 358-2**DEFINITIONS**

(Statutory authority: Social Services Law, §§ 20[3][d], 22[8], 34[3][f], 95[10][i], 131[1], 337, 355[3], 358[3], 410[1], 410-u—410-z; L. 1997, ch. 436)

Sec.	
358-2.0	Introduction
358-2.1	Action taken notice
358-2.2	Adequate notice
358-2.3	Adverse action notice
358-2.4	Agency conference
358-2.5	Aid continuing
358-2.6	Appellant
358-2.7	Applicant
358-2.8	Commissioner
358-2.9	Covered programs or services
358-2.10	Department
358-2.11	Expiration notice
358-2.12	Fair hearing
358-2.13	Hearing officer
358-2.14	Mass change in the Food Stamp Program
358-2.15	Notice of action
358-2.16	Parties to a fair hearing
358-2.17	Public assistance
358-2.18	Recipient
358-2.19	Restricted payment
358-2.20	Services funded through the New York State Department of Family Assistance
358-2.21	Social services agency
358-2.22	Social services district
358-2.23	Timely notice
358-2.24	Title
358-2.25	Witness
358-2.26	Resident of a tier II facility
358-2.27	Food stamps
358-2.28	Notice of missed interview
358-2.29	Request for contact notice
358-2.30	Office of Administrative Hearings

Historical Note

Subpart (§§ 358-2.0—358-2.25) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.0 Introduction.

The terms in Part 358 have the meanings set forth in this Subpart.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.1 Action taken notice.

An *action taken notice* means a notice from a social services agency advising:

- (a) an applicant for food stamp benefits or a recipient of food stamps at recertification of the social service agency's determination to accept or deny food stamp benefits; or
- (b) a recipient of food stamp benefits, of an increase in benefits.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.2 Adequate notice.

(a) Except as provided in subdivision (b) of this section, an *adequate notice* means a notice of action or an adverse action notice or an action taken notice which sets forth all of the following:

(1) the action the social services agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. Otherwise the notice shall state that there will be a separate notice for other affected assistance, benefits or services. In addition, in the case of:

(i) a reduction of public assistance or food stamp benefits: both the dollar amount of assistance or benefits prior to the reduction and the reduced amount must be specified;

(ii) an increase in the amount of a medical assistance spenddown: the amount of the spenddown, if any, prior to the increase and the spenddown amount after the increase must be specified. In addition, such notice must include an explanation of the procedures to be followed for meeting the spenddown;

(iii) a recoupment: the total amount to be recouped and the rate of recoupment must be specified. In addition, in the case of a recoupment of a public assistance grant, the right to claim that the rate of recoupment will cause undue hardship must be specified;

(iv) an acceptance of a food stamp application:

(a) the benefit level, including variations based on changes anticipated and at the time of certification, the date when benefits become available and the dates covering the certification/eligibility period must be specified. In addition, if the initial allotment contains benefits for both the month of application and the current month, the notice must explain that the initial allotment includes more than one month's benefits, and must indicate the monthly allotment amount for the remainder of the certification period;

(b) when an application is approved on an expedited basis without verification, the notice must explain that the household must provide the verification which was postponed and any special conditions applicable to the household if a normal certification period was assigned to such household;

(v) a denial of a food stamp application: when a household is potentially categorically eligible for food stamp benefits but is denied food stamp benefits, the notice must ask the applicant to inform the social services agency if the applicant is approved to receive family assistance, federally funded safety net assistance or supplemental security income benefits;

(vi) a notice of authorization of a public assistance grant: the amount of the grant must be specified;

(vii) an increase in a public assistance grant or food stamp benefits: the new amount of the grant or benefits must be specified;

(viii) a restriction of a medical assistance authorization: the date the restriction will begin, the effect and scope of the restriction, the reason for the restriction, the right of the recipient to select a primary care provider within two weeks of the date of the notice of intent to restrict, if the social services agency provides a limited choice of providers to the recipient; the right of the social services agency to select a primary provider for the recipient, if a list of primary care providers is not provided or where the recipient fails to select a primary care provider within two weeks if the recipient is given a choice; and the right of the recipient to change providers every three months, or sooner for good cause shown; the right of the recipient to explain and present documentation, either at a conference or by submission, showing the medical necessity of the services cited in the recipient information packet; the right of the recipient to examine records maintained by the social services agency which identify medical assistance services paid for on behalf of the recipient (*i.e.*, claim detail of recipient profile information), must be specified;

(ix) an acceptance of an application for services: the type of services to be provided, the duration of services planned, the name of the worker or unit responsible for the case and such person's telephone number, and the right of the applicant and recipient to accept or reject the services shall be specified. In addition, the notice must include a statement regarding the continuing responsibility of the recipient to report any changes in status;

(x) a determination that an applicant is eligible for the HEAP program: if Federal funds are available, the amount of benefits must be specified. If Federal funds are unavailable, a statement shall be included that HEAP benefits will be provided if sufficient Federal funds become available;

(xi) an acceptance of an application for medical assistance: the extent of coverage, including what care and services are authorized as well as any limitations, must be specified. In addition, if only part of the cost of a particular service will be allowed, such limitation must be specified. If the notice of acceptance indicates a spenddown liability, such notice must include an explanation of the procedures to be followed for meeting the spenddown;

(xii) a disqualification of a food stamp household, or a member of such household for failure to comply with food stamp registration or work requirements: the particular act of noncompliance, the proposed period of disqualification and that the household or individual may reapply in order to resume participation in the food stamp program at the end of the disqualification period as well as information about avoiding or ending the disqualification, must be specified;

(xiii) a notice of action taken in the food stamp program when a member of the applicant household has without good cause failed to comply with work registration requirements: the particular act of noncompliance, the proposed period of disqualification, that the individual or household may reapply in order to participate at the end of the disqualification period as well as information about ending the disqualification, must be specified; and

(xiv) a disqualification of a household from the food stamp program based upon the voluntary termination of employment by the head of household: the proposed period of disqualification, the household's right to reapply in order to resume participation at the end of the disqualification period as well as information about ending the disqualification, must be specified.

(2) except in the case of a denial, the effective date of the action;

(3) except in the case of an acceptance of an application for a covered program or service, the specific reasons for the action;

(4) the specific laws and/or regulations upon which the action is based;

(5) the applicant's or recipient's right to request an agency conference and fair hearing;

(6) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;

(7) an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made. Furthermore, that a request for a conference does not entitle one to aid continuing, and that a right to aid continuing only arises pursuant to a request for a fair hearing;

(8) when the agency action or proposed action is a reduction, discontinuance, restriction or suspension of public assistance, medical assistance, food stamp benefits or services, the circumstances under which public assistance, medical assistance, food stamp benefits or services will be continued or reinstated until the fair hearing decision is issued; that a fair hearing must be requested separately from a conference; and a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, food stamp benefits or services; and that participation in an agency conference does not affect the right to request a fair hearing;

(9) the right of the applicant or recipient to review the applicant's or recipient's case record and to obtain copies of documents which the agency will present into evidence at the hearing

and other documents necessary for the applicant or recipient to prepare for the fair hearing at no cost. The notice must contain an address and telephone number where the applicant or recipient can obtain additional information about: the applicant's or recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;

(10) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;

(11) the right to present written and oral evidence at the hearing;

(12) the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;

(13) information concerning the availability of community legal services to assist an applicant or recipient at the conference and fair hearing;

(14) a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation; and

(15) when an action concerning medical assistance is based on a change in law, a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all medical assistance recipients.

(b) Where an automatic public assistance grant adjustment is required for a class of recipients because of a change in either State or Federal law, the notice provided to a member of such class will be adequate if it includes:

(1) a statement of the intended action;

(2) the reasons for such intended action;

(3) a statement of the specific change in the law requiring such action;

(4) a statement of the circumstances under which a hearing may be obtained and assistance continued. Such statement must advise the recipient that although the recipient has the right to have a hearing scheduled, the hearing officer at the hearing may determine that the recipient did not have a right to a hearing or continuation of assistance unless the reason for the appeal is the incorrect computation of the grant; and

(5) the liability, if any, to repay continued or reinstated assistance, if the recipient loses the fair hearing.

Historical Note

Sec. filed Dec. 23, 1988; ams. filed: Sept. 25, 1989; Nov. 29, 1989; Nov. 20, 1990; Aug. 19, 2003; Feb. 9, 2007 eff. Feb. 28, 2007. Amended (a)(14).

§ 358-2.3 Adverse action notice.

Adverse action notice means a notice from a social services agency advising a recipient of food stamp benefits of its determination to discontinue, reduce, or suspend such recipient's food stamp benefits, within the food stamp certification period.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.4 Agency conference.

Agency conference means an informal meeting at which an applicant or recipient may have any decision of a social services agency concerning the applicant's or recipient's public assistance, medical assistance, food stamp benefits, HEAP or services reviewed or may have any other aspect of the applicant's or recipient's case reviewed by an employee of that agency who has the authority to change the decision with which the applicant or recipient disagrees.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.5 Aid continuing.

Aid continuing means the right to have public assistance, medical assistance, food stamp benefits or services continued unchanged until the fair hearing decision is issued.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.6 Appellant.

Appellant means the party for whom the fair hearing is requested.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.7 Applicant.

Applicant means a person who has applied for public assistance, medical assistance, HEAP, food stamp benefits, or a service.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.8 Commissioner.

Commissioner means the New York State Commissioner of Temporary and Disability Assistance, or the Commissioner of Health or the Commissioner of the Office of Children and Family Services, depending upon the type of hearing involved as set forth in section 358-2.30 of this Part, or their designees.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed: Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006.

§ 358-2.9 Covered programs or services.

Covered programs or services means one or more of the following: family assistance, safety net assistance, medical assistance, emergency assistance to aged, blind or disabled persons, emergency assistance to needy families with children, food stamps, HEAP, and any services funded through the New York State Department of Family Assistance as defined in section 358-2.20 of this Subpart.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 31, 2000; Aug. 19, 2003; Feb. 13, 2004; Feb. 28, 2006 eff. March 15, 2006.

§ 358-2.10 Department.

Department means the New York State Department of Family Assistance.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 19, 2003; Feb. 13, 2004 eff. May 15, 2004.

§ 358-2.11 Expiration notice.

Expiration notice means a notice sent by a social services agency which advises a household in receipt of food stamp benefits that its certification period is due to expire. The expiration notice must contain:

- (a) the consequences of failure to comply with the expiration notice;
- (b) the date the current certification period ends;

- (c) the date by which the recipient's household must reapply to receive uninterrupted benefits;
- (d) the date of any scheduled interview, and a statement that the recipient is responsible for rescheduling a missed interview;
- (e) the number of days the recipient has for submitting missing verification after the interview or after the recertification form is received by the local social services district if no interview is required;
- (f) the specific regulation upon which the action is based;
- (g) the household's right to request an application for food stamp benefits and the obligation of the local social services district to accept the application, provided that the application is signed and contains a legible name and address;
- (h) the address where the application must be filed;
- (i) the household's right to apply for food stamp benefits by mail or through an authorized representative;
- (j) information that any household consisting only of supplemental security income (SSI) applicants or recipients is entitled to apply for food stamp recertification at any office of the Social Security Administration (SSA);
- (k) the household's right to a fair hearing;
- (l) the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- (m) the right of the recipient to review the recipient's case record. The notice must contain an address and telephone number where the recipient can obtain additional information about the recipient's case; how to request a fair hearing; access to the case file; and/or obtaining copies of documents;
- (n) the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing; and
- (o) the right to present written and oral evidence at the hearing.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.12 Fair hearing.

Fair hearing means a formal procedure provided by OAH upon a request made for an applicant or recipient to determine whether an action taken or failure to act by a social services agency was correct.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-2.13 Hearing officer.

Hearing officer means an attorney assigned by OAH to preside at hearings.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-2.14 Mass change in the Food Stamp Program.

Mass change in the Food Stamp Program means changes initiated by the Federal government or a social services agency which affect all food stamp households or a significant portion of all food stamp households. *Mass changes* may include, but are not limited to, adjustments to income eligibility standards, shelter and dependent care deductions; the thrifty food plan and the standard

deduction; annual and seasonal adjustments to social security, supplemental security income and other Federal benefits.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-2.15 Notice of action.

Notice of action means a notice from a social services agency advising an applicant, recipient or resident of a tier II facility of any action the agency intends to take or has taken on any assistance or benefits except food stamp benefits, including the acceptance, denial, discontinuance, suspension, or reduction of public assistance, medical assistance or services, an increase in public assistance or medical assistance, a change in the amount of one of the items used in the calculation of a public assistance grant or medical assistance spenddown although there is no change in the amount of such public assistance grant or medical assistance spenddown, a change in the manner or method or form of payment of a public assistance grant, a determination that an applicant for or a recipient of public assistance is not exempt from work program requirements pursuant to section 385.2 of this Title, a restriction of a medical assistance authorization, and a denial or acceptance of HEAP or a determination to discharge a resident of a tier II facility involuntarily after such resident requests and participates in a hearing held by the facility or the social services district in which the facility is located.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 27, 1990; April 5, 1993; Aug. 31, 2000; Feb. 28, 2006 eff. March 15, 2006.

§ 358-2.16 Parties to a fair hearing.

Parties to a fair hearing means the person for whom a fair hearing is requested and the social services agency or agencies whose decision, action or failure to act is subject to review at the fair hearing.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.17 Public assistance.

Public assistance includes family assistance and safety net assistance, emergency assistance to aged, blind or disabled persons, emergency assistance to needy families including special grants and benefits available pursuant to Part 352 of this Title and, for the purposes of this Part, refugee cash assistance issued in accordance with Part 373 of this Title.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 16, 1995 as emergency measure; Feb. 14, 1996 as emergency measure; April 12, 1996 as emergency measure; April 12, 1996; Nov. 1, 1996 as emergency measure; Jan. 28, 1997 as emergency measure; March 28, 1997 as emergency measure; May 20, 1997 as emergency measure; July 18, 1997 as emergency measure; Sept. 3, 1997 as emergency measure; Oct. 28, 1997 as emergency measure; Dec. 29, 1997 as emergency measure; March 30, 1998 as emergency measure, expired 90 days after filing; Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-2.18 Recipient.

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.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.19 Restricted payment.

Restricted payment means one of the methods of payment described in Part 381 of this Title, including restricted money payment, indirect or vendor payment and protective payment.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.20 Services funded through the New York State Department of Family Assistance.

Services funded through the New York State Department of Family Assistance means services provided pursuant to the local social services district's consolidated services plan or integrated county plan. Such services may include, but are not limited to child care services, preventive services for children and families and for adults, protective services for children and adults, homemaker services, housekeeper/chore services, and information and referral services.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 19, 2003; Feb. 13, 2004 eff. May 15, 2004.

§ 358-2.21 Social services agency.

Social services agency means the State, county, city, town official or town agency, social services district, HEAP certifying agency or other entity responsible for making the determination or for the failure to act, which is the subject of review at the fair hearing.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-2.22 Social services district.

Social services district means the county department of social services or the New York City Department of Social Services.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.23 Timely notice.

Timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.24 Title.

Title means Title 18 of the *New York State Official Compilation of Codes, Rules and Regulations (NYCRR)* also referred to as the regulations of the Department of Family Assistance.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 19, 2003; Feb. 13, 2004 eff. May 15, 2004.

§ 358-2.25 Witness.

Witness means a person, other than the applicant, recipient, or the representative thereof, who presents testimony and/or documentary evidence at a fair hearing.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-2.26 Resident of a tier II facility.

Resident of a tier II facility means a family or family member residing in a tier II facility as defined in Part 900 of this Title.

Historical Note

Sec. filed April 5, 1993 eff. April 21, 1993.

§ 358-2.27 Food stamps.

Whenever the term *food stamps* is used in this Part it means food stamps under the Food Stamp Program and food assistance under the Food Assistance Program as set forth in Part 388 of this Title.

Historical Note

Sec. filed: Aug. 29, 1997 as emergency measure; Nov. 26, 1997 as emergency measure; Jan. 23, 1998 as emergency measure; Feb. 2, 1998 eff. Feb. 18, 1998.

§ 358-2.28 Notice of missed interview.

Notice of missed interview means a notice sent by a social services district informing an applicant or recipient that they have missed a scheduled food stamp eligibility or recertification interview and advising them that it is their responsibility to reschedule the interview.

Historical Note

Sec. filed Aug. 26, 2003 eff. Sept. 10, 2003.

§ 358-2.29 Request for contact notice.

Request for contact notice means a notice sent by a social services district advising a household that information needs to be verified or clarified during its food stamp certification period.

Historical Note

Sec. filed Aug. 26, 2003 eff. Sept. 10, 2003.

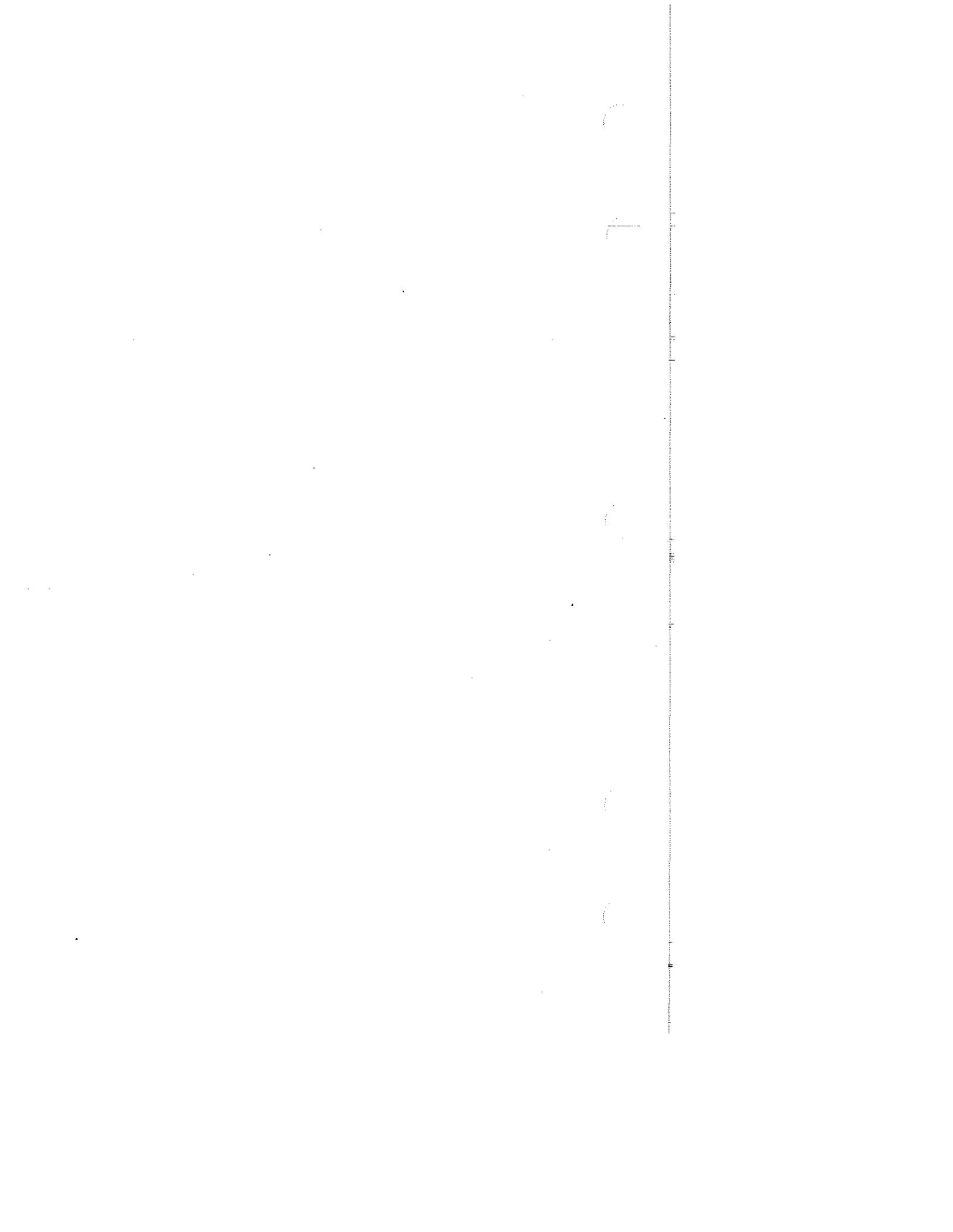
§ 358-2.30 Office of Administrative Hearings.

Office of Administrative Hearings (OAH) means the office established in the Office of Temporary and Disability Assistance for the purpose of conducting fair hearings under this Part. The OAH is authorized to conduct hearings under this Part for:

- (a) [Reserved]
- (b) applicants for and recipients of medical assistance on behalf of the Department of Health; and
- (c) applicants for and recipients of services and foster parents challenging rates paid to them for foster care on behalf of the Office of Children and Family Services.

Historical Note

Sec. filed Aug. 19, 2003; amd. filed Feb. 28, 2006 eff. March 15, 2006. Repealed (a).



SUBPART 358-3**RIGHTS AND OBLIGATIONS OF APPLICANTS AND RECIPIENTS AND SPONSORS OF ALIENS**

(Statutory authority: Social Services Law, §§ 20[3][d], 22, 34[3][f], 131[1], [6], 337, 349-a, 355[3], 390, 410[1], 410-u—410-z, 424-a, 455, 460-d; L. 1997, ch. 436)

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358-3.0	Introduction
358-3.1	Right to a fair hearing
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358-3.9	Authorization of representative

Historical Note

Subpart (§§ 358-3.0—358-3.9) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-3.0 Introduction.

The rights and obligations of applicants and recipients and sponsors of aliens receiving food stamp benefits are governed by this Subpart.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-3.1 Right to a fair hearing.

(a) An applicant or recipient has the right to challenge certain determinations or actions of a social services agency or such agency's failure to act with reasonable promptness or within the time periods required by other provisions of this Title, by requesting that the OAH provide a fair hearing. The right to request a fair hearing cannot be limited or interfered with in any way.

(b) If you are an applicant or a recipient of assistance, benefits or services you have a right to a fair hearing if:

- (1) your application has been denied by a social services agency, or you have agreed in writing that your application should be withdrawn but you feel that you were given incorrect or incomplete information about your eligibility for the covered program or service; or
- (2) a social services agency has failed to:
 - (i) determine your eligibility for a covered program or service with reasonable promptness or within the time periods required by other provisions of this Title;
 - (ii) issue or adjust your cash grant;
 - (iii) issue or adjust your food stamp benefits; or
 - (iv) authorize medical care or services for you; or
- (3) your public assistance, medical assistance, food stamps or services have been discontinued, suspended or reduced, or your public assistance, medical assistance or food stamps have been increased; or
- (4) the method or manner or form of payment of all or part of your public assistance grant has been changed, a restricted payment is being made or is being continued or a medical assistance authorization is restricted; or
- (5) you object to the payee selected for a restricted payment; or

- (6) your public assistance, medical assistance, HEAP or services are inadequate; or
 - (7) although there has been no change in the amount of your public assistance grant, medical assistance spenddown or food stamp benefits, you wish to challenge the social services agency's determination that the amount of one of the items used in the calculation of your public assistance grant, medical assistance spenddown or food stamp benefits has changed; or
 - (8) your request for restoration of any food stamp benefits lost less than one year prior to the request for restoration has been denied; or you do not agree with the amount of food stamp benefits restored or any other action taken by the social services agency to restore such benefits; or
 - (9) your food stamp benefits have been reduced, suspended or cancelled as a result of an order issued by the United States Food and Nutrition Service to reduce allotments because the requirements of states participating in the Food Stamp Program will exceed appropriations; however, in such case you have the right to a fair hearing only if you believe that your benefit level was computed incorrectly under Federal rules, or that Federal rules were misapplied or misinterpreted; or
 - (10) you are aggrieved by a mass change in the Food Stamp Program; or
 - (11) within a certification period, the amount of your food stamp benefits is inadequate and you have made the request for a fair hearing within such certification period; or
 - (12) your application for food stamp benefits has been denied or your food stamp benefits have been reduced or discontinued due to a determination that you are not exempt from Food Stamp Program work requirements and that you have failed to comply with work registration or employment and training requirements. You may request a fair hearing to review such determination including the determination of exemption status, the type of requirement imposed, or a social services agency's refusal to make a finding of good cause for failure to comply with such requirements if you believe that the finding of failure to comply was improper; or
 - (13) you are required to participate in a service, except when required to do so by court order; or
 - (14) you are an applicant for or a recipient of public assistance and you object to a social services agency determination that you are not exempt from work program requirements or to the determination that you are not work-limited as provided by section 385.2 of this Title; or
 - (15) you object to the amount deducted from your initial payment of supplemental security income as reimbursement of public assistance; or
 - (16) the amount you are being charged for a service has been increased and such increase is not based on a change in the fee or family share schedule; or
 - (17) you disagree 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 399 of this Title, by an administrative disqualification hearing, a waiver for an administrative disqualification hearing, a court determination or a disqualification consent agreement; or
 - (18) you are a recipient of medical assistance and you have reached a utilization threshold and your application for an exemption from or increase to such threshold has been denied; or
 - (19) you are participating in a work-related program or activity under Part 385 of this Title and you have a complaint regarding the calculation of your hours of participation in work experience or in work experience as part of community service; or
 - (20) you have been denied a waiver of public assistance program requirements under section 351.2(l) of this Title or an extension of such waiver has been denied or such waiver has been terminated or modified.
- (c) As the sponsor of an alien receiving food stamp benefits and for whom there has been an over-issuance of benefits for which you are liable, you have a right to a hearing to contest the following:

- (1) the determination that you were responsible for the incorrect information which was provided and which resulted in the over-issuance; and
 - (2) the amount of the over-issuance for which you are liable.
- (d) As a relative or friend of a deceased person, you have a right to a fair hearing if you have paid for the burial arrangements of such deceased person and your claim for reimbursement made pursuant to section 141 of the Social Services Law is denied by the local social services agency.
- (e) As a recipient of food stamp benefits, you do not have the right to a fair hearing to challenge the following:
- (1) the placement of your household on an alternate issuance system; or
 - (2) the length of time that your household is required to participate in an alternate issuance system; or
 - (3) an adverse decision in an administrative disqualification hearing; or
 - (4) a disqualification penalty imposed after you have waived your rights to an administrative disqualification hearing.
- (f) As an applicant or recipient you do not have the right to a fair hearing in all situations. For example, you do not have a right in the following situations:
- (1) the Department of Health has discontinued payment to the medical facility in which you are or had been residing because the facility has been decertified from participation in the Medical Assistance Program; or
 - (2) your physician has ordered a change in the level of care being provided to you; or
 - (3) a utilization review committee has ordered a higher level of care; or
 - (4) the sole issue involving your receipt of medical assistance is a Federal or State law requiring an automatic change which adversely affects some or all recipients; or
 - (5) you are complaining about the amount of any lien taken by a social services agency; or
 - (6) a local social services agency has demanded restitution, in accordance with the provisions of section 104 or 106-b of the Social Services Law, of public assistance paid, other than by a reduction of the public assistance grant; or
 - (7) you are complaining about the amount of a child support payment which is passed through to you; or
 - (8) your services have been discontinued as a result of a court order, or the court order which required the provision of services has expired; or
 - (9) you are a member of a class of public assistance recipients for whom either State or Federal law requires an automatic grant adjustment, unless the reason for your appeal is the incorrect computation of your grant; or
 - (10) you are a foster family care services recipient, a foster family caregiver, or a respite caregiver pursuant to section 505.29 of this Title, and a sponsoring agency terminates the foster family caregiver's or the respite caregiver's authority to provide foster family care services or a social services district or the Office of Children and Family Services or the Department of Health terminates its contract with a sponsoring agency; or
 - (11) you have been sent a request for contact notice in order to verify or clarify information during your food stamp certification period; or
 - (12) you have been sent a notice of missed interview informing you that you have missed a scheduled food stamp eligibility or recertification interview and advising you that it is your responsibility to reschedule the interview.
- (g) If you are an institutionalized spouse or a community spouse, as defined in section 360-4.10 of this Title, and a determination has been made on an application for medical assistance for the institutionalized spouse, you have a right to a fair hearing to challenge:
- (1) the amount of the community spouse monthly income allowance; and/or

- (2) the amount of monthly income determined to be otherwise available to the community spouse; and/or
- (3) the amount of resources attributed to the community spouse or to the institutionalized spouse; and/or
- (4) the amount of the community spouse resource allowance.

(h) You have a right to a fair hearing if you are a resident of a tier II facility and you have been involuntarily discharged from the shelter after having requested and participated in a hearing, held by the facility or by the social services district in which the facility is located, to determine whether you should be involuntarily discharged. If you do not request and participate in such a hearing you do not have a right to a fair hearing. You also do not have a right to a hearing under this Pat if the basis for the discharge is that you are or a family member is not longer medically appropriate to reside in the facility, as determined by qualified medical personnel, you or a family member's temporary housing assistance has been discontinued pursuant to the provisions of section 352.35 of this Title or, you have or a family member has been absent from the facility for more than 48 hours without having complied with the facility's rules concerning absence and you have not or the family member has not been readmitted to the facility.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: April 12, 1989 as emergency measure; June 27, 1989; Aug. 28, 1989; Nov. 3, 1989 as emergency measure; Feb. 1, 1990 as emergency measure; April 2, 1990 as emergency measure; June 1, 1990 as emergency measure; July 31, 1990 as emergency measure; Sept. 28, 1990 as emergency measure; Sept. 28, 1990; Nov. 20, 1990; Nov. 27, 1990; April 2, 1991 as emergency measure; May 31, 1991 as emergency measure; May 31, 1991; April 1, 1992; June 30, 1992 as emergency measure; Sept. 28, 1992 as emergency measure; Sept. 28, 1992; April 5, 1993; March 10, 1998 as emergency measure; June 8, 1998 as emergency measure; Sept. 4, 1998 as emergency measure; Sept. 4, 1998; Aug. 31, 2000; Aug. 19, 2003; Aug. 26, 2003; Feb. 13, 2004; Feb. 28, 2006 eff. March 15, 2006. Amended (b)(14), (19).

§ 358-3.2 Right to priority in hearing and determination.

Priority in scheduling of your hearing and determination will be provided when:

- (a) you are an applicant for emergency assistance to needy families with children, emergency assistance to aged, blind or disabled persons or emergency home relief and you are appealing the denial of such benefits; or
- (b) your circumstances warrant priority in scheduling and your hearing is being scheduled because you have:
 - (1) no food; or
 - (2) no shelter, or your shelter is imminently about to be lost or terminated; or
 - (3) an inadequate or inappropriate emergency shelter placement; or
 - (4) an eviction/dispossess notice; or
 - (5) no fuel for heat during the cold weather period; or
 - (6) a utility disconnect scheduled for a specific date; or
 - (7) a utility shut-off; or
 - (8) need for rental security deposit, broker's fee and/or first month's rent, if necessary to obtain permanent housing, and failure to expedite processing will lead to loss of such housing; or
 - (9) urgent need for medical care, services or supplies; or
 - (10) a denial or discontinuance of or inadequate personal care services; or
 - (11) a denial or discontinuance of or inadequate adult protective services; or
 - (12) been involuntarily discharged from a tier II facility as defined in Part 900 of this Title and you requested and participated in a hearing, held by the facility or by the social services

district in which the facility is located, to determine whether you should be involuntarily discharged; or

(13) any other problem which is determined at the commissioner's discretion, to be an appropriate subject for priority processing and which presents a crisis situation or a threat to your health and safety or that of your family; or

(c) you are requesting a fair hearing concerning your food stamp benefits and your household is planning to move away from the local social services district before the fair hearing decision would normally be issued; or

(d) you have been denied public assistance for yourself or your dependent child because:

(1) you are under the age of 18;

(2) you have never married;

(3) you either reside with and provide care for your dependent child or are pregnant;

(4) you are not residing in a place of residence maintained as a home by your parent, legal guardian or other adult relative or in an adult-supervised supportive living arrangement; and

(5) you have alleged that your physical or emotional health or safety or that of your dependent child would be jeopardized if you or such child lived in the same residence with your parent or legal guardian and an investigation conducted in accordance with section 424 of the Social Services Law did not support your allegation.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: March 8, 1990; April 5, 1993; Nov. 7, 1995 as emergency measure; Feb. 5, 1996 as emergency measure; April 4, 1996 as emergency measure; May 28, 1996 as emergency measure; May 28, 1996; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b)(13), (d).

§ 358-3.3 Notice requirements.

(a) *Public assistance, medical assistance and services: notice of action.* (1) Action to discontinue, suspend, reduce, restrict; changes in the manner of payment for child care services; denial of an extension of a waiver of public assistance program requirements or termination or modification of such waiver. Except as set forth in subdivision (d) of this section, you have a right to timely and adequate notice when a social services agency proposes to:

(i) take any action to discontinue, suspend, or reduce your public assistance grant, medical assistance authorization or services; or

(ii) change the manner or method or form of payment of your public assistance grant; or

(iii) restrict your medical assistance authorization; or

(iv) make changes in the manner of payment for your child care services and such change results in the discontinuance, suspension, reduction or termination of benefits or forces you to make changes in child care arrangements; or

(v) make changes in the manner of payment for your supportive services provided to enable you as a recipient of public assistance to participate in work activities pursuant to Part 385 of this Title and such changes result in the discontinuance, suspension, reduction or termination of benefits, or force you to change child care arrangements; or

(vi) deny an extension of a waiver of public assistance program requirements under section 351.2(l) of this Title or such waiver has been terminated or modified.

(2) Action to accept, deny, increase or make change in calculation; denial of utilization threshold exemption or increase application; employability determination changes in the manner of payment for denial of a waiver of public assistance program requirements. You have a right to adequate notice when a social services agency:

(i) accepts or denies your application for public assistance, medical assistance or services; or

(ii) increases your public assistance grant; or

(iii) determines to change the amount of one of the items used in the calculation of your public assistance grant or medical assistance spenddown although there is no change in the amount of your public assistance grant or medical assistance spenddown; or

(iv) denies an application for an exemption from or an increase of a medical assistance utilization threshold and you have reached the utilization threshold; or

(v) changes the manner of payment for your child care services except as provided in subparagraph (1)(iv) of this subdivision; or

(vi) determines that you are not eligible for an exemption requested from work requirements as described in Part 385 of this Title and you are an applicant for or recipient of public assistance; or

(vii) denies a waiver of public assistance program requirements under section 351.2(1) of this Title.

(3) Action based on a change in State or Federal law requiring automatic public assistance grant adjustments for classes of recipients. When you are a member of a class of public assistance recipients for whom changes in either State or Federal law require automatic grant adjustments, you are entitled to timely notice of such grant adjustment. This notice will be adequate if it includes those items listed in section 385-2.2(b) of this Part.

(b) *Food stamps.* (1) Action to discontinue, reduce or recoup: action notice. Except as set forth in subdivision (e) of this section, when a social services agency proposes to take any action to discontinue or reduce your food stamp benefits you have the right to timely and adequate notice.

(2) Action to accept, deny, increase, change in calculation: adverse action taken notice. When a social services agency accepts or denies your application for food stamp benefits or increases your food stamp benefits, or changes the amount of one of the items used in the calculation of your food stamp benefits although there is no change in the amount of your food stamp benefits, you have the right to adequate notice.

(3) Expiration notice. (i) Before or at the beginning of the last month of your household's current certification period for food stamp benefits, you have a right to an expiration notice as defined in section 358-2.11 of this Part; however, if your household was recertified for both public assistance and food stamps prior to the last month of the food stamp certification period, an expiration notice is not required.

(ii) For households with certification periods longer than one or two months the notice of expiration must be sent by the social services agency so that your household receives it no earlier than the first day of the second to the last month of the certification period and no later than one day before the last month of the certification period.

(iii) Households certified for one month only, or initially certified for two months during the month following the month of application, must be sent the expiration notice at the time of certification.

(c) *Home Energy Assistance Program (HEAP).* When a social services agency accepts or denies your application for HEAP benefits or determines that you are eligible for HEAP benefits but Federal funds are unavailable, you have a right to adequate notice.

(d) *Public assistance and medical assistance programs: exceptions to timely notice requirements.* (1) As a recipient of either public assistance or medical assistance you have the right to adequate notice sent no later than the effective date of the proposed action when:

(i) the social services agency has factual information confirming the death of a recipient or the payee of a family assistance case, and there is reliable information that no relative is available to serve as a new payee; or

(ii) the social services agency has received a clear written statement signed by you which includes information that requires the social services agency to discontinue or reduce your public assistance or medical assistance and you have indicated in such statement that you understand that such action will be taken as a result of supplying such information; or

(iii) the social services agency has received a clear written statement from you indicating that you no longer wish to receive public assistance or medical assistance; or

(iv) the agency has reliable information that you have been admitted or committed to an institution or prison which renders you ineligible for assistance or services under the Social Services Law; or

(v) your whereabouts are unknown and mail addressed to you by the social services agency has been returned by the post office with an indication that there is no known forwarding address. However, public assistance or medical assistance will be given to you if the social services agency is made aware of your whereabouts during the period covered by the returned public assistance check or medical assistance authorization; or

(vi) you have been accepted for public assistance or medical assistance in another local social services district, state, territory or commonwealth, and that acceptance has been verified by the social services district previously providing you with such assistance.

(2) As a recipient of public assistance, you have the right to adequate notice sent no later than the date of the proposed action when the following actions affect your public assistance grant:

(i) you have been placed for long-term care in a skilled nursing facility, intermediate care facility or hospital; or

(ii) a child has been removed from your home as a result of a judicial determination, or voluntarily placed in foster care by the child's legal guardian; or

(iii) a special allowance granted for a specific period has been terminated and you had been informed in writing at the time that you were first granted the special allowance that the allowance would automatically terminate at the end of the specified period; or

(iv) the social services agency has determined to accept your application for public assistance or has determined to increase your assistance;

(v) the social services agency action results from information you furnished in a quarterly report required by section 351.24 of this Title;

(vi) you are a recipient of public assistance and you have been determined eligible for supplemental security income and the social services agency has made a determination that the amount of supplemental security income makes you no longer eligible for public assistance.

(3) As a recipient of medical assistance, you have the right to adequate notice if you are in a general hospital, not receiving chronic care services and a utilization review committee has determined that your medical assistance payment should be reduced or discontinued.

(e) *Food Stamp Program: exemption from notice requirements or timely notice requirements.* (1) You are not entitled to an individual adverse action notice when:

(i) a mass change is initiated which affects all food stamp households or significant portions thereof; or

(ii) based on reliable information, the social services agency determines that all members of your household have died or that the household has moved from the social services

district or will not be residing in the social services district and will be unable therefore to obtain its next food stamp allotment from such district; or

(iii) your certification period has expired, you were previously informed of the expiration, and you have not reapplied for benefits; or

(iv) your household has been receiving an increased food stamp allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of the date when the increased food stamp allotment would terminate; or

(v) your household's allotment of food stamp benefits varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was notified that the food stamp allotment would vary at the time of certification; or

(vi) your household applied jointly for public assistance and food stamp benefits and has been receiving food stamp benefits pending the approval of the public assistance grant and was notified at the time of food stamp certification that food stamp benefits would be reduced upon approval of the public assistance grant; or

(vii) a household member is disqualified from the Food Stamp Program for an intentional program violation in accordance with Part 359 or Part 399 of this Title or the food stamp benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member; or

(viii) the social services agency has elected to assign a longer certification period to your household which was certified on an expedited basis and for which verification was postponed. The household must have received written notice that in order to receive benefits past the month of application the household must provide the verification which was initially postponed and the social services agency may act on the verified information without further notice; or

(ix) a social services agency has converted your household from cash repayment of an intentional program violation claim or an inadvertent household error to benefit reduction, as a result of the household's failure to make an agreed upon cash repayment; or

(x) you are a resident of a treatment center or group living arrangement which is determined to be ineligible for food stamp benefits because the facility has either lost its certification from the appropriate State agency/agencies or lost its status as an authorized representative due to its disqualification by the Federal Food and Nutrition Service as a retailer. However, residents of group living arrangements applying on their own behalf may remain eligible to participate in the Food Stamp Program; or

(xi) your household voluntarily requests, in writing or in the presence of an agency employee, that its food stamp benefits be terminated. If the household does not provide a written request, the social services agency must send the household a letter confirming the voluntary withdrawal.

(2) Mass changes. (i) When the Federal government initiates an adjustment to eligibility standards, allotments or deductions and the State initiates adjustments to utility standards, you are not entitled to a notice of adverse action.

(ii) When OTDA initiates a mass change in food stamp eligibility or benefit levels simultaneously for the entire caseload or that portion of the caseload that is affected, or by conducting individual desk reviews in place of the mass change, no later than the date your household is scheduled to receive the benefits which have been changed, you shall be informed of the following:

- (a) the general nature of the change;
- (b) examples of the effect the changes will have on household allotments;
- (c) the month in which the change will take effect;
- (d) the right to a fair hearing;

(e) the right to continued benefits and under what circumstances benefits will be continued, pending issuance of the fair hearing decision. You will be informed that at the hearing, the hearing officer may determine to end your continuation of benefits if it is determined that the issue being contested is not based on improper computation of benefits or misapplication or misinterpretation of Federal law or regulation;

(f) general information on whom to contact for additional information; and

(g) the liability the household will incur for any over-issued benefits if the fair hearing decision is adverse.

(3) As a recipient of food stamp benefits you have the right to an adequate notice sent no later than the date of the proposed action when the social services agency action results from information you furnished on a periodic report. As a recipient of food stamp benefits, you have the right to an adequate and timely notice because you failed to return a periodic report required by section 387.17(d) of this Title.

(f) *Involuntary discharges from tier II facilities.* As a resident of a tier II facility you have a right to adequate notice when you have been involuntarily discharged from a tier II facility as set forth in section 900.8 of this Title and you have requested and participated in a hearing, held by the facility or by the social services district in which the facility is located, to determine whether you should be involuntarily discharged. Such notice must be on a form mandated by OTDA, which meets the requirements for adequate notice as set forth in section 358-2.2 of this Part.

(g) *Concurrent benefits.* For the purposes of this subdivision, the term *benefits* has the same meaning as that used in section 351.9 of this Title and *concurrent benefits* has the same meaning as that used in section 351.9 of this Title.

(1) Denial of benefits. You have the right to an adequate notice when a social services official determines to deny you benefits on the grounds that you are receiving or have been accepted to receive a concurrent benefit in that social services district or in another social services district, state, territory or commonwealth.

(2) Discontinuance of benefits—timely and adequate notice. You have the right to timely and adequate notice when:

(i) a social services official determines to discontinue your benefits because you are receiving concurrent benefits in that social services district and in another state, territory or commonwealth, but you are not receiving concurrent benefits from social services districts solely within the State; or

(ii) a social services official determines to discontinue your benefits because you are receiving benefits in that social services district and all concurrent benefits in that district and in any other social services district in the State have been discontinued and no aid continuing has been granted under section 358-3.6 of this Subpart for any such discontinuances.

(3) Discontinuance of benefits—exception to timely notice. Notwithstanding any other provision of this section, you have a right to adequate notice sent no later than the effective date of the proposed action when a social services official determines to discontinue your benefits because you are receiving concurrent benefits in the same social services district or in another social services district within the State.

Historical Note

Sec. filed Dec. 23, 1988; ams. filed: Aug. 28, 1989; Nov. 29, 1989; Aug. 29, 1990 as emergency measure; Aug. 30, 1990 as emergency measure; Nov. 20, 1990; Nov. 27, 1990 as emergency measure; Nov. 27, 1990; Nov. 28, 1990 as emergency measure; Jan. 25, 1991 as emergency measure, expired 60 days after filing; March 27, 1991 as emergency measure; March 27, 1991, expired 60 days after filing; April 2, 1991 as emergency measure; May 31, 1991 as emergency measure; May 31, 1991; Dec. 29, 1992 as emergency measure; March 30, 1993 as emergency measure; April 5, 1993; May 27, 1993 as emergency measure; May 27, 1993; Jan. 5, 1996; March 10, 1998 as emergency measure; June 8, 1998 as emergency measure; Sept. 4, 1998 as emergency measure; Sept. 4, 1998; Aug. 31, 2000; Aug. 19, 2003;

Aug. 26, 2003; Feb. 13, 2004; amended adoption filed March 29, 2004; amd. filed Feb. 28, 2006 eff. March 15, 2006. Amended (a)(1)(v), (2)(vi).

§ 358-3.4 Rights in the fair hearing process.

As an appellant you have the right:

- (a) to the continuation or reinstatement of your public assistance, medical assistance authorization, food stamp benefits or services until the issuance of a decision in your fair hearing, to the extent authorized by section 358-3.6 of this Subpart. You have the right to request that your assistance, benefits or services not be continued or reinstated until the fair hearing decision is issued;
- (b) to examine your case record and to receive copies of documents in your case record which you need to prepare for the fair hearing, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;
- (c) to examine and receive copies of all documents and records which will be submitted into evidence at the fair hearing by a social services agency, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;
- (d) to the rescheduling (adjournment) of your hearing, to the extent authorized by section 358-5.3 of this Part;
- (e) to be represented by an attorney or other representative at any conference and hearing, or to represent yourself;
- (f) to have an interpreter at any fair hearing, at no charge to you, if you do not speak English or if you are deaf. You should advise OAH prior to the date of the fair hearing if you will need an interpreter;
- (g) to appear and participate at your conference and fair hearing, to explain your situation, to offer documents, to ask questions of witnesses, to offer evidence in opposition to the evidence presented by the social services agency and to examine any documents offered by the social services agency;
- (h) to bring witnesses to present written and oral evidence at any conference or fair hearing;
- (i) at your request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for yourself and your representatives and witnesses and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing;
- (j) to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location;
- (k) to request removal of a hearing officer in accordance with section 358-5.6 of this Part; and
- (l) to seek review by a court if the decision is not in your favor.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 29, 1989; May 13, 1991; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (f).

§ 358-3.5 Requests for a fair hearing.

- (a) A fair hearing may be requested in writing, by telephone, by electronic means, or facsimile or in person.
- (b) (1) A request for a fair hearing must be made within 60 days after the social services agency's determination, action, or failure to act about which you are complaining except as provided in paragraphs (2) and (3) of this subdivision for fair hearings relating to food stamp benefits, and paragraph (4) relating to HEAP benefits and paragraph (5) relating to involuntary discharges from tier II facilities, and paragraph (6) relating to determinations of exemptions from work activities due to disability. Where the social services agency's action is based on a change in State or Federal law requiring automatic public assistance grant adjustments for

classes of recipients, a request for a fair hearing must be made within 60 days after the changed grant becomes available to you.

(2) A request for a fair hearing to complain about any action by the social services agency affecting your food stamp benefits, including a loss of food stamp benefits, must be made within 90 days after the determination, action or failure to act about which you are complaining. Action includes a denial of a request for restoration of any benefits lost more than 90 days but less than one year prior to the request for restoration. Where the social services agency's action is the result of a mass change, a request for a fair hearing must be made within 90 days after the changed level of benefits become available to you.

(3) A request for a fair hearing to dispute the current level of food stamp benefits granted to your household must be made during the food stamp certification period.

(4) A request for a fair hearing to review the denial of, the failure to act on an application for, or to dispute the adequacy of HEAP benefits must be requested no later than 60 days after the mailing of the notice; however, in no event may a hearing request made more than 105 days after the district terminates the receipt of applications for the program year be accepted.

(5) A request for a fair hearing to review the involuntary discharge of a resident from a tier II facility after the resident has requested and participated in a hearing, held by the facility or social services district in which the facility is located, must be made no later than 30 days after the decision of the facility or social services district is rendered.

(6) A request for a fair hearing relating to determinations of exemptions from work activities due to disabilities must be made with 10 days of the agency's notice of determination pursuant to section 385.2(d)(7)(i) of this Title.

(7) If the last day for requesting a fair hearing falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered as timely received.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 20, 1990; April 5, 1993; Aug. 31, 2000; August 19, 2002; Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006. Amended (b)(6).

§ 358-3.6 Right to aid continuing.

In certain situations, you have the right to have your public assistance, medical assistance, food stamp benefits, and services continued unchanged until your fair hearing decision is issued. OAH will determine whether you are entitled to aid continuing and advise the appropriate social services agency and you of its decision.

(a) *Public assistance, medical assistance and services.* For public assistance, medical assistance and services, the right to aid continuing exists as follows:

(1) (i) Except as provided in paragraph (2) of this subdivision, where the social services agency is required to give you timely notice before it can take any action in your case, you have the right to aid continuing for your public assistance and medical assistance and services until the fair hearing decision is issued if you request a fair hearing before the effective date of a proposed action as contained in the notice of action. In the Medical Assistance Program, if you have been receiving assistance based on a spenddown of excess income, the right to aid continuing includes the right to have your spenddown liability continue unchanged.

(ii) If your assistance or services have been reduced or discontinued, restricted or suspended by the social services agency and you requested a hearing before the effective date contained in the notice, your assistance or services must be restored by the social services agency as soon as possible but no later than five business days after notification from OAH that you were entitled to have your public assistance, medical assistance or services continue uninterrupted pursuant to this paragraph.

(iii) In cases where the action is an automatic public assistance grant adjustment based on a change in State or Federal law, the effective date for determining the right to continued

public assistance, medical assistance and food stamps will be deemed to be 10 days after the date the changed grant becomes available to you.

(iv) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of aid continuing.

(2) There is no right to aid continuing of:

(i) public assistance where OAH has determined that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation; or

(ii) medical assistance or services where OAH has determined that the sole issue is one of State or Federal law or policy; or

(iii) medical assistance when you have been determined presumptively eligible for medical assistance and have subsequently been denied eligibility for medical assistance; or

(iv) medical assistance if you are a recipient in a general hospital, not receiving chronic care services, and you are in short-term hospitalization and a utilization review committee determines that such level of care is no longer required; or

(v) public assistance, medical assistance or services when the social services official determines to discontinue your benefits because you are receiving concurrent benefits as described in section 351.9 of this Title in the same social services district or in another social services district within the State.

(3) (i) Where the social services agency is required only to give you adequate notice but not timely notice and has discontinued, reduced, restricted or suspended your public assistance, medical assistance or services, you have the right to have your public assistance, medical assistance or services reinstated and continued until a fair hearing decision is issued only if you request a fair hearing within 10 days of the mailing of the agency's notice of the action and if OAH determines that the action on your public assistance or medical assistance benefits or services did not result from the application of or change in State or Federal law or policy. If OAH determines that you are entitled to have your public assistance, medical assistance or services reinstated and continued in accordance with this paragraph, the social services agency must restore your public assistance, medical assistance or services as soon as possible but not later than five business days after being advised by OAH of such determination. With the exception of child care services, there is no right to reinstatement for supportive services provided to enable you to participate in work activities pursuant to Part 385 of this Title.

(ii) If the 10th day of the mailing of the agency's notice of the action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of reinstatement pursuant to subparagraph (i) of this paragraph.

(4) (i) Where an applicant for or a recipient of public assistance has claimed to be exempt from work requirements under the disability program pursuant to section 385.2(d) of this Title and has been determined not to be exempt or to be work limited and a hearing is requested to contest such determination within 10 days of the date of the agency's notice, any failure to comply with employment requirements within the 10-day period or thereafter until a fair hearing decision is issued will not be considered noncompliance regardless of the outcome of the fair hearing.

(ii) If the 10th day after effective date of the agency's notice of the action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered to be received within 10 days of the effective date of the agency notice for purposes of subparagraph (i) of this paragraph.

(b) Public assistance, medical assistance, and services will not be continued pending the issuance of a fair hearing decision when:

(1) you have voluntarily waived your right to the continuation of such assistance, benefits or services in writing; or

(2) you do not appear at the fair hearing and do not have a good reason for not appearing; or

(3) prior to the issuance of your fair hearing decision, a social services agency proposes to take or takes an action which affects your entitlement to public assistance, medical assistance, or services, and you do not make a request for a fair hearing regarding the subsequent notice.

(c) *Food stamp benefits.* For food stamp households, including households in receipt of both food stamps and public assistance, the right to aid continuing exists as follows:

(1) (i) You have the right to have your food stamp benefits continue at the same level as you have been receiving until the fair hearing decision is issued only where the proposed adverse action is to take place during the certification period of your food stamp authorization and your request for a hearing is made prior to the effective date contained in a timely notice for your case closing or authorization reduction.

(ii) If your food stamp benefits have been reduced or discontinued by the social services agency and you have made a timely hearing request by the effective date contained in the notice, your food stamp benefits must be restored by the social services agency as soon as possible but no later than five business days after notification from OAH that you are entitled to have your benefits continue unchanged pursuant to this paragraph.

(iii) Where the action being taken is the result of a mass change, the effective date of the action is deemed to be 10 days after the date the changed level of benefits become available to you.

(iv) If the effective date of the proposed action falls on a weekend or holiday, a hearing request postmarked or received by OAH on the day after the weekend or holiday will be considered timely for the purposes of this paragraph.

(2) There is no right to aid continuing where:

(i) OAH has determined that the sole issue is one of Federal law or regulation and your claim that your benefits were improperly computed or the law or regulation was misapplied or misinterpreted is invalid; or

(ii) your food stamp benefits have been reduced, suspended or cancelled as a result of an order to reduce allotments issued by the Food and Nutrition Service because the requirements of states participating in the Food Stamp Program will exceed appropriations; or

(iii) a social services official determines to discontinue your benefits because you are receiving concurrent benefits as described in section 351.9 of this Title in the same social services district or in another social services district within the State.

(3) When food stamp benefits are reduced or terminated because you fail to make the request for a hearing within the required period stated in the notice, upon your request for a fair hearing your food stamp benefits will be reinstated if you establish that your failure to request a hearing in a timely manner was for good cause. If OAH determines that you have the right to have your food stamp benefits reinstated in accordance with this paragraph, the social services agency must reinstate your food stamp benefits as soon as possible but no later than five business days after being advised by OAH of such determination.

(4) When benefits are reduced or terminated due to a mass change, your benefits will be reinstated only if the issue being contested is that:

(i) food stamp eligibility or benefits were improperly computed; or

(ii) Federal law or regulation is being misapplied or misinterpreted by a State agency or by a social services agency.

If OAH determines that you have the right to have your food stamp benefits reinstated in accordance with this paragraph, the social services agency must reinstate your food stamp benefits as soon as possible but no later than five business days after being advised by OAH of such determination.

(5) If the action proposed in the notice results from a regularly scheduled recertification of your food stamp authorization, your level of participation in the Food Stamp Program will be continued at the level determined at your recertification. You do not have the right to have your level of benefits continued at the prior benefits level unless and until the fair hearing decision is issued requiring such benefit level.

(6) Once your benefits are continued or reinstated, your benefits should continue without change until you receive your hearing decision unless:

(i) your certification period expires, in which case you may reapply and may be determined eligible for a new certification period; or

(ii) a change affecting your household's eligibility for food stamps or the basis of issuance of food stamp benefits occurs before your hearing decision is issued and you fail to make a request for a fair hearing regarding a subsequent notice of adverse action; or

(iii) before the hearing decision is issued a mass change occurs which affects your household's eligibility for food stamps or basis of issuance.

(d) If your public assistance grant, child care services, or food stamp benefits are continued until a fair hearing decision is issued and you lose the fair hearing, the social services agency may recover the benefits or services which you should not have received. This subdivision does not apply to fair hearings to review the imposition of a work sanction under sections 351.2(i)(2), 385.12 and 385.13 of this Title.

(e) If you are involuntarily discharged from a tier II facility after requesting and participating in a hearing, held by the facility or the social services district in which the facility is located, and you request a fair hearing to review this determination, you do not have the right to remain at the facility pending the outcome of your fair hearing.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 30, 1990 as emergency measure; Nov. 20, 1990; Nov. 28, 1990 as emergency measure; Nov. 27, 1990; April 2, 1991 as emergency measure; May 31, 1991 as emergency measure; May 31, 1991; April 5, 1993; Jan. 5, 1996; Aug. 31, 2000; Aug. 19, 2003; Feb. 13, 2004; Feb. 28, 2006 eff. March 15, 2006. Amended (a)(3)(i), (4)(i), (d).

§ 358-3.7 Examination of case record before the fair hearing.

(a) (1) At any reasonable time before the date of your fair hearing and also at the fair hearing, you or your authorized representative have the right to examine the contents of your case record and all documents and records to be used by the social services agency at your fair hearing.

(2) Except as provided in paragraph (3) of this subdivision, the only exceptions to access to your case record are:

(i) those materials to which access is governed by separate statutes, such as records regarding child welfare, foster care, adoption or child abuse or neglect or any records maintained for the purposes of the Child Care Review Service; and

(ii) those materials being maintained separately from public assistance files for the purposes of criminal prosecution and referral to the district attorney's office. This exception applies only to records which are part of an active and ongoing investigatory action; and

(iii) the county attorney or county welfare attorney's files.

(3) Case records secured by the Commission for the Visually Handicapped or by a local rehabilitation agency acting on behalf of such commission will not ordinarily be made available for examination since they contain information secured from outside sources; however, particular extracts will be furnished to you or your authorized representative when provision of such information will be beneficial to you. The case record, or any part thereof, admitted as

evidence in a fair hearing shall be available for review by you or your authorized representative.

(b) (1) Upon request, you have a right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of all documents which the social services agency will present at the fair hearing in support of its determination. If the request for copies of documents which the social services agency will present at the hearing is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;

(2) Upon request, you have the right to be provided at a reasonable time before the date of the hearing, at no charge, with copies of any additional documents which you identify and request for purposes of preparing for your fair hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide you with such copies no later than at the time of the hearing. If you or your representative request that such documents be mailed, such documents must be mailed within a reasonable time from the date of the request; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed;

(3) Your request for copies of documents pursuant to paragraphs (1) and (2) of this subdivision may at your option be made in writing, or orally, including by telephone.

(4) If the social services agency fails to comply with the requirements of this subdivision the hearing officer may adjourn the case, allow a brief recess for the appellant to review the documents, preclude the introduction of the documents where a delay would be prejudicial to the appellant, or take other appropriate action to ensure that the appellant is not harmed by the agency's failure to comply with these requirements.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 29, 1989; Oct. 29, 1997 eff. Nov. 19, 1997.
Amended (b)(1), (2) and (4).

§ 358-3.8 Agency conference.

(a) At any reasonable time before the date of your fair hearing, you may request that the agency schedule an agency conference before your fair hearing to review the agency decision for which you have requested the fair hearing except as provided for in subdivision (c) of this section.

(b) Even though you have not requested a fair hearing, you may request an agency conference to review any action on your case.

(c) No agency conference is required for actions involving the involuntary discharge of residents of tier II facilities.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed April 5, 1993 eff. April 21, 1993. Amended (a), added (c).

§ 358-3.9 Authorization of representative.

(a) Except where impracticable to execute a written authorization, an individual or organization seeking to represent you, other than an attorney or an employee of an attorney, must have your written authorization to represent you at any conference or fair hearing and to review your case record. An employee of your attorney will be considered an authorized representative if such employee presents written authorization from your attorney or if such attorney advises the social services agency by telephone of such employee's authorization.

(b) Once a social services agency and the OAH have been notified that a person or organization has been authorized to represent you at your fair hearing, such representative will receive copies of all correspondence to you from the social services agency and OAH relating to the conference and fair hearing.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b).

SUBPART 358-4**RIGHTS AND OBLIGATIONS OF SOCIAL SERVICES AGENCIES**

(Statutory authority: Social Services Law, §§ 20[3][d], 22[3][f], 22[8], 34[3][f], 337, 390[12], 424-a, 455, 460-d)

Sec.	
358-4.0	Introduction
358-4.1	Proposed actions
358-4.2	Prehearing responsibilities
358-4.3	Responsibilities and rights in the fair hearing process
358-4.4	Compliance with fair hearing decision

Historical Note

Subpart (§§ 358-4.0—358-4.4) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-4.0 Introduction.

The rights and obligations of social services agencies are governed by this Subpart.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-4.1 Proposed actions.

(a) A social services agency must review or cause to be reviewed any of the following intended actions to determine whether the action is correct based upon available evidence included in the applicant's or recipient's case record:

- (1) proposed approval, denial, discontinuance, suspension or reduction of a public assistance grant, medical assistance authorization, food stamp benefits or services;
- (2) proposed increase in a public assistance grant, food stamp benefits, or a medical assistance spenddown;
- (3) proposed change in the amount of one of the items used to calculate a public assistance grant, food stamp benefits, or a medical assistance spenddown;
- (4) proposed acceptance or denial of an application for HEAP benefits;
- (5) proposed involuntary discharge of a resident from a tier II facility as defined in Part 900 of this Title; or
- (6) proposed denial of an exemption from work requirements pursuant to section 385.2 of this Title.

(b) Where it is determined that the intended action is correct after review, the social services agency must send to the applicant/recipient a notice which meets the requirements of section 358-3.3 of this Part.

Historical Note

Sec. filed Dec. 23, 1988; ams. filed: April 5, 1993; Aug. 31, 2000; Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006. Amended (a)(6).

§ 358-4.2 Prehearing responsibilities.

(a) When requested, the social services agency must provide assistance to applicants and recipients in making a request for a fair hearing.

- (b) (1) Upon notification by OAH that a fair hearing has been requested and that the appellant's public assistance, medical assistance, food stamp benefits, or services must be continued or reinstated in accordance with section 358-3.6 of this Part until the fair hearing decision is issued, the social services agency, except as provided in section 358-3.6(b) and (c)(6) of this Part, must take immediate action to assure that the appellant's public assistance,

medical assistance, food stamp benefits and services continue unchanged until the fair hearing decision is issued.

(2) Upon receipt of such notification, if public assistance, medical assistance, food stamp benefits or services already have been discontinued, reduced, restricted or suspended, the social services agency must take whatever action is necessary to restore the appellant's public assistance, medical assistance, food stamp benefits or services to their previous level. Such action must be taken as soon as possible but no later than five business days from notification that appellant's public assistance, medical assistance, food stamp benefits or services must continue or be reinstated.

(c) Upon oral or written request, including request by telephone, the social services agency must provide to the appellant and the appellant's authorized representative copies of the documents to be presented at the fair hearing. Such copies must be provided at a reasonable time before the date of the hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide the appellant and the appellant's authorized representative such copies no later than at the time of the hearing. Such documents must be provided without charge and must be provided to the appellant and the appellant's authorized representative by mail within a reasonable time from the date of the request if the appellant or the appellant's authorized representative request that such documents be mailed; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed.

(d) Upon oral or written request, including request by telephone, the social services agency must provide to the appellant and the appellant's authorized representative copies of any documents from appellant's case file which the appellant or the appellant's authorized representative identifies and requests for purposes of hearing preparation. Such copies must be provided at a reasonable time before the date of the hearing. If the request for copies of documents is made less than five business days before the hearing, the social services agency must provide the appellant and the appellant's authorized representative such copies no later than at the time of the hearing. Such documents must be provided without charge and must be provided to the appellant and the appellant's authorized representative by mail within a reasonable time from the date of the request if the appellant or the appellant's authorized representative request that such documents be mailed; provided however, if there is insufficient time for such documents to be mailed and received before the scheduled date of the hearing such documents may be presented at the hearing instead of being mailed.

(e) The social services agency must encourage the use of agency conferences to settle disputes and complaints concerning actions regarding an applicant's or recipient's public assistance, medical assistance, food stamp benefits, request for an exemption from work requirements, HEAP benefits or services so as to eliminate the need to hold fair hearings wherever the dispute can be resolved by scrutiny of documents and/or thorough investigation.

(f) The social services agency must hold agency conferences when such conference is requested as provided for in section 358-3.8 of this Part. The conference may not be used to inhibit the appellant's right to a fair hearing. Agency conferences must be scheduled before the date of the fair hearing. If the appellant is contesting a denial of expedited participation in the Food Stamp Program, the conference must be scheduled within two business days of the conference request, unless the appellant requests a later date.

(g) The social services agency must bring the necessary information and documentation to any agency conference, including a telephone conference, to explain the reason for the agency determination and to provide a meaningful opportunity to resolve the problem.

(h) Except for telephone agency conferences approved pursuant to subdivision (i) of this section, a representative of the social services agency must appear with the case record at the agency conference. Such representative must have reviewed the case and must have the authority to make binding decisions on behalf of the social services agency, including the authority to withdraw the intended action.

(i) Social services agencies may provide telephone conferences upon prior approval of the Office of Administrative Hearings of the OAH. The OAH may approve such requests in its discretion, where holding an in-person conference is not feasible.

(j) The social services agency must send copies of all correspondence relating to the conference and fair hearing to the authorized representative of the appellant.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 29, 1989; Oct. 29, 1997; Aug. 31, 2000; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b)(1)(i).

§ 358-4.3 Responsibilities and rights in the fair hearing process.

(a) The social services agency must provide complete copies of its documentary evidence to the hearing officer at the fair hearing and also to the appellant or appellant's authorized representative, where such documents were not provided previously to the appellant or appellant's authorized representative in accordance with sections 358-3.7 and 358-4.2(c) of this Part. Such documents must be provided without charge.

(b) Except as provided in subdivision (c) of this section, a representative of the social services agency must appear at the hearing along with the case record and a written summary of the case. Such representative must:

- (1) have reviewed the case; and
- (2) be prepared to present evidence in support of the action, including:
 - (i) the case number;
 - (ii) the applicable category or categories or type of public assistance or care, medical assistance, food stamp benefits or services involved;
 - (iii) the names, addresses, relationships and ages of persons affected;
 - (iv) the determination regarding which the hearing request was made;
 - (v) a brief description of the facts, evidence and reasons supporting such determination, including identification of the specific provisions of law, regulations and approved local policies which support the action;
 - (vi) the relevant budget or budgets prepared by the social services agency for the appellant or the household of such appellant, including printouts of relevant budgets produced on the Welfare Management System (WMS); and
 - (vii) a copy of the applicable action taken notice, adverse action notice, expiration notice or notice of action, including any notices produced on the client notices system.

(3) have the authority to make binding decisions at the hearing on behalf of the social services agency, including the authority to withdraw the action or otherwise settle the case.

(c) (1) No later than five calendar days before the hearing date, the social services agency may make application to the OAH to appear at a hearing on papers only. The OAH may approve such application in its discretion where the rights of the appellant can be protected and the personal appearance of the agency is neither feasible nor necessary.

(2) Notwithstanding paragraph (1) of this subdivision, a hearing officer may require the appearance of a representative of a social services agency where such appearance is necessary to protect the due process rights of the appellant.

(d) Upon request of the appellant, the social services agency must provide necessary transportation and transportation expenses to and from the fair hearing for the appellant and appellant's representatives and witnesses and payment for appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing.

(e) Social services agencies have those hearing rights which appellants have as set forth in sections 358-3.4(d) (adjournment), 358-3.4(e) (representation), 358-3.4(g) (present evidence, question witnesses, examine documents), and 358-3.4(h) (bring witnesses) and 358-3.4(k) (removal of hearing officer) of this Part.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: May 13, 1991; Nov. 12, 1991; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b)(2)(v), (vii), (c)(1).

§ 358-4.4

§ 358-4.4 Compliance with fair hearing decision.

A social services agency must comply with fair hearing decisions in accordance with section 358-6.4 of this Part.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

SUBPART 358-5**THE FAIR HEARING PROCESS**

(Statutory authority: Social Services Law, §§ 20[3][d], 22, 34[3][f], 131[6], 337, 355[3], 390, 424-a, 455, 460-d)

Sec.	
358-5.0	Introduction
358-5.1	Notice of fair hearing
358-5.2	Scheduling
358-5.3	Adjourning the fair hearing
358-5.4	Withdrawal of a request for a fair hearing
358-5.5	Abandonment of a request for a fair hearing
358-5.6	Hearing officer
358-5.7	Who may be present at the fair hearing
358-5.8	Media admission to fair hearing
358-5.9	Fair hearing procedures
358-5.10	Consolidated fair hearings
358-5.11	The hearing record

Historical Note

Subpart (§§ 358-5.0—358-5.11) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-5.0 Introduction.

The fair hearing process is governed by this Subpart.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-5.1 Notice of fair hearing.

(a) Except for hearings which are given priority in scheduling in accordance with section 358-5.2 of this Subpart, at least 10 calendar days prior to the date of the fair hearing, a written notice of the fair hearing will be sent by OAH to the appellant, appellant's authorized representative and to the social services agency.

(b) The fair hearing notice will state the following:

(1) the date, time and place of the fair hearing and an explanation of how and when a change in the date and place of the fair hearing may be requested, and under what circumstances a hearing will be rescheduled if neither the appellant nor the appellant's representative appears at the hearing;

(2) whether public assistance, medical assistance, food stamp benefits or services must be continued unchanged;

(3) the appellant's right upon request to necessary transportation or to transportation expenses to and from the fair hearing for the appellant and the appellant's authorized representatives and witnesses and for payment of the appellant's necessary child care costs and for any other necessary costs and expenditures related to the fair hearing;

(4) the appellant's right to be represented at the fair hearing by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;

(5) the right to present written and oral evidence at the hearing;

(6) that the appellant should bring the notice of fair hearing to the hearing as well as all evidence that has a bearing on the case such as books, records and other forms of written evidence, and witnesses, if any;

(7) the appellant's right to review appellant's case record prior to and at the fair hearing;

- (8) the appellant's right upon request to obtain copies of documents which the social services agency will present at the fair hearing and copies of other additional documents for the purpose of preparing for the fair hearing;
- (9) the right of a deaf or non-English speaking appellant to interpreter services at the fair hearing at no charge; and
- (10) the issues which are to be the subject of the hearing.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 29, 1989; Aug. 19, 2003 eff. Sept. 3, 2003.
Amended (a).

§ 358-5.2 Scheduling.

(a) The fair hearing will be held at a time and place convenient to the appellant as far as practicable. In scheduling the hearing, OAH will consider such things as the physical inability of the appellant to travel to the regular hearing location.

(b) *Priority scheduling.* (1) Except as set forth in paragraph (4) of this subdivision, a fair hearing which is subject to priority processing pursuant to section 358-3.2 of this Part must be scheduled as soon as practicable after the request therefor is made. In determining the date for which the hearing will be scheduled, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review.

(2) When a hearing is requested concerning food stamp benefits and the food stamp household intends to move from the local social services district before the decision normally would be issued, priority will be given to the scheduling of the hearing, taking into account any date before which the hearing must be scheduled to allow for the appellant to receive the decision while still in the district.

(3) Except as set forth in paragraph (4) of this subdivision, after a hearing which was scheduled on a priority basis as set forth above, the decision must be issued as soon as practicable. In determining the date by which the decision will be issued, consideration must be given to the nature and urgency of the appellant's situation, including any date before which the decision must be issued to allow for meaningful resolution of the issue under review. If, at the conclusion of a hearing which was scheduled on a priority basis, the hearing officer determines that the issues do not warrant continued priority processing, the hearing officer will inform the parties that the issuance of the decision will not receive priority processing.

(4) When a fair hearing is requested concerning the involuntary discharge of a resident of a tier II facility after such resident requests and participates in a hearing, held by the facility or the social services district in which the facility is located, such fair hearing must be scheduled within seven working days of the request. The decision after the fair hearing must be issued within seven working days of the date of the fair hearing.

(c) When a hearing is requested pursuant to section 358-3.1(g) of this Part or has been given priority in accordance with section 358-3.2(d) of this Part, the hearing will be held within 30 days of the request, unless delayed by, or adjourned at the request of, the appellant.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 3, 1989 as emergency measure; Feb. 1, 1990 as emergency measure; March 8, 1990; April 2, 1990 as emergency measure; June 1, 1990 as emergency measure; July 31, 1990 as emergency measure; Sept. 28, 1990 as emergency measure; Sept. 28, 1990; April 5, 1993; Nov. 7, 1995 as emergency measure; Feb. 5, 1996 as emergency measure; April 4, 1996 as emergency measure; May 28, 1996 as emergency measure; May 28, 1996; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (a).

§ 358-5.3 Adjourning the fair hearing.

(a) Upon request of either the appellant or a social services agency, the fair hearing may be rescheduled, upon a showing of good cause for requesting the delay.

(b) When in the judgment of OAH or the hearing officer the parties' due process rights would best be served by adjourning the fair hearing, or if there are special circumstances which make proceeding with the case fundamentally unfair, OAH or the hearing officer may reschedule the fair hearing.

(c) Requests to adjourn a fair hearing must be made in accordance with the instructions in the notice of fair hearing.

(d) If a fair hearing is adjourned based upon a request by the appellant, the time limit set forth in section 358-6.4 of this Part will be extended by the number of days the fair hearing has been postponed.

(e) If public assistance, medical assistance, food stamp benefits or services are continued in accordance with section 358-3.6 of this Part and the fair hearing is rescheduled for the reasons set forth in subdivision (a) or (b) of this section, an appellant has the right to have public assistance, medical assistance, food stamp benefits or services continued until the fair hearing decision is issued.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b).

§ 358-5.4 Withdrawal of a request for a fair hearing.

(a) OAH will consider a hearing request to be withdrawn under the following circumstances:

(1) OAH has received a written statement from the appellant or appellant's authorized representative stating that the request for a fair hearing is withdrawn; or

(2) the appellant or appellant's authorized representative has made a statement withdrawing the request to the hearing officer on the record at the hearing.

(b) An oral statement by telephone or in person to a social services agency employee that an appellant is withdrawing a request for a fair hearing is insufficient to withdraw a fair hearing request.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (a), (a)(1).

§ 358-5.5 Abandonment of a request for a fair hearing.

(a) OAH will consider a fair hearing request abandoned if neither the appellant nor appellant's authorized representative appears at the fair hearing unless either the appellant or appellant's authorized representative has:

(1) contacted OAH within 15 days of the scheduled date of the fair hearing to request that the fair hearing be rescheduled; and

(2) provided OAH with a good cause reason for failing to appear at the fair hearing on the scheduled date; or

(3) contacted OAH within 45 days of the scheduled date of the hearing and establishes that the appellant did not receive the notice of fair hearing prior to the scheduled hearing date.

(b) OAH will restore a case to the calendar if the appellant or appellant's authorized representative has met the requirements of subdivision (a) of this section.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (a)-(b).

§ 358-5.6 Hearing officer.

(a) The hearing shall be conducted by an impartial hearing officer assigned by OAH to conduct the hearing, who has not been involved in any way with the action in question.

(b) To ensure a complete record at the hearing, the hearing officer must:

- (1) preside over the fair hearing and regulate the conduct and course of the fair hearing, including at the hearing officer's discretion, requiring sworn testimony, and administering the necessary oaths;
 - (2) make an opening statement explaining the nature of the proceeding, the issues to be heard and the manner in which the fair hearing will be conducted;
 - (3) elicit documents and testimony, including questioning the parties and witnesses, if necessary, particularly where the appellant demonstrates difficulty or inability to question a witness; however, the hearing officer will not act as a party's representative;
 - (4) where the hearing officer considers independent medical assessment necessary, require that an independent medical assessment be made part of the record when the fair hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision;
 - (5) adjourn the fair hearing to another time on the hearing officer's own motion or on the request of either party, to the extent allowable by section 358-5.3 of this Subpart;
 - (6) adjourn the fair hearing when in the judgment of the hearing officer it would be prejudicial to the due process rights of the parties to go forward with the hearing on the scheduled hearing date;
 - (7) review and evaluate the evidence, rule on the admissibility of evidence, determine the credibility of witnesses, make findings of fact relevant to the issues of the hearing which will be binding upon the commissioner unless such person has read a complete transcript of the hearing or has listened to the electronic recording of the fair hearing;
 - (8) at the hearing officer's discretion, where necessary to develop a complete evidentiary record, issue subpoenas, and/or require the attendance of witnesses and the production of books and records; and
 - (9) prepare an official report containing the substance of what transpired at the fair hearing and including a recommended decision to the commissioner or the commissioner's designee.
- (c) A party to a hearing may make a request to a hearing officer that the hearing officer remove himself or herself from presiding at the hearing.
- (1) The grounds for removing a hearing officer are that such hearing officer has:
 - (i) previously dealt in any way with the substance of the matter which is the subject of the hearing except in the capacity of hearing officer; or
 - (ii) any interest in the matter, financial or otherwise, direct or indirect, which will impair the independent judgment of the hearing officer; or
 - (iii) displayed bias or partiality to any party to the hearing.
 - (2) The hearing officer may independently determine to remove himself or herself from presiding at a hearing on the grounds set forth in paragraph (1) of this subdivision.
 - (3) The request for removal made by a party must:
 - (i) be made in good faith; and
 - (ii) be made at the hearing in writing or orally on the record; and
 - (iii) describe in detail the grounds for requesting that the hearing officer be removed.
 - (4) Upon receipt of a request for removal, the hearing officer must determine on the record whether to remove himself or herself from the hearing.
 - (5) If the hearing officer determines not to remove himself or herself from presiding at the hearing, the hearing officer must advise the party requesting removal that the hearing will continue but the request for removal will automatically be reviewed by the general counsel of ODTA or the general counsel's designee.
 - (6) The determination of the hearing officer not to remove himself or herself will be reviewed by the general counsel of ODTA or the general counsel's designee. Such review will include review of written documents submitted by the parties and the transcript of the hearing.

(7) The general counsel of ODTA or the general counsel's designee must issue a written determination of whether the hearing officer should be removed from presiding at the hearing within 15 business days of the close of the hearing.

(8) The written determination of the general counsel or the general counsel's designee will be made part of the record.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: May 13, 1991; Aug. 19, 2003 eff. Sept. 3, 2003.
Amended (a), (b)(9), (c)(5)-(7).

§ 358-5.7 Who may be present at the fair hearing.

The following persons may be present at a fair hearing:

- (a) the appellant who has requested the fair hearing;
- (b) the appellant's representative;
- (c) counsel or other representatives of the social services agency;
- (d) witnesses of either party and any who may be called by the hearing officer;
- (e) an interpreter; and
- (f) any other person admitted at the hearing officer's discretion, with the consent of the appellant.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-5.8 Media admission to fair hearing.

(a) The media may be admitted to a fair hearing where the appellant has made a specific waiver of appellant's right to confidentiality both in writing and on the record and has clearly and unequivocally confirmed on the record that the appellant desires and consents to the presence of the media. The waiver must be unqualified, complete, and made with full knowledge of the ramifications of the waiver, including that the waiver is irrevocable.

(b) Where a waiver has been secured in accordance with subdivision (a) of this section, the extent of any access to be granted to the media is to be determined at the discretion of the hearing officer. In determining the extent of such access, the hearing officer will consider the following:

- (1) maintenance of proper hearing decorum;
- (2) potential disruption to the proceedings;
- (3) adverse effect on witnesses;
- (4) impediments to the making of a proper and accurate record;
- (5) the physical space and conditions of the hearing room;
- (6) potential disruption to the hearing officer, including impediments to the hearing officer's ability to discharge responsibilities; and
- (7) any other factor which, in the discretion of the hearing officer, is necessary to ensure the orderly and proper conduct of the hearing and the creation of a complete and accurate hearing record or which is necessary in order to protect confidential information where confidentiality cannot be waived by the appellant.

Historical Note

Sec. filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-5.9 Fair hearing procedures.

(a) At a fair hearing concerning the denial of an application for or the adequacy of public assistance, medical assistance, HEAP, food stamp benefits or services; or an exemption from work activity requirements the appellant must establish that the agency's denial of assistance or benefits was not correct or that the appellant is eligible for a greater amount of assistance or

benefits or is exempt from work requirements pursuant to Part 385 of this Title. Except, where otherwise established by law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of public assistance, medical assistance, food stamp benefits or services, the social services agency must establish that its actions were correct.

(b) The fair hearing decision must be supported by and in accordance with substantial evidence.

(c) Technical rules of evidence followed by a court of law need not be applied. Irrelevant or unduly repetitious evidence and/or cross-examination may be excluded at the discretion of the hearing officer. Privileges recognized by law will be given effect.

(d) Any written record or document or part thereof to be offered as evidence may be offered in the form of a reproduction or copy where such reproduction or copy is identified satisfactorily as a complete and accurate reproduction or copy of the original material.

(e) In addition to subpoenas issued at the discretion of the fair hearing officer as allowed by section 358-5.6(b)(3) of this Subpart, attorneys for parties in fair hearings shall have the same authority to issue subpoenas as is possessed by attorneys under section 2302 of the Civil Practice Law and Rules.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 31, 2000; Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006. Amended (a).

§ 358-5.10 Consolidated fair hearings.

(a) OAH may consolidate fair hearings where two or more persons request fair hearings in which the individual issues of fact are not disputed and the sole issue in each request is an objection to:

- (1) Federal or State law or regulation, or local policy; or
- (2) a change in Federal or State law.

(b) Each person whose case has been consolidated with another person's case has the right to:

- (1) present one's own case or have one's case presented by a representative; and
- (2) withdraw from the consolidated fair hearing and have an individual fair hearing.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (a).

§ 358-5.11 The hearing record.

(a) *Fair hearing record.* Only the OAH may record the fair hearing. A written transcript or recording of the fair hearing testimony and exhibits, or the hearing officer's official report together with the recommended decision of the hearing officer, all papers and requests filed in the proceeding prior to the close of the fair hearing and the fair hearing decision, constitute the complete and exclusive record of the fair hearing. Where a decision without hearing is issued in accordance with section 358-6.2 of this Part, the documents submitted by the appellant and the social services agency constitute the complete and exclusive record of the fair hearing.

(b) *Review of record.* The exclusive record of the fair hearing is confidential; however, the exclusive record may be examined by either party or their authorized representative at the OAH, or upon request at some other location subject to the approval of the OAH.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Nov. 29, 1989; Aug. 19, 2003 eff. Sept. 3, 2003. Amended (a)-(b).

SUBPART 358-6**DECISION AND COMPLIANCE**

(Statutory authority: Social Services Law, §§ 20[3][d], 22[8], 34[3][f], 131, 131-9, 158-b, 164; art. 5)

Sec.	
358-6.0	Introduction
358-6.1	All decisions
358-6.2	Decision without hearing
358-6.3	Direction relative to similar cases
358-6.4	Compliance
358-6.5	Compliance with direction relative to similar cases
358-6.6	Corrected decisions and reopened hearings

Historical Note

Subpart (§§ 358-6.0—358-6.6) filed Dec. 23, 1988 eff. Jan. 15, 1989.

§ 358-6.0 Introduction.

All decisions of the appropriate commissioner issued after a request for fair hearing are governed by this Subpart.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-6.1 All decisions.

(a) The fair hearing decision issued by the commissioner must be based exclusively on the fair hearing record, or in the case of a decision without hearing, on the documents submitted by the appellant and the social services agency. The decision must be in writing and must set forth the fair hearing issues, the relevant facts, and the applicable law, regulations, and approved policy, if any, upon which the decision is based. The decision must make findings of fact, determine the issues and state reasons for the determinations and when appropriate, direct specific action to be taken by the social services agency. In addition, the decision may address the violation of any provision of this Part or Part 385 of this Title by the social services agency, including but not limited to violations of regulations concerning notice, aid continuing and provision of documents and records and set forth appropriate relief for such violations.

(b) Upon issuance, the decision is final and binding upon social services agencies and must be complied with in accordance with section 358-6.4 of this Subpart.

(c) A copy of the decision, accompanied by written notice to the appellant of the right to judicial review will be sent to each of the parties and to their representatives, if any. In addition, such notice will advise the appellant that the appellant or the appellant's authorized representative may request OAH's assistance in obtaining compliance with the decision.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: April 2, 1991 as emergency measure; May 31, 1991 as emergency measure; May 31, 1991; Aug. 31, 2000; Aug. 19, 2003; Feb. 28, 2006 eff. March 15, 2006. Amended (a).

§ 358-6.2 Decision without hearing.

(a) Upon the commissioner's own motion or upon request of an appellant in cases in which there is no material issue of fact to be resolved, a decision may be issued without a hearing. The determination to issue a decision without a hearing rests solely within the discretion of the commissioner.

(b) A request for a decision without a hearing must be accompanied by sufficient information to enable the commissioner to ascertain whether any unresolved material issue of fact exists, and

should contain a full and clear statement of the issues and of the appellant's position on these issues.

(c) When the commissioner determines that a decision without hearing is appropriate, the OAH will send the request for a decision without hearing, or the request for a hearing, along with any supporting documents to the social services agency involved. Within 10 business days of receipt of these documents, the social services agency must forward to OAH, the appellant, and the appellant's representative, a response containing sufficient information to ensure resolution of the dispute.

(d) Within 10 business days of the receipt of the documents submitted by the social services agency, the appellant or authorized representative may submit comments or rebuttal to the OAH with copies to the other parties.

(e) At any point after a request for a decision without a hearing has been made, if it appears that there is a material and unresolved issue of fact relating to the issue or issues upon which the hearing was requested, the appellant and the social services agency will be informed that a fair hearing will be scheduled upon notice to all parties.

(f) A decision without a hearing will be issued by the commissioner based upon the papers submitted in accordance with this section.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (c)-(d).

§ 358-6.3 Direction relative to similar cases.

When a fair hearing decision indicates that a social services agency has misapplied provisions of law, regulations, or such agency's own State-approved policy, OAH's letter transmitting such decision to such agency may contain a direction to the agency to review other cases with similar facts for conformity with the principles and findings in the decision.

Historical Note

Sec. filed Dec. 23, 1988; amds. filed: Aug. 31, 2000; Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-6.4 Compliance.

(a) For all decisions, except those involving food stamp issues only, definitive and final administrative action must be taken promptly, but in no event more than 90 days from the date of the request for a fair hearing.

(b) (1) For all cases involving food stamp issues only the decision must be issued and the parties notified of the decision within 60 days of receipt of the request for the fair hearing by OAH.

(2) If the decision will result in an increase in household food stamp benefits, social services agencies must reflect such increase in the coupon allotment within 10 days of the receipt of the hearing decision; however, the increase may occur later than 10 days after the decision if the social services agency decides to make the decision effective in the household's normal issuance cycle and the issuance will occur within 60 days from the household's request for a hearing. Decisions which result in a decrease in household benefits must be reflected on the next scheduled issuance following receipt of the fair hearing decision.

(c) Upon receipt of a complaint that a social services agency has not complied with the fair hearing decision, the commissioner, through action coordinated by OAH, will secure compliance by whatever means is deemed necessary and appropriate under the circumstances of the case.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b)(1), (c).

§ 358-6.5 Compliance with direction relative to similar cases.

When a direction has been given to a social services agency to correct a misapplication of law, regulations or such agency's own State-approved policy in all cases similar to the one in which a decision has been issued, such social services agency must report the actions it has taken to

comply with such direction to the commissioner or OAH within 30 days after receipt of the direction. The social services agency must make such additional reports as the commissioner may require.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003.

§ 358-6.6 Corrected decisions and reopened hearings.

(a) *Corrected decisions.* (1) The commissioner may review an issued fair hearing decision for purposes of correcting any error found in such decision.

(2) After review, the commissioner may correct any error occurring in the production of an issued fair hearing decision including, but not limited to, typographical and spelling errors.

(3) After review, on notice to the parties, the commissioner may correct any error of law or fact which is substantiated by the fair hearing record.

(4) During the pendency of any review of an issued fair hearing decision, the original decision is binding and must be complied with by the social services agency in accordance with the provisions of section 358-6.4 of this Subpart.

(b) *Reopened hearings.* On notice to all parties, the OAH may reopen a previously closed fair hearing record for purposes of completing such record. If such reopening occurs subsequent to the issuance of a fair hearing decision, the provisions of paragraph (a)(4) of this section apply.

Historical Note

Sec. filed Dec. 23, 1988; amd. filed Aug. 19, 2003 eff. Sept. 3, 2003. Amended (b).

Executive Order No. 131

Establishing Administrative Adjudication Plans

WHEREAS, administrative adjudication was developed to provide expert, efficient, timely and fair resolution of claims, rights and disputes before state agencies;

WHEREAS, administrative adjudication often addresses complex scientific, technical, financial, medical, legal and related issues under the jurisdiction of state agencies with specialized knowledge;

WHEREAS, administrative adjudication should be a more flexible alternative to, rather than a duplication of, the civil and criminal court system;

WHEREAS, administrative adjudication must meet due process standards and should resolve disputes in a manner that is fair and appears fair to the public;

WHEREAS, the fairness of administrative adjudication and the appearance of fairness are particularly important when a state agency is a party to the administrative proceeding; and

WHEREAS, to assure expert, efficient, timely and fair adjudication, hearing officers who preside at administrative hearings should be knowledgeable, competent, impartial, objective and free from inappropriate influence;

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

I. *Definitions*

A. The term "agency" shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state authorized by law to make final decisions in adjudicatory proceedings but shall not include the governor, agencies created by interstate compact or international agreement, the Division of Military and Naval Affairs to the extent it exercises its responsibility for military and naval affairs, the Division of State Police, the identification and intelligence unit of the Division of Criminal Justice Services, the Division for Youth, the State Insurance Fund, the Workers' Compensation Board, the State Division of Parole, the Department of Correctional Services, the State Ethics Commission, the State Education Department and the Division of Tax Appeals.

B. The term "hearing officer" shall mean a person designated and empowered by an agency to conduct adjudicatory proceedings as defined in this Order, including but not limited to hearing officers, hearing examiners and administrative law judges; provided, however, that such

term shall not apply to the head of an agency or to members of a state board or commission.

C. The term "adjudicatory proceedings" shall mean any activity before an agency in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a formal adversarial hearing; provided, however, that such term shall not apply to (1) a rule making proceeding, (2) an employee disciplinary action or other personnel action pursuant to article five of the civil service law or (3) representation proceedings conducted by the State Labor Relations Board and the Public Employment Relations Board.

II. *General Principles*

A. Every agency that conducts adjudicatory proceedings shall insure that such proceedings are impartial, efficient, timely, expert and fair.

B.1. Unless otherwise authorized by law and except as provided in paragraph two of this subdivision, a hearing officer shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the hearing officer with any person except upon notice and opportunity for all parties to participate.

2. A hearing officer may consult on questions of law with supervisors, agency attorneys or other hearing officers, provided that such supervisors, hearing officers or attorneys have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding. Hearing officers may also consult with supervisors, other hearing officers, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing. The head of each agency shall strictly enforce the prohibition set forth in this paragraph B.

3. Subdivision one of this paragraph shall not apply (a) in determining applications for initial licenses for public utilities or carriers or (b) to proceedings involving the validity or application of rates, facilities, or practices to public utilities or carriers.

C. No agency shall consider whether a hearing officer's rulings, decisions or other actions favor or disfavor the agency or the State in establishing the hearing officer's salary, promotion, benefits, working conditions, case assignments or opportunities for employment or promotion. The work of hearing officers shall only be evaluated on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

D. No agency shall establish quotas or similar expectations for any hearing officer that relate in any way to whether the hearing officer's rulings, decisions or other actions favor or disfavor the agency or the State.

E. In any pending adjudication proceeding, the agency may not order or otherwise direct a hearing officer to make any finding of fact, to reach any conclusion of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand,

reversal, or other decision on the record of the proceeding; provided, however, that such provision shall not preclude a supervisor from giving legal advice or guidance to a hearing officer where the supervisor determines that such advice or guidance is appropriate to assure the quality standards of the agency or to assure consistent or legally sound decisions.

F. If the head of an agency, or a designee, issues a decision that includes findings of fact or conclusions of law that conflict with the finds, conclusions or recommended decision of the hearing officer, the head of the agency, or the designee, shall set forth in writing the reasons why the head of the agency reached a conflicting decision.

III. *Administrative Adjudication Plans*

A. Every agency responsible for administrative adjudication shall develop an administrative adjudication plan. No later than February 1, 1990, each agency shall make its proposed plan available to the public for comment and shall publish a notice of the availability of such plan in the *State Register* at the first available date. No later than March 20, 1990, each agency shall conduct at least one public hearing to solicit comments on the plan. Each agency shall give full consideration to the comments received from the public and shall issue a final administrative adjudication plan no later than April 30, 1990. Notice of the availability of such final plan shall be published in the *State Register* and shall address the comments received from the public. All such plans shall be fully implemented no later than July 1, 1990 except to the extent appropriations necessary to implement the plan are not available. An agency may amend such plan as necessary following notice of a proposed amendment and an opportunity for public comment.

B. The administrative adjudication plan shall, at a minimum, include the following:

1. An attestation by the head of the agency that the plan adheres to the principles of administration adjudication set forth in section two of this Order.

2.a. An organization of administrative adjudication that ensures that hearing officers do not report with regard to functions that relate to the merits of adjudicatory proceedings to any agency official other than the head of the agency, a supervisor of hearing officers or the general counsel. Wherever practical, hearing officers shall be assigned to an administrative unit made up exclusively of hearing officers, supervisors and support staff. The unit may be part of the agency counsel's office but may not be part of any agency bureau, office or division with programmatic functions unless such functions are not the subject of adjudicatory proceedings within the agency nor may it include attorneys responsible for prosecutions or other adversarial presentation of agency position. Unless otherwise proscribed by law, hearing officers may be assigned duties in addition to serving as a hearing officer provided that (1) such duties do not conflict with the hearing officer's responsibilities as a hearing officer and (2) such duties do not involve functions related to prosecutions or adversarial presentations of agency positions. Hearing officers may be assigned to conduct investigatory hearings provided that the standards of independence and objectivity specified in this Order are adhered to.

b. An agency may establish an organization of administrative adjudication for less complex cases that does not satisfy the requirements of paragraph a of this subdivision provided that any such organization and its justification is set forth in the agency's administrative adjudication plan.

c. In order to comply with the requirement that a hearing officer not report with regard to functions that relate to the merits of adjudicatory proceedings to any agency official other than the head of the agency, a supervisor of hearing officers or the general counsel as set forth in paragraph a of this subdivision, an agency may request the services of a hearing officer from a different agency. No later than January 15, 1990, the Division of the Budget, in consultation with the Office of Business Permits and Regulatory Assistance ("OBPRA"), shall develop a plan under which agencies may share the services of hearing officers where necessary. The Office of Business Permits and Regulatory Assistance shall develop and maintain a register of hearing officers that may be available to conduct adjudicatory proceedings in agencies other than the agency that employs them.

3. Provisions for the hiring of hearing officers that allow, to the extent practical and consistent with the Civil Service Law, opportunities for non-agency personnel to compete for open hearing officer positions.

4. Location of hearing officers that separates, to the extent practical, hearing officers, supervisors and support staff from other agency staff.

5. Duly promulgated procedural regulations governing adjudicatory hearings that include, without limitation, requirements for clear and detailed notices of hearing and statements of charges; permission for answers and responsive pleadings, where appropriate; provisions for discovery to the extent permitted by the agency; and a procedure for any party to request recusal of a hearing officer.

6. A description of continuing education and training programs for hearing officers. Training programs shall include an explanation of the need for objectivity and fairness and the avoidance of a pro-agency bias. The Governor's Office of Employee Relations shall develop training programs to assist agencies in providing continuing education and training to hearing officers.

7. A description of efforts to consult and share resources with other agencies.

8. The use of outside hearing officers, to be paid on a per diem or contract basis, where such outside officers are necessary to implement the provisions of this Order.

9. For agencies that adjudicate 50 or more adjudicatory proceedings per year, a management system intended to effect timely disposition of adjudicatory proceedings.

10. A description of the agency's existing system of administrative adjudication and a discussion of the changes in such system that the proposed plan would effect.

11. The summary of the agency's rules governing procedures on adjudicatory proceedings and appeals required pursuant to subdivision three of section 301 of the State Administrative Procedure Act.

IV. *Oversight*

A. OBPRA shall monitor the completion and filing of proposed and final administrative adjudication plans. To assist OBPRA in this effort, every agency shall send their proposed and final administrative adjudication plan to OBPRA.

B. OBPRA shall review any complaints from an individual or organization that an agency's system of administrative adjudication is not consistent with this Order. However, OBPRA shall have no jurisdiction to review a complaint until a complainant has exhausted all of the complainant's administrative and judicial remedies with regard to the administrative proceeding at issue. In reviewing any such complaint, OBPRA shall not review the merits of an individual case determination nor shall it review issues that have been ruled upon by a court. OBPRA's review shall be limited to whether the system of adjudication utilized by the agency is consistent with the provisions of this Order.

C. In the event that OBPRA's review identifies areas of an agency's system of administrative adjudication that appear to be inconsistent with the provisions of this Order, OBPRA shall notify the agency and the complainant. Such notification shall be advisory in nature and not binding on an agency.

V. *Reporting*

No later than December 1, 1990, and every two years thereafter, every agency shall make public a report that sets forth the steps taken by the agency to comply with this Order. Such report shall also include statistics on Article 78 proceedings brought against the agency, including the outcome of such proceedings and the reasons for any reversal or modification of an agency determination.

VI. *Public Authorities and other agencies*

Public authorities and corporations and agencies not covered by this Order are encouraged to administer their systems of administrative adjudication in a manner consistent with the principles of this Order.

Signed: Mario M. Cuomo

Dated: December 4, 1989