



**NEW YORK STATE  
OFFICE OF TEMPORARY AND DISABILITY  
ASSISTANCE**

40 NORTH PEARL STREET  
ALBANY, NY 12243-0001

**David A. Paterson  
Governor**

**Informational Letter**

**Section 1**

<b>Transmittal:</b>	10-INF-19
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Center for Employment and Economic Supports
<b>Date:</b>	August 31, 2010
<b>Subject:</b>	Home Energy Assistance Program: Elimination of 105 Day Rule
<b>Suggested Distribution:</b>	HEAP Coordinators Administrative Law Judges
<b>Contact Person(s):</b>	Policy Questions: HEAP Bureau liaison – 518-473-0332 Legal Questions: Alicia Sullivan@ (518) 474-5790
<b>Attachments:</b>	<a href="#">Attachment 1: Class Action Notice</a>
<b>Attachment Available On – Line:</b>	<input checked="" type="checkbox"/>

**Filing References**

<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Dept. Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
None	None	18 NYCRR 393 and 358	SSL 97 42 USC 8621et seq.	HEAP Manual	New York State HEAP Plan

**Section 2**

**I. Purpose**

The purpose of this release is to inform the local districts of programmatic and fair hearing implications of a recent court approved settlement in a Home Energy Assistance Program (HEAP) class action lawsuit entitled Pedersen v. Hansell.

## **II. Background**

A settlement was approved by the Federal District Court in Pedersen v. Hansell on May 10, 2010. This lawsuit was brought by New York City HEAP recipients categorized as “autopay heater households.” This class is defined as follows:

Autopay Heater Households, including Autopay Households who received an Autopay Renter Notice when they should have been issued an Autopay Heater Notice, and who, on the dates specified and/or approved by the State Defendant since January 22, 2005 were eligible for a Regular HEAP benefit and should have been issued a notice substantially in the form of the Autopay Heater Notice based on computer records of the State and City Defendants on the date(s) specified and/or approved by the State Defendant.

The settlement modified the HEAP benefit notice provided to class members, including the addition of a toll-free telephone number to obtain a copy of the New York State HEAP Annual Plan. The settlement also eliminated the 105 day rule for requesting a fair hearing on a HEAP issue currently contained in the social services regulations at 18 NYCRR 358-3.5(b)(4) and 393.5(e), which state that, “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.” The Court ordered the Office of Temporary and Disability Assistance to begin rule making proceedings to eliminate the 105 day language and to post a notice to the class informing them of the relief granted and their right to request a fair hearing. Attached to this INF is a copy of the Notice of Class Action Relief.

## **III. Program Implications**

Effective immediately, any applicant or recipient who requests a fair hearing on a HEAP issue more than 105 days after the close of that year’s HEAP program shall not be denied a fair hearing on that basis alone. If a decision after fair hearing finds that a HEAP applicant/recipient is or was eligible for any HEAP benefit, he/she may nonetheless be denied payment of a HEAP benefit if funds in the Federal Low Income Home Energy Assistance Program (LIHEAP) block grant are unavailable for benefit issuance. Federal LIHEAP funds are appropriated by the Federal government on a year by year basis and are only available for benefit issuance if the fair hearing is requested within the HEAP program year for which such benefit is claimed or by the end of the following federal fiscal year.

### **Issued By**

**Name:** Russell Sykes

**Title:** Deputy Commissioner

**Division/Office:** Center for Employment and Economic Supports

**NOTICE OF CLASS ACTION RELIEF  
TO ALL HOUSEHOLDS RECEIVING BENEFITS IN THE  
HOME ENERGY ASSISTANCE PROGRAM (HEAP)  
AND RIGHT OF CLASS MEMBERS TO A FAIR HEARING**

If you pay separately for your residential heating costs and automatically received a Regular (non-emergency) Home Energy Assistance Program (HEAP) benefit, without filing an application, a recent settlement in a federal class action law suit called Pedersen v. Hansell (08-CV-313, Eastern District of New York) ("Pedersen v. Hansell") may concern you.

The federal district court in Brooklyn has approved a settlement between the New York City Human Resources Administration ("HRA"), the New York State Office of Temporary Assistance ("OTDA"), and a class of persons receiving family assistance, safety net assistance and/or Food Stamps and/or Supplemental Security Income at the "Living Alone" rate ("SSI Code A"), who, on or after January 22, 2005: (1) paid for their own residential heating costs; (2) were eligible for a Regular HEAP benefit; and (3) did not submit an application for a Regular HEAP benefit (the "Pedersen Class"). If you have a question about the court approved settlement, you may contact the attorney who represents the Pedersen Class, Peter Vollmer, by calling 516-277-1156.

The federal court cannot order OTDA to recalculate past HEAP benefits for persons who are part of the Pedersen Class. However, persons in the Pedersen Class may be able to appeal any prior decisions regarding their regular HEAP eligibility or HEAP benefits through New York State's Fair Hearing process. OTDA has agreed that it shall not impose the 105 day rule found at 18 N.Y.C.R.R. §§ 358-3.5(b)(4) and 393.5(e) against any person in the Pedersen Class who requests a fair hearing for Regular HEAP Benefits.

**CONTACT INFORMATION**

TO REQUEST A FAIR HEARING, CONTACT:

New York State Office of Temporary and Disability Assistance

Mail: NYSOTDA  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, NY 12201-1930

Fax: (518) 473-6735

Telephone: (800) 342-3334

In Person: New York State Office of Temporary and Disability  
Assistance (OTDA)  
14 Boerum Place, Brooklyn, NY  
or  
330 West 34<sup>th</sup> Street, third floor, New York, NY

Web site: <http://www.otda.state.ny.us/oah/forms.asp>

**When communicating with OTDA, tell them you are requesting a Fair Hearing pursuant to the Pedersen v. Hansell fair hearing notice.**