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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 98 LCM-34

Date: July 13, 1998

Division: Administrative
Hearings

TO: Local District Commissioners

SUBJECT: Clarification Of Fair Hearing and Special Hearings Processes

ATTACHMENTS: None

At the last New York State Public Welfare Association conference a number of questions and concerns were expressed about the impact the realignment of program responsibilities and the restructuring of the former Department of Social Services (DSS) would have on the fair hearings process. The purpose of this memorandum is to ensure a clear and consistent understanding of the fair hearing and special hearings processes among all local districts.

Fair hearings. Simply put, there has been no practical change in the fair hearing process from a local district perspective. Located within the Office of Temporary and Disability Assistance (OTDA), the Office of Administrative Hearings (OAH) remains responsible for all hearings to review district determinations regarding the provision of public assistance, food assistance, medical assistance and other social services. While responsibility for various social services programs have been transferred to the Department of Labor (DOL), Department of Health (DOH) or the Office of Children and Family Services (OCFS), arrangements have been made to continue to provide fair hearings for all these programs through the OAH.

Requests for fair hearings continue to be made to the same address and phone numbers. Scheduling of fair hearings remains exactly as it has been. Hearing officers continue to conduct fair hearings in the same manner. Decisions are issued as they have been in the past. Communication between OAH and local districts concerning fair hearing activity has not changed and all of the OAH individuals local districts have used as contacts remain in place.

Special hearings. There have been changes in the special hearings process. The functions of the former DSS Bureau of Special Hearings have been transferred to DOH and OCFS. The DOH is now responsible for special hearings involving Medicaid fraud and abuse, Medicaid rate audits and adult care facility enforcement except for family-type homes for adults. The OCFS is now responsible for special hearings involving the amendment or expungement of child abuse and maltreatment records; requests made to the Central Register for clearance of those applying for child care employment or licensure; removal of children from foster care homes; applications to adopt children; adoption subsidies; licensing of and enforcement actions against child care providers and operators of family-type homes for adults; child welfare section 153-d and utilization review sanctions; and issues relating to actions of the Commission for the Blind and Visually Handicapped.

Related issues. The litigation process for Article 78 proceedings appealing fair hearing decisions now requires the participation of more than one agency in certain situations. The responsibility for litigation [strategy] will vary depending upon the issue involved and which entities are named as parties. Where the challenge to a fair hearing decision is based on substantial evidence or hearing procedure, the OTDA takes the lead with the Attorney General's office. Program-related law and policy issues are the responsibility of the agency administering the program involved. It is not at all unusual for the roles of the agency attorneys to shift in the course of litigation, as different issues come to the fore. Where such cases are settled, the attorney for each agency must concur in the agreement. The Assistant Attorney General assigned to the case generally will sign the stipulation on behalf of each involved agency. Article 78 challenges to special hearings decisions made by DOH hearing officers will be handled by DOH; the OCFS will handle challenges to decisions made by their special hearings officers.

Service of process for OTDA remains the same. Service may be made either in person at Counsel's Office, 40 North Pearl, 16C, Albany, New York 12243 or at OAH, 80 Centre Street, 3rd floor, New York City 10013 or by mail. The OCFS accepts service only in the Capital District but at two locations: at Counsel's Office located at 40 North Pearl, 10C, Albany, New York 12243 or at 52 Washington Street, Rensselaer, New York 12144. The DOH accepts service only at Counsel's Office, Corning Tower, Empire State Plaza, Albany, New York 12237-0094. The DOL accepts service at Counsel's Office, Room 509, Building 12, State Office Building Campus, Albany, New York 12240. Service on DOL is also accepted in Counsel's Office, 345 Hudson Street, Room 8001, New York City 10014-0673.

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The policy for paying awards of attorneys' fees for the districts may vary from agency to agency. Any questions or issues should be directed to the appropriate State agency.

Should your staff have any questions about the fair hearing process, please have them contact Mark Lacivita, Director of Administration, Office of Administrative Hearings at 518-473-7051. Questions about the special hearings process for those special hearings handled by OCFS should be directed to Albert Pozzi, Hearing Officer, Bureau of Special Hearings, at 518-474-3366.

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Office of Administrative Hearings