

Office of Administrative Hearings (OAH) Procedures Transmittal			Transmittal Number: 12-01
Distribution:			Date: September 4, 2012
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ALB OAH Staff <input checked="" type="checkbox"/>	UPS ALJs <input checked="" type="checkbox"/>	Upstate LDSS <input checked="" type="checkbox"/>	Subject: Abandonment of a Request for a Fair Hearing – Change in Section 358-5.5 of Title 18 NYCRR
	SUP ALJs <input checked="" type="checkbox"/>		
NYC OAH Staff <input checked="" type="checkbox"/>	NYC ALJs <input checked="" type="checkbox"/>	NYC Agencies <input checked="" type="checkbox"/>	
	SUP ALJs <input checked="" type="checkbox"/>		

Effective October 23, 2012, there will be a change in Section 358-5.5 of Title 18 NYCRR which will affect the way in which abandoned fair hearings are dealt with in the Office of Administrative Hearings (OAH). The change eliminates the 15 day and 45 day restrictions on reopening a defaulted hearing, and will allow restoration to the calendar if the request is made within one year of the default provided good cause for missing the defaulted hearing is established.

When determining whether to reopen a hearing, OAH Communications Intake Unit Staff must consider whether the appellant or the appellant's authorized representative has provided a good cause reason for failing to appear at the hearing on the scheduled date. If a good cause reason is not established for failing to appear at the hearing on the scheduled date, the hearing will not be reopened, however, a new hearing will be scheduled. If good cause is established, the defaulted hearing will be reopened. In either case, the hearing officer is authorized to make the final decision on good cause.

For those reopened defaulted hearings that had been subject to aid continuing prior to the default, aid continuing will be ordered restored retroactively and prospectively if the request to reopen the default was made within 60 days from the date of the default. If the request was made 60 days or more from the date of the default and the hearing is reopened, aid continuing will be ordered prospectively only.

In no event will a defaulted fair hearing be restored to the calendar if the request to do so is made one year or more from the date of the defaulted fair hearing.

If you have any questions regarding this transmittal, please contact Victoria A. Fiorino at (518) 473-4717 or via e-mail at victoria.fiorino@otda.ny.gov.



Louise Finkell, Director of Administration
Office of Administrative Hearings