Office of Administrative Hearings (OAH) Procedures Transmittal	Transmittal Number:	13-02
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ALB OAH Staff X UPS ALJS X Upstate LDSS X SUP ALJS X	Subject: Waiver of Personal Appearance Instructions for Agencies	
NYC OAH Staff X NYC ALJS X NYC Agencies X SUP ALJS X		

This transmittal is being released by the Office of Administrative Hearings (OAH) to document instructions for requesting a waiver of personal appearance by any agency against which a Fair Hearing is scheduled. An agency may be a Social Services District, Managed Care Agency, New York State Department or Office, or other entity. This Transmittal is intended to update transmittals: 95-11, 00-02, 05-09, 06-04, 06-06, 06-10, 07-05, 07-11, and 11-02.

OAH has the responsibility for scheduling and holding fair hearings to review a variety of issues. Under certain circumstances and in accordance with 18 NYCRR 358-4.3(c)(1), an agency may request a waiver of appearance and submit a written evidentiary packet by following the guidelines below. Waiver requests will be reviewed and granted on a case-by-case basis. At this time, "blanket" waivers of appearance will not be granted with the exception of the EBT Account Adjustment Program as noted in Transmittal 06-10; however, if the agency contact does not receive a telephone call from this office prior to the hearing date indicating otherwise, it will be presumed that a waiver has been granted.

It should be noted that even in situations where a waiver of appearance has been granted, the Administrative Law Judge (ALJ) may require the testimony of the agency representative at the time of the hearing. It will, therefore, be necessary that a primary contact person be available (and a back-up contact be designated to be available) during the course of the hearing to accept a telephone call from the Administrative Law Judge. The primary and back-up contact persons' names and telephone numbers should be included on the request for waiver. The waiver request should also contain the fair hearing number, date of hearing, and a summary of the specific facts relevant to the issue under review at the hearing. A proposed format for requesting a waiver of appearance is attached as an example.

For proper inclusion in the fair hearing record, the waiver request and evidentiary packet should be submitted immediately upon notification of the hearing request, as follows:

The original waiver request and evidentiary packet should be sent to the Albany Central Office address, fax number or email address listed below. It is essential that the packets are received in the Albany Central Office to allow sufficient time for forwarding to the hearing site--allow at least five calendar days prior to the hearing date. If packets are not received within this timeframe, there is no guarantee that they will be available at the

hearing. The Administrative Law Judge may decide to proceed with the hearing without the input of the agency.

Mail via regular mail to:

Waiver of Appearance Request

Office of Administrative Hearings NYS Office of Temporary and Disability Assistance (OTDA) P.O. Box 1930 Albany, New York 12201-1930

-or-

Mail via express mail to:

Waiver of Appearance Request

Office of Administrative Hearings
NYS Office of Temporary and Disability Assistance (OTDA)
40 North Pearl Street, Floor 15B
Albany, New York 12243

-or-

Email including the Fair Hearing number in the subject line. Note that packets containing confidential information should be sent via encrypted email to:

Otda.sm.hearings.waivers@otda.ny.gov

-or-

Fax to the attention of **Waiver of Appearance Request** at:

Fax Number: (518) 473-6735

When faxing, please include on the fax transmittal the name of the appellant, the fair hearing number, the date of the hearing, and the number of pages contained in each package to assist in matching the submission to the appropriate fair hearing file.

Any other methods of submission must be approved by the OAH management.

Please note it is the responsibility of the agency to provide a copy of the evidentiary packet to the appellant and/or representative, in addition to that required above, if requested. When the hearing is scheduled as a telephone hearing, since the appellant will not appear, it is essential that the agency mail the appellant and/or representative a copy of the evidence packet prior to the hearing even when not requested by the client. Also, when the agency's representative appears in person, it is essential that two copies of the evidence packet are brought to the hearing, one for the Administrative Law Judge and one for the client.

Questions with respect to individual cases and/or receipt of waiver requests/evidentiary submissions should be addressed to the OAH Liaison desk at 518-474-8787.

If you have any questions with respect to this transmittal, you may contact Victoria A. Fiorino at (518) 473-4717 or via email victoria.fiorino@otda.ny.gov.

Louise Finkell, Director of Administration Office of Administrative Hearings

Laure C. Fikell

SAMPLE WAIVER REQUEST

Waiver of Appearance Request Office of Administrative Hearings NYS Office of Temporary & Disability Assistance P.O. Box 1930 Albany, New York 12201-1930 Appellant's Name _____ Fair Hearing Number: To Whom It May Concern: This information is submitted with respect to the above-mentioned fair hearing and is submitted in lieu of appearance at the hearing. A personal appearance is not necessary because In accordance with the requirements contained in 18 NYCRR 358-4.3(c) (1), please consider this as this agency's request to present evidence in the form of written documentation in lieu of appearing at the hearing. Should the content of this document raise issues requiring further elaboration or cross-examination during the course of the hearing, please contact: _____ (name) at_____ (telephone number) -or-_____ (name) at_____ (telephone number).

(In this section, summarize the agency's position relative to the issue under review at the hearing. Attach all appropriate documentation and submit within the timeframe required for information to be available on the scheduled date of the hearing.)

These facts, as presented, should be of assistance in your review of this case.

The following should be noted for the record:

Sincerely,