

Office of Administrative Hearings (OAH) Procedures Transmittal	Transmittal 18-06
Distribution:	Date: May 24, 2018
Albany OAH Staff <input checked="" type="checkbox"/> Rest of State Hearing Officers <input checked="" type="checkbox"/> Supervising Hearing Officers <input checked="" type="checkbox"/> NYC OAH Staff <input checked="" type="checkbox"/> NYC Hearing Officers <input checked="" type="checkbox"/> Supervising Hearing Officers <input checked="" type="checkbox"/> Rest of State Social Service Districts <input checked="" type="checkbox"/> NYC Agencies <input checked="" type="checkbox"/>	Subject: Abandonment Letter Retroactive Group (03/29/2017-03/01/2018)

Pursuant to the Order in Fishman v. Daines, the Office of Administrative Hearings (OAH) was directed to modify its policies and procedures, retroactive to March 29, 2017, as they relate to notices of abandonment provided to Medicaid appellants who fail to appear at their fair hearing. OAH implemented its modified policies and procedures, effective March 2, 2018. This Transmittal establishes the handling procedures for the retroactive group of 3,622 Medicaid appellants who failed to appear at their fair hearing between March 29, 2017 and March 1, 2018.

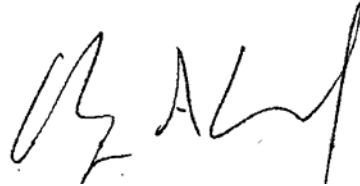
The appellants and authorized representatives described above will be mailed a Letter 19 OAH Abandonment Letter, dated May 25, 2018. In the Fair Hearing Information Screen (FHIS) Comment section for each hearing, the following message will be generated: **“MARCH 2017-18 OAH ABANDONMENT LETTER 19 SENT 05/25/2018. DISREGARD THE LETTER 19 IN FILENET DATED 03/06/2018, AS THAT LETTER WAS NOT MAILED.”**

If an appellant or authorized representative contacts OAH to reopen a hearing described above within one calendar year of the failure to appear or within ten calendar days of the Letter 19 OAH Abandonment Letter if the failure to appear occurred over one year earlier, and provides good cause for having failed to appear at the prior hearing, Legal Specialties Unit staff (LSU) shall reopen the hearing by entering the appropriate reopening code in the FHIS Disposition/Reason field (e.g. “REOP 26” if the appellant was ill). If an appellant’s credibility is in question, the reason for the failure to appear is verifiable and, if credible, the reason for the failure to appear would constitute good cause, LSU may use Disposition/Reason Code “RPDN 25” to allow the appellant an opportunity to submit proof of the reason for failing to appear.

If an appellant or authorized representative contacts OAH to reopen a hearing within one calendar year of the failure to appear or within ten calendar days of the Letter 19 OAH Abandonment Letter if the failure to appear occurred over one year earlier, but does not provide good cause for having failed to appear at the prior hearing, the hearing shall be reopen denied (“RPDN 66”). Disposition/Reason Code “RPDN 25” may also be used for the reasons previously described.

If over one year has passed since the date of the failure to appear and over ten calendar days have passed since the mailing of the Letter 19 OAH Abandonment Letter, the hearing shall be reopened denied ("RPDN 67") irrespective of whether the appellant had good cause for failing to appear at the prior hearing.

If you have any questions regarding this Transmittal, you may contact your supervisor or Frank Seminerio at (518) 474-9777 or Frank.Seminario@otda.ny.gov.

A handwritten signature in black ink, appearing to read "Roy A. Esnard". The signature is stylized and cursive, with the first name "Roy" and last name "Esnard" clearly distinguishable.

Roy A. Esnard, Deputy Commissioner
Office of Administrative Hearings