

LEGAL FACT SHEET

NYS Office of Temporary and Disability Assistance (OTDA) – Administrative Hearing

What is an Administrative Hearing?

Many state agencies have internal administrative procedures for appeals of county and state agency decisions regarding benefits, services and records. These procedures are governed by statutes and agency regulations. Of particular importance to kinship caregivers are “Special Hearings” held by the Office of Children and Family Services (OCFS) and “Fair Hearings” held by the Office of Temporary and Disability Assistance (OTDA). Other relevant administrative hearings are held by the Department of Education regarding school enrollment and educational decisions as well as hearings at the NYS Department of Health and for state employees related to retirement, disability, and other benefits. All administrative hearings are governed by the NYS Administrative Procedure Act sections 301-308. There are also federal hearing procedures for federal benefits, like Social Security retirement.

This fact sheet discusses OTDA hearings and describes key provisions of relevant statutes and regulations.

During the COVID-19 pandemic, many administrative hearings have shifted from in-person hearings to telephone hearings. If you do decide to file for an administrative hearing via a telephone hearing and plan to self-represent yourself, visit <https://fairhearinghelpny.org/> for more information on fair hearings, due process rights, and benefits eligibility (does not provide representation services).

Only Certain Circumstances Authorize Hearings

Administrative hearings by OTDA must be authorized by a specific statutory provision or regulation that creates the right to a hearing. This means that there must be a law or regulations identifying the benefit/service/record decision that can be appealed to an administrative judge.

Section 22 of the Social Services Law (SSL) is the most relevant statute. It addresses many of the hearing rights for both OCFS and OTDA (technically the two agencies are part of the Department of Family Assistance).

Social Services Law (SSL) 22 states: “[G]rounds for such appeals...shall include at least the following: (a) Denial of any application, (b) Failure to act upon any application within thirty days after filing... , (c) Inadequacy in amount or manner of payment of assistance, (d) Discontinuance in whole or in part of assistance, or termination of a service ... (e) Failure to permit a parent or guardian to visit the child or failure to provide supportive services,... (f) Failure to provide adoption services or assistance to a prospective adoptive parent on behalf of a child freed for adoption....” This is not a full list of the grounds for hearings. More circumstances when there is a right to a hearing are found at [NYS REGS Hearings 18 NYCRR 358- 3.1](#).

[The Adoption and Foster Family Coalition New York \(AFFCNY\)](#) website also offers a breakdown of what types of hearings can be heard by OCFS and OTDA. The following list of hearings includes references to each hearings’ statutes and regulations.

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What are the Permitted Challenges Available at OTDA Fair Hearings?

OTDA hears challenges related to its own services, when someone receiving benefits/services from the local department of social services believes that a “decision about your case made by a local social services agency is wrong.”

Challenges occur when the department is overdue to reply to our request, or provided notification that it has cancelled, reduced, or denied benefits, or has otherwise made an unfavorable determination about your benefits or eligibility for benefits. The [OTDA website](#) lists typical situations where a case may be challenged.

In general, request for Fair Hearings are heard for cases related to:

- **Public Assistance** (including non-parent grants) – SSL 22, SSL 74-h, 18 NYCRR 358
- **Medical Assistance** – SSL 22, 18 NYCRR 358
- **Supplemental Nutrition Assistance Program (Food Stamps)** –SSL 95, 18 NYCRR 358,
- **Home Energy Assistance Program (HEAP) benefits or Services** –SSL 97(1), 18 NYCRR 358
- **Additional income for aged, blind, and disable persons receiving SSI** –SSL 208, 18 NYCRR 358, hearings 18 NYCRR 358-5.12.

Challenges Must be Filed Within Time Limits – Most challenges must be submitted within thirty days of notice, but for work activity it is within ten days, and for Food Stamp (SNAP) within ninety days of determinations. SSL 22(4)(b).

In addition to the circumstances and time limits, OTDA’s web site offers extensive information on the [fair hearing process](#).

OTDA Fair Hearings Procedures

Fair hearings can be requested – via telephone (800) 342-3334), fax, in person, or online. See details [fair hearings requests](#).

Presenting Evidence and Appearances at Hearings – Evidence must be submitted at least two days before the hearing. Hearings are held via telephone. OTDA website has complete information at [telephonic hearings](#).

Demanding Compliance with Determination – SSL 363-d. OTDA’s website offers information on how to [demand compliance](#) with a fair hearing decision.

Appeals of OTDA Hearing Determinations

Post Hearing Decisions – Article 78 Challenges

Before bringing an Article 78 proceeding, a **petitioner must have exhausted all of his or her administrative remedies**. After exhausting administrative appeals, then a special civil action, an Article 78, may be started in the county Supreme Court (County Supreme Courts are the civil trial courts in New York State). The name “Article 78” refers to Section 7801 of the New York Civil Practice Law and Rules.

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There is a filing fee of \$305, which can be waived by applying for a poor person order, see Court administration rules for [Poor Person](#). Numerous web sites, including the Office of Court Administration, offer guidance regarding Article 78 special proceedings.

Attorneys who work with child welfare law and public assistance law often file Article 78's for clients when hearing decisions appear to be in error. It is recommended that the party seek counsel or help from a legal assistance provider who specializes in child welfare law before filing an Article 78. See **Kinship Navigator Legal Resources**.

In a recent Article 78 OTDA case. In *Yarde v. Roberts*, 60 Misc. 2d 686 (Albany County 2017), an aunt challenged the county department of social services' denial of retroactive benefits. The aunt who was receiving food stamps was told that there was no public benefit available to her when she became a caregiver for her niece, despite the affirmative duty of the county to inform her about the non-parent ("child only") public assistance grant. She filed a fair hearing, and the administrative decision agreed that the county department had failed in its duty to inform about cash assistance, based upon numerous regulations (i.e. 18 NYCRR 350.3(a)(1), 18 NYCRR 350.3(a)(1).SSL 392.

The Article 78 court found that the county failed its statutory duty to inform about her benefits. The court ordered retroactive payments to the aunt for the entire period of time that she was misled. This case illustrates how an Article 78 decision can successfully reverse an administrative hearing adverse ruling.

In reaching the decision, the trial court based its conclusion on its review of the relevant statutes and regulations that the agency claimed supported its administrative decision. The standard for such court reviews is whether the administrative decision was "arbitrary and capricious."

The Yarde court in its ruling provides a good summary of the standard of review. In part it says:

"The judicial standard of review of administrative determinations pursuant to CPLR Article 78 is whether the determination is arbitrary and capricious, and a reviewing court is therefore restricted to an assessment of whether the action in question was taken "without sound basis in reason and ... without regard to the facts." *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974). The test usually applied in deciding whether a determination is arbitrary and capricious or an abuse of discretion is whether the determination has a rational or adequate basis. *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 883 N.Y.S.2d 751, 911 N.E.2d 813 (2009). The reviewing court in a proceeding pursuant to Article 78 will not substitute its judgment for that of the agency unless it clearly appears to be arbitrary, capricious or contrary to the law. *Paramount Communications Inc. v. Gibraltar Cas. Co.*, 90 N.Y.2d 507, 663 N.Y.S.2d 133, 685 N.E.2d 1214 (1997). However, "an agency determination arrived at in a manner inconsistent with its own regulations is not supported by a rational basis." *Mid Island Therapy Associates, LLC v. New York State Educ. Dept.*, 129 A.D.3d 1173..."

In summary, if there is no basis in the law for the decision, then upon review a court may find that the law wasn't followed, and an Article 78 challenge may succeed. For further information on Article 78's, see [Legal Services of Western New York](#) and for an in depth review, see [Columbia Law](#).

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Conclusion

This Fact Sheet provides an overview of OTDA administrative hearings. It is not uncommon for an administrative hearing to overrule the county department's or commissioner's decisions. So, it is important to file for a hearing. However, as noted, hearings are only available in certain situations. After the hearing decision or if there is no hearing available, there is still an opportunity to challenge via an Article 78. What underpins the chances for a successful challenge, both at the administrative hearing or in an Article 78, are if the facts favor the challenger. If the facts show that the department did not have a statutory or regulatory basis for the decision, then there is a good chance of success.

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.