

The Fair Administrative Hearing Process

Division of Energy Assistance (DEA)

Office of Community Services (OCS)

Administration for Children & Families (ACF)

U.S. Department of Health and Human Services (HHS)



ADMINISTRATION FOR
CHILDREN & FAMILIES

Agenda

- Statutes and Policies
- Fair Administrative Hearing Transparency
- Fair Administrative Hearing Process Internal Controls
- Questions and Answers

Statutes and Policies

Assurance 13

Grantee must “... *provide an opportunity for a Fair Administrative Hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness...*”

Policies

Denied Benefits

- Benefit ineligibility for any LIHEAP program component

Partially Denied Benefits

- Benefit amount less than anticipated

Delayed Benefits

- Benefit not available because agency failed to process the application within a reasonable or stated time frame

Fair Administrative Hearing Data

No Changes.		
Public Hearings, 2605(a)(2) - For States and the Commonwealth of Puerto Rico Only		
11.3 List the date and location(s) that you held public hearing(s) on the proposed use and distribution of your LIHEAP funds?		
	Date	Event Description
1	12/27/2017	[name] Chapter, [city, state]
2	12/28/2017	[name] Chapter, [city, state]
3	01/03/2018	[name] Chapter, [city, state]
4	01/03/2018	[name] Chapter, [city, state]
5	01/05/2018	[name] Chapter, [city, state]
6	01/09/2018	[name] Senior Center, [city, state]
7	01/11/2018	[name] Chapter, [city, state]
8	01/11/2018	[name] Senior Center, [city, state]
9	01/11/2018	[name] Chapter, [city, state]
10	01/16/2018	[name] Chapter, [city, state]
11	01/23/2018	[name] Chapter, [city, state]
12	01/24/2018	[name] Chapter, [city, state]
13	01/25/2018	[name] Senior Center, [city, state]
14	01/31/2018	[name] Chapter
15	12/28/2017	[name] Chapter
16	01/27/2018	[name]

Fair Administrative Hearing Data

Survey of Fiscal Year (FY) 2018 State Model Plans (Section 12)

Total Hearings Reported for the Year	673
Range of Total Hearings Reported	0 - 266
No. States Reporting 50 + Hearings	3
No. States Reporting 1 - 50 Hearings	19
No. States Reporting 0 Hearings	28

Source: The Briljent survey of FY 2017 numbers reported in all state Model Plans in 2018. One state's total represented a significant outlier and is excluded from the survey. A survey was also made of a sample of 15 tribal and 2 territorial Model Plans and the results were similar.

Caveats of the Data

- In reviewing the plan, there are concerns about validity of information.
- If we assume it is accurate, it means that less than half of grantees report hearings.
 - Is that because grantees do not know how to proceed?
 - Is it too overly burdensome?
 - Were the issues resolved?



Fair Administrative Hearing Transparency

Transparency depends on the clear, understandable, and purposeful availability of the Fair Administrative Hearing information to all applicants using multiple methods of communication.

Availability of Fair Administrative Hearing

- **Information about the Fair Administrative Hearing process must be:**
 - Easily viewed by all applicants.
 - Repeated in various forms, written and verbal.
 - Made clear several times throughout the application process.
 - Stated in straightforward terms.
 - Available in other languages, as appropriate.
 - Available in places other than written in the application.

Process Publicity

Posters

- Include statements of applicant rights.
- Include specifics about the process and time lines.
- Ensure they are easily viewed.
- Display multiple copies.

Brochures

- Include applicant's rights/responsibilities.
- Include a detailed explanation of the process.
- Identify issues that can be appealed.

Web Sites

- Include statements of applicant rights.
- Include a detailed explanation of the process and time lines.
- Identify issues that can be appealed.

Applications

- Include statements of applicant rights.
- Include a detailed explanation of the process and time lines.
- Identify issues that can be appealed.

Letter of Decision/Notice of Assistance

- Include statements of applicant rights.
- Include a detailed explanation of the process and time lines.
- Identify issues that can be appealed.

Public Participation

- Include statements of applicant rights.
- Include a detailed explanation of the process and time lines.
- Identify issues that can be appealed.

Fair Hearing Statement Components

- **Fair Hearing language should include the following:**
 - Who can request a Fair Hearing?
 - What must be included in the request?
 - Why is the request being made?
 - When can a request be made?
 - Where is the request addressed?
 - How is a Fair Hearing requested?
- **A copy of this information should be provided to the applicant.**



Activity 1: What Is Missing?

- What important information is missing according to our previous slide?



Application: Part 8 - Notice that You Can Get a Fair Hearing

As an applicant for LIHEAP, you may request a hearing for the following reasons:

1. If your LIHEAP application is denied
2. If your LIHEAP application is not reviewed timely

A request for a hearing can be made in writing, by phone, by fax, or in-person.

Activity 2: What Is Missing?

- What important information is missing according to our previous slides?



Right to a Fair Hearing

Any applicant of the LIHEAP program whose application for **assistance is denied** or who wishes to contest **the amount of assistance granted**, may request a **Fair Hearing**. The request must be made **within 60 days** of my denial or benefit notice. How to request a Fair Hearing. An applicant for LIHEAP benefits may initiate the hearing process **by filing a request** with the Department of Social Services, Office of Administrative Hearings (grantee's address).

Activity 3: What Is Missing?

- What important information is missing according to our previous slides?



What if I am dissatisfied?

You may request an agency conference to discuss any action with which you disagree. You may also request an administrative hearing by the State Department of Social Services when funds are available and your application is denied, or you are refused the right to apply during the application period, or your application is not acted on or is closed prior to benefit determination. A hearing must be requested within 30 days of the negative action.

The hearing request may be submitted to the local agency or to:

Hearing and Legal Services Manager
Appeals and Fair Hearings Unit
(State) Department of Social Services
(Specific Address)

Benefit Determination Notification

- **Fair Hearing language must include the following:**
 - Who can request a Fair Hearing?
 - What must be included in the request?
 - Why is the request being made?
 - When can a request be made?
 - Where is the request addressed?
 - How is a Fair Hearing requested?
 - What is the process for the grantee response?
 - What is the time frame for the response?
 - What other types of resolution are available to the applicant?

Activity: Benefit Determination Notification

- What type of documents could include the Fair Hearing language?



- Notice of denial (with reason for denial clearly stated)
- Notice of approval (may dispute the amount of the benefit)
- Notice of pending action (i.e., need for additional applicant information)
- Notices involved in the Fair Administrative Hearing process
- Application Form



Process Internal Controls

There are some typical features and effective features of a Fair Administrative Hearing process.

Fair Hearing Features

- **Common Features of a Fair Hearing Process**
 - Host a pre-hearing resolution conference (informal but documented)
 - Have an official Fair Administrative Hearing
 - Have various steps at specific time frames in the processes
 - Have a limited time frame
 - Move from a less formal conference to a more formal hearing
 - Involve hearing by personnel at a next higher/more disinterested level
 - Use concept of progressive higher authority

Resolution Conference

- **Pre-Hearing Resolution Conference**
 - Is optional
 - Is usually local
 - Does not change the requirement
 - Should not affect time frames
 - Is not the same as the Fair Administrative Hearing
 - Must be documented



Resolution Conference

- **Conference Process**
 - Is conducted by staff persons at a higher and less involved level than the person(s) who made the initial eligibility decision
 - Reviews the eligibility determination directly with the applicant
 - Arrives at a resolution, if possible
 - Continues the process unless the applicant formally withdraws the request based on the conference



Hearing Process

- Grantees have the flexibility to use policies, procedures, and personnel that are in place and used with its other programs.
- Examples:
 - Housing and Urban Development (HUD)
 - Community Development Block Grant (CDBG)
 - Weatherization Assistance Program (WAP)

Hearing Practices

- **Accessibility**
Is usually conducted at a central office or by phone/video conference
- **Notification**
Should include details about the hearing (date, time, location, procedures, etc.)
- **Hearing Official**
Has an impartial official (independent, neutral party) conducting the Fair Administrative Hearing

Typical Formal Procedures

- **Most Fair Administrative Hearing procedures include the following:**
 - Applicant's opportunity to state the reason for the request
 - Applicant's right to representation, legal or otherwise
 - Applicant's right to present witnesses
 - Applicant's opportunity to present supporting facts/evidence/arguments
 - Grantee agency's opportunity to explain the reason for the action taken
 - Each party's right to question the other
 - Applicant's right to discover evidence supporting the agency's decision
 - Record of the proceedings

Fair Administrative Hearing Decision

- **The Decision:**
 - Is the final administrative decision on the case.
 - Is issued within a reasonable time frame stated in the agency's Fair Administrative Hearing policy.
 - Is in writing and includes the reasons for the decisions supported by the applicable policies, regulations, or laws.



NY Fair Administrative Hearing Process

Now that we have examined some information about hearings, we will look at a specific grantee's process.

Andrew Bryk

New York State Home Energy Assistance Program

New York State Administrative Hearings

- Administrative hearings at the NYS Office of Temporary and Disability Assistance (OTDA) are known as Fair Hearings and are conducted by the Office of Administrative Hearings (OAH).
 - Conducts prompt and impartial hearings
 - Provides timely and accurate decisions
 - Performs administrative hearings on behalf of other agencies
 - Handles a high volume of requests from multiple Social Services Programs across NY, including the Home Energy Assistance Program (HEAP)

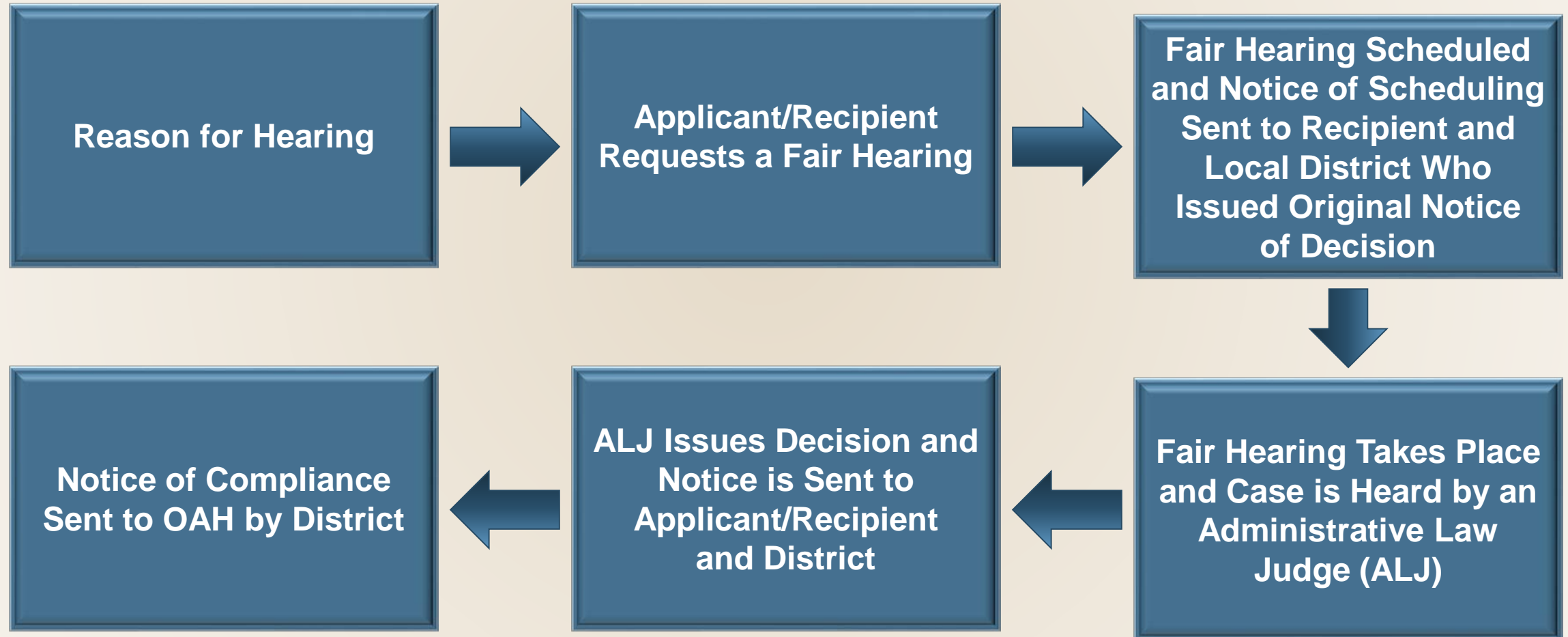
New York State Administrative Hearings

- OAH has seven units that work together to ensure that grievances regarding social service benefits are heard fairly and expediently:
 - Administration
 - Legal Specialties Unit
 - Hearings
 - Compliance
 - Litigation
 - Operations & Support Unit
 - Fair Hearing Information System

Fair Hearings Process

- The Fair Hearing process allows for the public to:
 - Request a Fair Hearing.
 - Request an adjournment or reopening.
 - Cancel a Fair Hearing.
 - Request compliance with a Fair Hearing decision.
 - Search the Fair Hearing decision archive.
- Find out more about our process here: <http://otda.ny.gov/hearings/>

Fair Hearings Process



NYS HEAP and Fair Hearings

- The Fair Hearing process helps to maintain effective and equitable HEAP policy through the hearing and compliance process.
- Policies and procedures should be reviewed and possibly adjusted based on Fair Hearing decisions.

Policy Revision as a Result of Fair Hearings

- Amended HEAP policy for nominal payments had unintended consequences
- Standing HEAP policy resulted in a large number of Fair Hearings based on benefit denials
- A quantity of Fair Hearings on the same matter may indicate a policy revision is necessary, even when decisions are upheld
- Change to current policy based on evaluation of other states' policies and intent to assist all eligible low-income households

Contact Information

- **NYS Office of Temporary and Disability Assistance**
<http://otda.ny.gov>
- **NYS Home Energy Assistance Program (HEAP) Bureau**
(518) 473-0332
<http://otda.ny.gov/programs/heap>
- **NYS Office of Administrative Hearings (OAH)**
(800) 342-3334
<http://otda.ny.gov/hearings>

Examine the Process

Let's look at some ways that the process might be internally controlled to encourage its availability and usage.

Organization and Culture

- Create an organizational culture that fosters transparency and meaningfully preserves rights of the applicants.
 - Establish an agency culture that advocates for the applicant's rights and responsibilities.
 - Ensure that a dissatisfied applicant is comfortable filing for the Fair Hearing.
 - Promote the importance of an effective process among employees through periodic training and dissemination of information.



Evaluating Your Policy

- Establish policies and procedures in compliance with statutory requirements and typical definitions.
- Analyze the process for points that present the greatest risk of inaccuracy and noncompliance with the policy.
- Evaluate the monetary cost of benefit inaccuracy and administrative noncompliance.
- Adjust the process as indicated by its lack of effectiveness in meeting the statutory intent.

Information and Communication

- Establish procedures that require communication about the process with applicants at all levels.
- Establish specific employee responsibilities in dealing with requests at all levels of the process.
- Establish procedures for the exchange of information among all involved parties.



Developing Your Policy

- Establish and maintain written Fair Administrative Hearing policies and procedures in your LIHEAP program manual.
- Periodically train staff, emphasizing the importance of the process, including statutory compliance and program effectiveness.
- Design publications/forms/notices and test **usability by applicants**.
- Establish/track strict agency time lines to process requests.
- Establish/update logs recording the requests.
- Assign periodic supervisor reviews of log information and progress.
- Keep **statistics** to evaluate the usage of the process.

Developing Your Policy

- Maintain appropriate separation of duties between staff making initial eligibility decisions and those making subsequent appeal decisions.
- Establish written rules for the Fair Administrative Hearing, including rules of evidence, testimony, representation, etc.
- Establish the point at which the decision on the appeal is final and how to announce the results.

Process Evaluation Through Monitoring

Performance

Internally review performance in meeting the stated policy objectives and the intent of Assurance 13.

Utilization

Evaluate utilization by applicants in terms of the number of applicants who request the Fair Administrative Hearing and any process points that discourage applicants from the process.

Requirements

Monitor the requirement that all staff make the process understandable and repeatedly available to all applicants.

Conclusion

Using effective internal controls can help establish an impartial and transparent Fair Administrative Hearing process.

Resources

- **LIHEAP Statute Assurance 13 - Section 2605(b)(13) [42 U.S.C. § 8624(b)(13)]**
Fair administrative hearing requirement
- **LIHEAP IM 2014-2 Common Findings from Compliance Reviews**
Fair hearings findings (November 26, 2013)
- **Committee of Sponsoring Organizations of the Treadway Commission (COSO)**
Internal control standards
- **How to File a Formal LIHEAP Complaint – 45 CFR 96.50**
- **NY Policy**
<http://otda.ny.gov/hearings/>
- **DEA Staff**
<https://www.acf.hhs.gov/ocs/resource/contacts>

Questions?

