

***State of New York
Office of the State Comptroller
Division of Management Audit
and State Financial Services***

**OFFICE OF TEMPORARY AND
DISABILITY ASSISTANCE**

FAIR HEARINGS PROCESS

REPORT 97-S-42



H. Carl McCall

Comptroller



State of New York Office of the State Comptroller

Division of Management Audit and State Financial Services

Report 97-S-42

Mr. Brian Wing
Commissioner
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, NY 12243

Dear Mr. Wing:

The following is our report on the Office of Temporary and Disability Assistance's Fair Hearings process.

This audit was performed pursuant to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law. Major contributors to this report are listed in Appendix A.

*Office of the State Comptroller
Division of Management Audit
and State Financial Services*

September 23, 1998

Executive Summary

Office of Temporary and Disability Assistance Fair Hearings Process

Scope of Audit

The Office of Temporary and Disability Assistance (OTDA) is responsible for administering the State's public assistance programs which were formerly administered by the Department of Social Services. These programs include the Temporary Assistance to Needy Families (TANF), Food Stamps and Safety Net programs. OTDA oversees the activities of the State's 58 local social services districts (districts) that carry out these programs. Districts sometimes make determinations to deny benefits to applicants who do not meet eligibility criteria, or to reduce or discontinue the benefits of current recipients. If applicants or recipients believe the district is wrong in denying, reducing or discontinuing their benefits, they can appeal the district's determination by requesting a Fair Hearing (hearing) before OTDA's Office of Administrative Hearings (OAH). Regulations require that the hearing decision be issued within 90 days (60 days for Food Stamps) of the hearing request. A recipient can request that benefits continue at the current level until OAH issues a decision.

OAH issues three major types of decisions: affirmed (the district determination was correct); reversed (the district was wrong and should make necessary corrections); and withdrawn (the district does not pursue the case, usually because it is unprepared to support its determination). Between January 1, 1996 and September 30, 1997, OAH issued 446,830 decisions statewide; 20 percent of these decisions were affirmed, 29 percent were reversed and 49 percent were withdrawn by the districts. OTDA regulations require that districts maintain documentation to support their benefit determinations at hearings. Regulations also require that districts make timely adjustments to benefits to reflect the results of hearing decisions, and set up accounts receivable for recipients to whom benefits have been overpaid.

Our audit addressed the following questions about the Fair Hearings process during the period January 1, 1996 through February 28, 1998:

- Does OTDA ensure districts are prepared to support benefit determinations at hearings, and that hearings are concluded within the required time frames?
- Do districts make timely benefit adjustments and establish accounts receivable as required?

Our audit did not review the process or the effectiveness of the initial front-end determinations of eligibility for benefits. This objective can not

be reasonably conducted without the full cooperation and participation of the NYC Mayor's Office, which to-date has been refused.

Audit Observations and Conclusions

We found that OTDA needs to take additional steps to ensure districts adequately prepare for hearings. We estimated that, over a 6 month benefit period, the fiscal impact of districts' losing hearing decisions due to factors within their control was \$18.6 million. To reach this estimation, we applied OAH monthly benefit rates to the number of decisions districts would have won, according to historical rates, and estimated the value of these losses over a 6 month benefit period. We did not estimate the associated expense to OTDA or the local districts of improving case management procedures. Additionally, we estimated that districts overpaid \$2.8 million in benefit payments during the 21 month period ended September 30, 1997 because of delays in issuing hearing decisions. It is possible that none of these overpayments will be recovered. We also found that districts should improve their processes for adjusting benefits to reflect the results of decisions, and establish accounts receivable for overpaid benefits, as required.

Our audit found that OTDA does not formally monitor whether districts comply with regulations by being prepared to support their benefit decisions at hearings. Districts lose, through reversals and withdrawals, 78 percent of hearings statewide; in New York City, which accounts for 83 percent of hearing decisions, the loss rate is 85 percent. These statistics underscore the need for OTDA to assume greater responsibility for oversight in this area. Our survey of districts statewide and our visits to three districts found that many do not formally train staff about hearings and many are concerned about how the process works. We recommend that OTDA monitor districts' preparedness for hearings, ensure that hearing decisions are issued timely, and provide training and other assistance to districts that need it. (See pp. 5-13)

Our examination of 150 randomly selected hearing decisions at three districts (Dutchess, Nassau and Onondaga) found that the districts did not make the proper public assistance adjustments timely for 24 (16 percent) of the 150 cases we reviewed. These cases included four instances where recipients were underpaid \$14,677 and five instances where recipients were overpaid \$12,974. We recommend that OTDA ensure that districts make the appropriate retroactive benefit payments for the underpayments we identified and that districts make hearing-related benefit changes timely. (See pp. 15-17)

Comments of OTDA Officials

OTDA officials generally agreed with the 10 recommendations we made in this report. The officials also stated that our cost savings projections do not consider the amount of State financial participation in any of the programs or the cost associated with corrective actions and that our calculation of the \$2.8 million in benefit overpayments due to late hearings decisions is overstated. OTDA's complete response is included as Appendix B.

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Introduction

Background

On August 20, 1997, the Governor signed welfare reform legislation that abolished the Department of Social Services and created a new agency in its place: the Department of Family Assistance. The Department of Family Assistance is composed of two independent agencies: the Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services. OTDA is responsible for administering the State's financial assistance programs, which were formerly administered by the Department of Social Services. These public assistance programs include the Temporary Assistance to Needy Families (TANF) program (formerly Aid to Families with Dependent Children), and the Food Stamps and Safety Net programs. OTDA oversees the activities of the State's 58 local social service districts (districts), including New York City's Human Resources Administration (HRA), which administer these programs. TANF assistance is provided to families which have insufficient income support, and can also provide additional monies to help pay for shelter and heating fuel costs. Food Stamps are income supplements intended to alleviate hunger and improve nutrition for low-income families. The State's Safety Net Program provides cash assistance to needy families that are not eligible for TANF or other federally funded programs.

In the course of administering public assistance programs, districts sometimes make determinations to deny benefits to applicants who do not meet eligibility criteria, or to reduce or discontinue the benefits of current recipients. The Federal government requires that each state ensure that welfare recipients are not deprived of due process when a question arises related to their eligibility for assistance. New York State has adopted the Fair Hearings process to ensure clients receive fair treatment when questions arise concerning their eligibility for benefits.

The districts must notify applicants and recipients about their rights and responsibilities, including the right to a Fair Hearing (hearing). This is done by a booklet developed by OTDA entitled "What You Should Know About Your Rights and Responsibilities." This booklet explains the Fair Hearings process including what actions the client should take to request and prepare for the hearing. In addition, the notice informing individuals of a denial or a change in their benefits enumerates the steps clients must take to request a hearing. If applicants or recipients believe that the district is wrong in denying, reducing or discontinuing their benefits, they can appeal the district's determination by requesting a hearing. The hearing is held before an Administrative Law Judge (Judge) from the

Office of Administrative Hearings (OAH), an office within OTDA's legal department.

Once a hearing is scheduled, districts should take all the necessary steps to support their benefit determinations at the hearing. OAH issues a decision as to whether the district was correct in its determination after each hearing. When a decision is affirmed, the Judge confirms the district was correct in its determination; when a decision is reversed, the Judge determines the district was wrong and orders the district to correct (initiate or restore) the client's benefits; when a case is withdrawn, the district decides not to pursue the case, usually because it is not prepared to process the case and/or cannot produce the appellant's case record. Each hearing could involve more than one issue decided affecting a client's public assistance benefits.

The Federal government mandates time frames during which administrative action must be taken to resolve requests for hearings. For cases related to Food Stamps, hearing decisions must be issued within 60 days of the request for a hearing; for all other cases, hearing decisions must be issued within 90 days of the request. If a current recipient asks for a hearing before the effective date on the notice to reduce or discontinue benefits and requests that benefits continue, benefits continue at the current level (Aid to Continue) until OAH makes the hearing decision.

The mission of OAH is to provide impartial hearings and to issue timely and accurate decisions which review district and OTDA determinations regarding social services programs. OAH is composed of five regional field offices: Albany, Buffalo, Long Island, New York City and Syracuse. Judges at each field office conduct hearings at the appropriate district offices. Table 1 contains selected OAH statistics for the 21 month period ended September 30, 1997.

Table 1

District	Issues Decided	Percent Affirmed	Percent Reversed	Percent Withdrawn	Percent Other
New York City	371,877	13%	32%	53%	2%
Upstate	74,953	54%	14%	27%	5%
Statewide	446,830	20%	29%	49%	2%

Audit Scope, Objectives and Methodology

We audited selected aspects of the OTDA's Fair Hearings process for the period January 1, 1996 through February 28, 1998. The objectives of our audit were to determine whether OTDA has an adequate system to ensure districts take all the necessary steps to support benefit determinations at hearings and within required time frames, and whether districts make timely hearing-related benefit adjustments and establish accounts receivable when appropriate. Our audit did not review the process or the effectiveness of the initial front-end determinations of eligibility for benefits. This objective can not be reasonably conducted without the full cooperation and participation of the NYC Mayor's Office, which to-date has been refused.

To accomplish our objectives, we reviewed OTDA regulations and procedures, interviewed responsible OTDA and district managers, analyzed district hearings information and sent a questionnaire to each district to obtain their feedback about the hearing process. We also sampled district hearing requests at three districts, Dutchess, Nassau and Onondaga. The purpose of our sample was to examine documentation maintained by the districts and to determine whether the appropriate adjustments were made for cases involving public assistance reductions on a timely basis. For cases involving the discontinuance of public assistance benefits, we determined whether the districts established an account receivable for cases involving Aid to Continue. In addition, we determined whether the districts could provide documentation showing they had legitimate reasons for withdrawn requests and reversals. We did not attempt to quantify the costs associated with improving case record management procedures at OTDA or the local districts.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations which are included within our audit scope. Further, these standards require that we understand the OTDA's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by agency management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address in detail activities that may be functioning properly.

Response of OTDA Officials to Audit

Draft copies of this report were provided to OTDA officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix B.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Temporary and Disability Assistance shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein and where recommendations were not implemented, the reasons therefor.

OTDA Monitoring

OTDA is responsible for administering the State's public assistance programs and for overseeing districts' activities, which include making benefit payments, managing recipient case records and supporting district benefit determinations at OAH hearings. However, we found that OTDA does not monitor whether districts are adequately prepared to support their benefit determinations at hearings. We estimated that, over a 6 month benefit period, the fiscal impact of districts' losing hearing decisions due to factors within their control was \$18.6 million. We also believe OTDA must act to ensure the State does not continue to incur unnecessary costs for benefit payments to ineligible individuals. OTDA should increase and improve its monitoring of district operations to ensure the districts adequately prepare for hearings, and that OAH concludes hearings within the required time frames. OTDA should also clarify its procedures for implementing hearing decisions, and ensure districts provide their staff with appropriate training for handling hearing-related transactions. In addition, OTDA should establish adequate system support for district offices to make it easier for district staff to correct benefit payments.

Fiscal Impact of Fair Hearings Losses

We found that neither OAH nor any other OTDA employees monitor whether districts take all the necessary steps to support their benefit determinations at hearings. OAH management told us that a 1989 Executive Order prohibits OAH from helping districts to win hearings. According to this Executive Order, administrative hearings must "be fair in fact and must appear to be fair to the litigants and to the public." While we agree that the Executive Order prohibits OAH from assisting districts, we do not believe it prevents other OTDA staff and officials from taking steps to ensure districts comply with regulations, maintain adequate case records and present these records at hearings.

We believe the fact that statewide the districts are losing 78 percent of the issues decided (29 percent reversals plus 49 percent withdrawals) underscores the importance of OTDA's assuming greater monitoring responsibilities with the goal of improving the process. Such improvements are needed to reduce the fiscal impact associated with the State and districts losing fair hearings due to factors within their control. This is especially important for New York City: this district receives 83 percent of the issues decided, but only 13 percent of its determinations are affirmed while 85 percent (32 percent reversals plus 53 percent withdrawals) are lost.

Preparation For Hearings

Districts control or otherwise manage their case record filing systems. They are responsible for knowing the location of the records at all times because the records may be needed for case administration functions. When districts do not prevail in many of the hearings, due to factors within the district's control, some individuals who are potentially ineligible for benefits continue to receive them.

OAH maintains a database (FHIS) that contains outcome data on the results of fair hearings. For the purposes of our audit, we obtained from OAH a listing of those outcomes and their related data which, according to OAH represented issues which the districts lost primarily because the districts were not prepared for the hearings. Exhibits A and B at the end of this report show in detail the reasons why the determinations of districts statewide were not affirmed.

Using OAH data, we separated the data into discontinuances and reductions. Discontinuances relate to stopping a person's aid; reductions lessen a person's aid. OAH data showed that, for our audit period, 65,052 issues decided were lost statewide due to factors within the districts' control; 57 percent of the controllable defeats were discontinuances and 30 percent were reductions. The remaining 13 percent related to remanded cases which we excluded from our analysis as these cases have no fiscal impact. Table 2 below shows the number of issues which the New York City and upstate districts lost (either through reversal or withdrawal) because they were not prepared for the hearings.

Table 2

	Discontinuances	Reductions
New York City	41,628	21,910
Upstate Districts	992	522
Total	42,620	22,432

However, even if the districts were prepared for all the above hearings, it is unlikely they would have had their determinations affirmed in every issue decided. Therefore, as shown in Table 3, we multiplied the case totals above by the historical rate at which issues are won, to obtain a reasonable estimate of the number of cases the districts could have won. For New York City, we multiplied the above totals by 13 percent; for the upstate districts, we applied a rate of 54 percent. These rates were

calculated by OAH and pertain to the period January 1, 1996 through September 30, 1997.

Table 3

New York City	Discontinuances	Reductions
Total Issues Decided	41,628	21,910
Historical Win Rate	.13	.13
Decisions That Could Have Been Won	5,412	2,848

Upstate	Discontinuances	Reductions
Total Issues Decided	992	522
Historical Win Rate	.54	.54
Decisions That Could Have Been Won	536	282

To estimate the fiscal impact associated with the districts' losing hearings for reasons within their control, we obtained from OAH monthly fiscal impact data. We adjusted these rates to account for the mix of TANF cases and Food Stamp cases and for the discontinuances and reductions within each category.

As shown in Table 4, we applied these adjusted monthly benefit rates to the issues decided that we estimate would have been won by the districts, to determine the monthly and semi-annual fiscal impact associated with the issues decided.

Table 4

New York City	Discontinuances	Reductions
Issues Decided That Could Have Been Won	5,412	2,848
Monthly Rate	\$459	\$119
Monthly Fiscal Impact	\$2,484,108	\$338,912
Impact Over 6 Months	\$14,904,648	\$2,033,472

Upstate	Discontinuances	Reductions
Issues Decided That Could Have Been Won	536	282
Monthly Rate	\$459	\$119
Monthly Fiscal Impact	\$246,024	\$33,558
Impact Over 6 Months	\$1,476,144	\$201,348

As shown in Table 4, we estimated that the fiscal impact associated with hearings lost due to reasons within the districts' control was \$16,380,792 (\$14,904,648 + \$1,476,144) for cases involving benefit discontinuances and \$2,234,820 (\$2,033,472 + \$201,348) for cases involving benefit reductions, for a total of \$18,615,612. Exhibits C and D at the end of this report show the details of our calculation for the New York City and upstate districts, respectively.

In responding to our draft report, OTDA officials stated that the report projects cost savings to the State in gross dollars without consideration of the amount of State financial participation in any of the programs involved. Additionally, OTDA officials stated that the fiscal calculations do not appear to reflect any recognition of the costs associated with corrective action.

Contrary to the statement by OTDA officials, our report does not attempt to project cost savings to the State in gross dollars, without any consideration of the State financial participation in any of the programs involved. As we state consistently throughout the report, we attempted to estimate the fiscal impact of districts' losing hearing decisions due to factors within their control. On this basis, we projected a six month fiscal impact of \$18.6 million. Our estimate of the Federal, State and local shares of this amount are \$5.3 million, \$6.7 million and \$6.6 million, respectively.

OTDA officials are correct that our projections of the fiscal impact of districts losing hearing decisions due to factors within their control do not reflect the costs associated with corrective actions. It was not within the scope of our audit to assess these costs. Additionally, we believe it is the responsibility of OTDA management to identify potential alternative solutions to the problem of district failure to prevail at hearings, to assess the relative merits of these alternatives, and to select the most appropriate, cost effective alternative to resolving the problem. Until the completion

of such an objective process, it would not be possible to estimate the costs associated with corrective actions.

Timeliness of Hearings

Since delays in meeting federally-mandated time limits could result in benefit overpayments that may not be recovered, OTDA should ensure that OAH concludes hearings within the mandated time frames.

Reports from OAH's FHIS database show those TANF, Safety Net (public assistance) and Food Stamp fair hearings which were not concluded within the stipulated time frames. For our audit period, we used the information contained in the database to identify the number of hearings that were not concluded within the appropriate time frames. This information follows in Table 5.

Table 5

	Public Assistance	Food Stamps
New York City	27,950	3,608
Upstate Districts	4,361	744
Totals	32,311	4,352

OAH data showed that, for our audit period, 57 percent of the hearings held during the period January 1, 1996 through September 30, 1997 were discontinuances. We applied this rate to the number of hearings not concluded within the time frames to arrive at an estimated number of hearings that would result in a discontinuance of benefits, as shown in Table 6.

Table 6

	Public Assistance	Food Stamps
New York City	15,931	2,057
Upstate Districts	2,486	424
Totals	18,417	2,481

At our request, OAH provided us with data which we used to calculate that in 56 percent of cases, recipients continued to receive benefits while awaiting their hearing decision. We applied this rate to the number of cases that were discontinued to arrive at the number of discontinued cases

where recipients continued to receive their benefits while awaiting the conclusion of the hearing, as shown in Table 7.

Table 7

	Public Assistance	Food Stamps
New York City	8,921	1,152
Upstate Districts	1,392	237
Totals	10,313	1,389

We applied OAH's monthly benefit rates to the cases that we estimate would have been won by the districts to determine the monthly fiscal impact associated with the cases. We estimate that delays in concluding hearings may have cost districts \$2.8 million in excess benefit payments during the 21 month period ended September 30, 1997. Exhibits E and F at the end of this report contain details of our calculations for the New York City and upstate districts, respectively.

In responding to our draft report, OTDA officials acknowledge that there is a fiscal impact associated with untimely hearing decisions, but disagree with our \$2.8 million estimate of benefit overpayments for the 21 month period ended September 30, 1997. According to OTDA officials, the actual fiscal impact of the untimely issuance of decisions can be determined only by calculating the number of days by which cases exceeded the 90 and 60 day time frames. OTDA officials included such statistics in their response to the draft audit report (the highest average number of days to decision issuance was 79 days for New York City decisions in December of 1996, and nearly 82 days for Upstate decisions in January 1997), but did not provide these statistics to us during the course of the audit. Further, OTDA's use of averages can be misleading. In calculating the averages, OTDA officials combined cases that were decided in excess of the 90 day time frame with cases that were decided in less than the 90 day time frame. Because some of the averages provided by OTDA are relatively close to the time limits, it is apparent that a substantial number of New York City and Upstate decisions were not rendered within the time frames.

District Fair Hearings Procedures

OTDA regulations state that each district must develop its own procedures to ensure that the necessary evidence is prepared to support hearing decisions. Regulation 91 INF-56 indicates steps must be taken to close the case or reduce benefits immediately when a favorable decision is issued to the district.

We sent a questionnaire to each of the State's 58 districts to determine how each district prepares for hearings and whether districts have established adequate procedures for implementing decisions timely. In addition, we asked if the districts had any concerns with the hearing process or if any improvements can be made. Fifty-four districts responded to our survey questionnaire and provided the following feedback.

- Forty-two districts do not formally train workers about the Fair Hearings process.
- Five districts (Franklin, Livingston, Orange, Seneca and Washington) indicated decisions are implemented within ten days of the decision date. One district, Sullivan, responded that decisions are implemented within five days of the decision date.
- Oswego does not have a process in place to make benefit adjustments for hearing decisions. Oswego's response indicates the supervisor follows-up with the appropriate worker when the district receives a notice from Albany that no action has been taken.
- Twelve districts referred to the need to improve the scheduling of hearings. The most consistent response (Broome, Essex, Herkimer, Jefferson, and Tioga) relates to districts' concerns about the excessive number of recipients scheduled for hearings at the same time, which impacts their ability to adequately prepare for hearings. OAH officials told us that they normally bundle 20 hearings before OAH sends a hearing examiner to a district.
- Six districts referred to the need for OAH to make more timely hearing decisions and/or faster notification of hearing decisions.
- Seven districts indicated that OAH is too lenient in allowing a client to adjourn a scheduled hearing.

Responses to our questionnaire show that districts need clarification about the OTDA's procedures concerning the timeliness of implementing hearing decisions. OTDA needs to clarify its procedures to the districts for implementing hearing decisions. The responses also show that districts need additional training on how to prepare for hearings. We believe the responses further illustrate the need for OTDA to implement better monitoring procedures and control techniques.

System Support

OAH has implemented procedures to ensure statutory requirements are met for hearing decision timeliness. OAH maintains the Fair Hearing Information System (FHIS) to track the status of hearing requests. FHIS contains all outcome data on the results of hearings decisions. In addition, FHIS exception reports show hearing requests that remain active for more than three weeks without a scheduled hearing date. FHIS reports also show all cases without a disposition within 60 days of the hearing request date. OAH procedures require hearing supervisors to follow up on these cases to ensure they are resolved promptly.

District staff in Income Maintenance units use the Welfare Management System (WMS), OTDA's benefit payment authorization system, to generate benefit payments for recipients. However, we found that there is no direct link between FHIS and WMS. OTDA officials told us that the current OTDA systems renovation project includes plans to link the two systems. Until this linkage occurs, there is no way district staff in Income Maintenance units can automatically access hearing decision outcomes to make the necessary changes in benefit payments. Districts are responsible for developing a process to inform these Income Maintenance staff about hearing decisions on a timely basis. Districts provide this information to staff through a separate manual process. By establishing the system support districts need, OTDA can help ensure districts make timely adjustments to benefits to reflect hearing decisions.

Recommendations

1. Monitor district Fair Hearings functions to ensure that districts are prepared to support their determinations at hearings.

(OTDA officials acknowledged New York City as a major concern, given that the audit report attributes to New York City over 85 percent of all findings and 98 percent of all issues lost due to controllable factors. According to OTDA officials, the New York City HRA has developed and is in process of implementing a Paperless Office System with an electronic case folder, which when completed, should enable the City to establish management reports identifying problem areas on a Center-by-Center basis. OTDA will undertake selected monitoring of Upstate districts based on statistical or other information documenting slippage.)

2. Ensure that the timeliness standards for issuing hearings decisions are met as required by OTDA regulation.

(OTDA officials stated that, as a result of welfare reforms in the past three years, there has been an increase in hearings requests, which has outpaced OTDA's efforts to achieve timely issuance of decisions, despite additional funding and staff. Since 1995, OAH has been authorized to hire an additional 35 positions, including 18 hearing officers. Additionally, according to officials, OAH took steps to eliminate a backlog of 11,000 unscheduled TANF hearings and a similar effort has reduced the backlog of employment related hearings.)

3. Provide training and assistance in those districts whose outcome results indicate the need for such training and assistance.

(OTDA officials identified several initiatives they are engaged in that will assist local districts in focusing on problem areas and improving performance. These initiatives include the Melrose project, which is the initial phase of an electronic case file, and the redesign of WMS, which will furnish a common intake mechanism for multiple Federal programs in New York.)

Recommendations (Continued)

4. Review the potential improvements in the Fair Hearings process cited by the districts to determine if their implementation can improve the process.

(OTDA officials stated that they will continue to work with local districts to address expressed concerns and suggestions for improvement.)

5. Establish adequate systems support to enable district staff to make corrections to benefit payments more promptly.

(OTDA officials stated that programs linking WMS and FHIS have been discussed, but are in abeyance due to Y2K programming needs. According to the officials, local districts can use data from existing reports and data bases to develop local tracking procedures.)

District Fair Hearings Practices

As part of our audit, we visited the Dutchess, Nassau, and Onondaga districts to determine if they made the appropriate public assistance adjustments for hearing decisions on a timely basis, if they established accounts receivable for overpayments identified, and if district errors had caused reversed and withdrawn requests to occur. We selected these districts based on the results of their hearings. We randomly sampled 50 hearing decisions at each district from OAH's Decisions Issued reports for the period January 1, 1996 through October 15, 1997. Our sample at each district consisted of 25 affirmed decisions and 25 reversed or withdrawn decisions. For each decision included in our sample, we reviewed the public assistance payment histories and information maintained in the district case files to determine whether the appropriate public assistance adjustments were made on a timely basis. We found that the districts had not made the appropriate public assistance adjustments for hearing decisions on a timely basis in 16 percent of the cases (24/150) that we reviewed. We also found the districts had not established an account receivable in most of the appropriate cases. Furthermore, we found that district errors had caused 20 percent of reversed and withdrawn hearing requests to occur.

Public Assistance Adjustments

Regulation Part 358-6.4 states that definitive and final administrative action must be taken timely for all decisions, except those involving Food Stamps only, but in no event more than 90 days from the date of the request for a hearing. If the decision will result in an increase in household Food Stamp benefits, the increase must occur within 60 days from the household's request for a hearing. Decisions which result in a decrease in household Food Stamps benefits must be reflected on the next scheduled issuance following the receipt of the hearing decision. Regulation Part 358-6.6 requires the district to comply with an issued hearing decision, even if the district decides to appeal the hearing decision. OTDA procedure 91 INF-56 requires districts to take immediate steps to close the case or reduce benefits when a favorable decision is issued to the district. Additionally, if Aid to Continue was authorized, districts must take immediate steps to recoup those funds.

During our visit at Dutchess, we found the district did not make the proper public assistance adjustment timely for 7 of the 50 cases reviewed, a 14 percent exception rate. Specifically, we found four public assistance

overpayments totaling \$3,513 and three public assistance underpayments totaling \$12,618. We describe the details of these cases below.

- The district did not implement two hearing decisions. As a result, the district made public assistance payments totaling \$2,199 to appellants in these cases during periods for which they were not entitled to benefits.
- The district paid Aid to Continue totaling \$1,314 while awaiting decisions for two affirmed hearings. Our audit showed that the appellants were ineligible for benefits.
- In one case, the district did not restore the client's public assistance and continue the client's assistance unchanged as instructed by the hearing decision because it was appealing the original decision. As of October 1997, 14 months had elapsed since the original decision and the client had not received \$12,250 of assistance she was entitled to receive.
- In another case, the district underpaid a client \$335 in benefits because it implemented the decision one month late.
- The district also underpaid a client \$33 in benefits in the first month after the hearing decision for another case.

At Nassau, we found the district did not make the proper public assistance adjustment timely for 12 of the 50 cases reviewed, a 24 percent exception rate. Specifically, we found eight public assistance overpayments totaling \$9,461, one public assistance underpayment totaling \$2,059, and three cases in which the district implemented the hearing decisions late.

- Nassau paid Aid to Continue totaling \$8,937 while awaiting decisions for seven affirmed hearings for periods ranging from 30 to 152 days, during which the appellants were ineligible for benefits.
- The district overpaid the client \$236 for Food Stamps and \$288 for Safety Net benefits because this case involved an "expedited" request for public assistance due to emergency circumstances. The client was later determined to be ineligible after benefit payments had been made.

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- In one case, the district underpaid a client \$2,059 because it could not document its redetermination of a client's eligibility for a broker's fee and furniture allowance.
 - Nassau also overpaid a client \$496 because it had implemented a decision 214 days late. However, the district took steps to recoup the overpayment.
 - In another case, the district delayed paying a client \$1,173, the proper retroactive benefits required by the hearing decision, until 146 days after the decision date.
 - Nassau also delayed by 142 days imposing a 45-day public assistance sanction equaling a \$705 reduction in benefits.

At Onondaga, we found that district employees did not make the proper public assistance adjustment timely for 5 of the 50 cases reviewed, a 10 percent exception rate.

- Onondaga paid Aid to Continue totaling \$1,174 while awaiting decisions for four affirmed hearings during periods ranging from 31 to 90 days for which the appellants were ineligible for benefits.
- The district also delayed 48 days reducing a recipient's benefits totaling \$1,140.

We asked the district Fair Hearings managers why these exceptions occurred. The Dutchess manager said that these cases were probably isolated instances. She indicated that one hearing accounted for most of the dollar findings (\$12,250) in our case review. She said the district was unaware it was required by Regulation Part 358-6.6 to make public assistance adjustments for decisions under appeal. As a result, the client did not receive benefits to which she was entitled. The Nassau and Onondaga managers stated their districts sometimes receive the official hearing decision notification late from OAH. As a result, these districts are not always able to implement hearing decisions in a timely fashion.

Improvements are needed to correct procedures used by the districts we visited relative to processing of Fair Hearing decisions. Districts must ensure their practices result in timely and accurate benefit payments to recipients.

Accounts Receivable

During the time of our audit, OTDA procedure 90 LCM-204 requires districts to make reasonable efforts to collect public assistance overpayments involving \$35 or more. For a closed case, the district should send a letter after the case closing informing the former recipient of the outstanding overpayment balance and requesting voluntary repayment or agreement to a repayment plan. If this first effort is not successful, collection efforts must continue so long as they are cost effective or if the overpayment involves fraud. Continued efforts include additional letters advising the client that legal action may be taken, use of collection agents and/or legal action itself. Collection efforts should be suspended on those cases in which, after thorough investigation, it is determined that the individual is unable to pay. The district must maintain a record of the outstanding overpayment in the event that the former recipient's financial circumstances change or the case is reopened. Furthermore, districts should routinely review of closed public assistance cases with outstanding overpayments which have had no collection activity within one year of the review.

In our examination of the 150 cases sampled for review at the three districts we visited, we found that Dutchess, Nassau and Onondaga had made no attempts to recoup overpayments involving the discontinuance or the reduction of benefits. We identified four discontinuance cases at Dutchess, eight cases at Nassau and one case at Onondaga. In none of these cases did the district send a letter to the former recipient requesting voluntary repayment or agreement to a repayment plan. Further, the districts did not establish an account receivable for the outstanding overpayment in any of these cases.

Dutchess and Nassau Fair Hearings managers told us their districts do not attempt to recoup overpayments for cases when they discontinue public assistance because they believe clients lack the ability to repay the district. However, OTDA procedures require the district to perform a thorough investigation before determining that the client is unable to pay. We found no evidence these districts had performed such an investigation. By not actively pursuing recovery of public assistance overpayments to former recipients, the districts do not recognize an additional revenue source for both the district and the State. OTDA needs to ensure that the districts seek the recovery of monies they overpaid to recipients.

The Onondaga Fair Hearings manager told us that one of the benefit reduction cases had been referred to the district's Collection Department, but that an overpayment amount had yet to be determined. She also told

us a recoupment log had been established for another benefit reduction case.

Documentation for Lost Cases

At a hearing involving a district's denial of an application for benefits or a district's refusal to increase benefits which a recipient claims are inadequate, OTDA regulations require that the appellant prove that the district's determination about benefit eligibility or benefit amount is incorrect. If the hearing involves a district's decision to discontinue or reduce current benefits, the district must prove that its determination is correct by presenting adequate supporting documentation.

We reviewed supporting hearing documentation that Dutchess, Nassau and Onondaga maintained to determine whether the districts could show they had legitimate reasons for withdrawn requests and reversals. We found that Dutchess could support the reasons for its withdrawn requests and reversals. However, documentation showed that district errors had caused 20 percent (5/25) of the hearing requests in Nassau and 8 percent (2/25) of the hearing requests in Onondaga. In one Onondaga case, the district had to withdraw from the hearing because it lost the client "Appointment Notice" for a meeting to determine a recipient's continued public assistance eligibility. Without such evidence, the district could not show the client had ample opportunity to prove eligibility. In another case the district had issued a client notice with an incorrect effective date. As a result of these errors, the district had to restore all benefits and withdraw from the hearing.

The district Fair Hearings managers could not explain why these errors had occurred. By not properly documenting that they have considered all the eligibility criteria when making benefit decisions, the district may not be paying public assistance clients and applicants all the benefits they are entitled to.

Recommendations

6. Ensure Fair Hearing decisions are implemented timely.

(OTDA officials stated that they continue to enhance local district capabilities in a number of ways, including mailing issued decisions to each district and HRA income support center on a daily basis and implementing a compliance tracking system, which has enabled OAH to electronically transmit notifications of compliance complaints to every district/center within 24 hours of receipt.)

7. Make the appropriate retroactive benefit payments for the under-payments identified.

(OTDA officials partially responded to this recommendation. OTDA officials stated that this function will continue to require local district input to assure timely issuance of retroactive payments, because of a lack of system support linking WMS and FHIS. In our judgment, OTDA officials should take steps to ensure that the local districts make the appropriate retroactive benefit payments to rectify the under-payments we identified in this report.)

8. Establish a record of the outstanding overpayments identified. Assess whether these overpayments are collectable and, if so, renew recovery efforts.

9. Ensure the necessary cost-effective steps are taken timely to actively recover public assistance overpayments to former recipients.

(In response to recommendations 8 and 9, OTDA officials stated that each district will have to establish its own tracking system for overpayments due and potentially collectible, due to the lack of automated reports from WMS.)

10. Ensure districts maintain case record documentation to support their benefit determinations

(OTDA officials stated that Division of Temporary Assistance staff stress the need for local districts to establish reliable case records and to have data available for review.)

**Total Issues Decided That Were Lost Due To
Factors Within Upstate Districts' Control
January 1, 1996 through September 30, 1997**

Code	Description	Issues Decided
01	Agency Notice Defective	136
41	Agency Notice Defective	2
Subtotal Agency Notice Defective		138
02	Agency Verification and/or Eligibility Procedure Defective	1,030
04	Agency Either Misapplied Law, Regulation or Policy or there was no authority for their Action	1,423
42	Agency Verification and/or Eligibility Procedure Defective	41
44	Agency Either Misapplied Law, Regulation or Policy or there was no authority for their Action	39
Subtotal Involving Incorrect Eligibility Determinations		2,533
03	Agency Hearing Presentation Deficient (Insufficient Documents, Testimony, etc..., but all or part of case record present)	495
43	Agency Hearing Presentation Deficient (Insufficient Documents, Testimony, etc..., but all or part of case record present)	26
Subtotal Involving Inadequate Hearing Presentations		521
05	Agency Failed to Produce Appellant's Case Record	410
20	Agency is not Prepared to Process &/or does not have Appellant's Case Record	910
45	Agency Failed to Produce Appellant's Case Record	3
Subtotal Involving No Case Record		1,323
07	Agency Failed to Send Requested Documents to Appellant	10
Total Issues Decided That Were Lost Due to Controllable Factors		4,525
Average Number of Issues Decided Per Decision Issued		2.6
Adjusted Number of Lost Decisions That Affect Benefit Payments		1,740

**Total Issues Decided That Were Lost Due To
Factors Within New York City's Control
January 1, 1996 through September 30, 1997**

Code	Description	Issues Decided
01	Agency Notice Defective	6,082
41	Agency Notice Defective	27
Subtotal Agency Notice Defective		6,109
02	Agency Verification and/or Eligibility Procedure Defective	6,835
04	Agency Either Misapplied Law, Regulation or Policy or there was no authority for their Action	9,681
42	Agency Verification and/or Eligibility Procedure Defective	618
44	Agency Either Misapplied Law, Regulation or Policy or there was no authority for their Action	202
Subtotal Involving Incorrect Eligibility Determinations		17,336
03	Agency Hearing Presentation Deficient (Insufficient Documents, Testimony, etc..., but all or part of case record present)	14,611
43	Agency Hearing Presentation Deficient (Insufficient Documents, Testimony, etc..., but all or part of case record present)	700
Subtotal Involving Inadequate Hearing Presentations		15,311
05	Agency Failed to Produce Appellant's Case Record	35,797
20	Agency is not Prepared to Process &/or does not have Appellant's Case Record	105,416
45	Agency Failed to Produce Appellant's Case Record	1,077
Less: Code 24 Withdrawals and Unrelated Employment Sanctions		(27,805)
Subtotal Involving No Case Record		114,485
07	Agency Failed to Send Requested Documents to Appellant	127
Total Issues Decided That Were Lost Due to Controllable Factors		153,368
Average Number of Issues Decided Per Decision Issued		2.1
Adjusted Number of Lost Decisions That Affect Benefit Payments		73,032

**Six-Month Estimate of The
Fiscal Impact of New York City Hearing Losses**

a. Adjusted Number of Lost Decisions That Effect Benefit Payments:

Discontinuances:			Percent Discontinued			
73,032	*		57%	=		41,628

Reductions:			Percent Reduced			
73,032	*		30%	=		21,910

b. Calculation of The Number of Hearings won:

Discontinuances:			Percent Won			
41,628	*		13%	=		5,412

Reductions:			Percent Won			
21,910	*		13%	=		2,848

c. Calculation of Monthly Cost Associated With Controllable Hearing Defeats:

Discontinuances:						
5,412	*		\$459	=		\$2,484,108

Reductions:						
2,848	*		\$119	=		\$338,912

d. Costs Associated With Controllable Hearing Discontinuances and Reducations:

Discontinuances:			Months			
\$2,484,108	*		6	=		\$14,904,648

Reductions:			Months			
\$338,912	*		6	=		\$2,033,472

Total Fiscal Impact of New York City Hearing Losses						\$16,938,120
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**Six-Month Estimate of The
Fiscal Impact of Upstate Districts Hearings Losses**

a. Adjusted Number of Lost Decisions That Effect Benefit Payments:

Discontinuances:	Percent Discontinued		
1,740 *	57%	=	992
Reductions:	Percent Reduced		
1,740 *	30%	=	522

b. Calculation of The Number of Hearings Won:

Discontinuances:	Percent Won		
992 *	54%	=	536
Reductions:	Percent Won		
522 *	54%	=	282

c. Calculation of Monthly Costs Associated with Controllable Hearing Defeats:

Discontinuances:			
536 *	\$459	=	\$246,024
Reductions:			
282 *	\$119	=	\$33,558

d. Costs Associated with Controllable Hearing Discontinuances and Reductions

Discontinuances:	Months		
\$246,024 *	6	=	\$1,476,144
Reductions:	Months		
\$33,558 *	6	=	\$201,348
Total Fiscal Impact of Upstate Districts Hearing Losses			\$1,677,492

Fiscal Impact of New York City Hearing Timeliness
January 1, 1996 through September 30, 1997

Public Assistance:

Cases Over 90 Days			Percent of Cases Discontinued		
27,950	*		57.00%	=	15,931
Public Assistance Rate			Months		
\$480	*		3	=	\$1,440
Cases Discontinued			Percent of Cases Receiving Continuing Aid		
15,931	*		56.00%	=	8,921
Cases Receiving Continuing Aid					
8,921	*		\$1,440	=	\$12,846,240

Food Stamps:

Cases Over 60 Days			Percent of Cases Discontinued		
3,608	*		57.00%	=	2,057
Food Stamp Rate			Months		
\$137	*		2	=	\$274
Cases Discontinued			Percent of Cases Receiving Continuing Aid		
2,057	*		56.00%	=	1,152
Cases Receiving Continuing Aid					
1,152	*		\$274	=	\$315,648

Subtotal	\$13,161,888
New York City Win Rate	.13
Total Fiscal Impact of New York City Hearing Timeliness	\$1,711,045

Fiscal Impact of Upstate District Hearing Timeliness
January 1, 1996 through September 30, 1997

Public Assistance:

Cases Over 90 Days					
4,361	*	57.00%	=		2,486
Public Assistance Rate		Months			
\$480.00	*	3	=		\$1,440.00
Cases Discontinued		Percent of Cases receiving Continuing Aid			
2,486	*	56.00%	=		1,392
Cases Receiving Continuing Aid					
1,392	*	\$1,440.00	=		\$2,004,480.00

Food Stamps:

Cases Over 60 Days					
744	*	57.00%	=		424
Food Stamps Rate		Months			
\$137.00	*	2	=		\$274.00
Cases Discontinued		Percent of Cases Receiving Continuing Aid			
424	*	56.00%	=		237
Cases Receiving Continuing Aid					
237	*	\$274.00	=		\$64,938.00

Subtotal	\$2,069,418
Upstate Win Rate	.54
Fiscal Impact of Upstate District Hearing Timeliness	\$1,117,486

Major Contributors to This Report

Kevin McClune
Michael Solomon
Richard Sturm
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Michael Filippone
Nancy Varley



George E. Pataki
Governor

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Brian J. Wing
Commissioner

September 3, 1998

Dear Mr. McClune:

I am writing to comment on the OSC Draft Report 97-S-42 on the fair hearing process. It is my understanding that the present plan is that these comments will be appended to the final Report. Given the serious nature of our comments, particularly those with fiscal implications, I ask that the report be amended to reflect our comments.

For your convenience, I have also attached a copy of our comments on the previous draft report (letter of February 23, 1998, from Russell J. Hanks) and ask that it be appended to your final Report. I was pleased to note that this latest draft of the Report reflects acceptance of many of the points made in our prior letter as well as in our discussions. Nonetheless, a number of serious flaws, both fiscal and operational, remain and require comment.

There are two major areas of concern to us in the Report on the fair hearing process. The first concern deals with the estimated fiscal impact of an asserted lack of preparation by local districts at fair hearings (pp. 6-8). The second concern deals with the estimated fiscal impact of issuing fair hearing decisions beyond the 90 and 60 day time frames (pp. 8-9).

The Report projects cost savings to the State in gross dollars without consideration of the amount of State financial participation in any of the programs involved. The State's share in most of these programs varies from the 100% federally funded Food Stamp Program to 50% for Safety Net Assistance and most other State programs. The fiscal calculations also do not appear to reflect any recognition of the costs associated with corrective action. The largest single problem is the difficulty that HRA experiences in getting files to hearings. Resolution of this problem, prior to implementation of paperless records management, is labor intensive and undoubtedly expensive. OTDA and HRA have recognized this problem and are working together to address it even before the paperless office becomes a reality. For example, the OAH worked closely with HRA to prepare for the large increase in activity involving employment programs. As a result of this focused effort, HRA has achieved a significant improvement in positive hearing performance and outcomes despite a fourfold increase in hearing volume. These results involved a large commitment of funding, staff, and other resources. An examination of this investment would be instructive.

With respect to the impact of aid-continuing beyond mandated time frames, the report calculates a fiscal impact by multiplying the full 90 or 60 day time frame by the respective public assistance or food stamp monthly rate. This analysis contains a basic flaw, since the continuing of aid during these periods is precisely what is mandated by the applicable regulations. The actual fiscal impact of untimely decision issuance can be determined only by calculating the number of days by which cases exceeded the 90 or 60 day time frames. In fact, the average number of days to issuance did not exceed the time frames during the period examined. The highest average number of days to issuance was 79 days for NYC decisions in December 1996, and 81.97 days for Upstate decisions in January 1997. It is noted that the average days to issuance for May 1998 has been reduced to 46.89 days in NYC and 47.84 days Upstate. Accordingly, for those few cases that did exceed the time frames, the average number of days exceeding the time frames was considerably less than 90 and 60 days, making the actual fiscal impact much less than the OSC estimate.

Our efforts to eliminate the backlog of 17,500 unscheduled hearings involving Temporary Assistance to Needy Families, Food Assistance and employment were largely successful. By the end of May 1998, the backlog of cases to be scheduled at 80 Centre Street in New York City was eliminated. Because of scheduling limitations at 16th Street, however, there remains a backlog of approximately 4,000 unscheduled cases involving employment. It is anticipated that this remaining backlog will be addressed by the fall of 1998. The reduction of the backlog by 13,500 cases, and the elimination of the remaining backlog will significantly reduce the number of days to issuance from the hearing request date.

With regard to ensuring timely implementation of decisions by performance monitoring of and assistance to local districts, we continue to endeavor to enhance local district capabilities in these areas in a variety of ways and also agree that the timely implementation of decisions which affirm local district actions is an important goal. To that end we have been exploring methods of direct implementation of affirmed discontinuances at the State level upon issuance of a fair hearing decision. However, while the available technology is close to achieving such capability, the existing legal framework would require the execution of individual memoranda of understanding with each local district for which direct State action would be taken. We are continuing to explore this issue.

The attached letter of February 23, 1998, detailed systems improvements initiated by the Office of Administrative Hearings (OAH) in the transmittal of fair hearing information, and the extensive training of local districts by OAH staff in the use of these systems. It also described the major efforts undertaken by the OAH to train local districts, including HRA, in the basic elements of preparation for fair hearings. In addition, the OAH monitors the performance of local districts through the hearing process itself. In those rare instances where a hearing indicates a systemic problem in the application of law by a local district, the OAH may issue a "directive in similar cases" under 18 NYCRR 358-6.3, which requires the local district involved to report to us corrective action taken within 30 days of the directive.

The Division of Temporary Assistance ("DTA") has taken steps to increase local districts' awareness of fair hearing requirements through a recent statewide teletraining program (see response to comment #3) and its ongoing field monitoring process. The DTA has committed itself to focus on the limited number of districts with high reversal and withdrawal rates. Attached is our response to each of the specific recommendations in the report.

We will continue to explore new and creative ways to ensure that local districts are provided with the information, tools and training necessary to meet the ever-changing challenges of administering public assistance programs.

Sincerely,



Mr. Kevin M. McClune
Director of State Audits
Office of the State Comptroller
Bureau of Management Audit
13th Floor
A.E. Smith State Office Bldg.
Albany, New York 12236-0001

Attachments (2)

cc: Daniel Hogan
Philip Mahar
John E. Robitzek
Russell J. Hanks
David C. Dorpfeld
Patricia Stevens
Jack Madden
Tom Nathan

Our comments on the recommendations in the OSC Draft Report 97-S-42 are as follows:

1. Monitor district Fair Hearings functions to ensure that districts are prepared to support their determinations at hearings.

RESPONSE NYC is of major concern being cited in the audit as representing over 85% of all findings and responsible for 98% of the total issues decided that were lost due to controllable factors.

The Human Resources Administration of New York City has developed the Paperless Office System (POS) which includes an electronic case folder. The POS electronic case folder is currently operational in the Melrose Job Center and is scheduled to be implemented in the remaining Job Centers within the next two years. Plans call for POS to be linked to the Fair Hearing Evidence Management System. Completion of this system and the linking of it with the Fair Hearings information system should enable the City to establish management reports identifying problem areas on a Center-by-Center basis. This data will be reviewed and evaluated by DTA staff.

Selected monitoring in the Upstate districts will be undertaken when statistical or other information documenting slippage in their Fair Hearing preparedness or processing is noted (e.g., DTA local district assessments, field visits, client complaints).

2. Ensure that the timeliness standards for issuing hearings decisions are met as required by ODTA (OTDA) regulation.

RESPONSE Timely issuance of hearings decisions is an issue that arises as the volume of hearings requests increases significantly and available resources become strained. As a result of numerous and substantial welfare reforms enacted at the federal and State level, in the past three years, the OTDA has experienced an unprecedented rise in hearings requests which, despite additional funding and staff, has outpaced our efforts to achieve timely issuance. Workload has grown from 143,679 requests in 1994, to 179,251 in 1995, 202,340 in 1996, and 211,149 in 1997. In addition to the impact of the increased request rate on our operation, there is necessarily a concomitant impact upon local districts. In short, as the increased request rate affects our performance, it also affects the districts' ability to perform their part of the process. In recognition of the increased request rate, this Office, working with the cooperation of the Division of the Budget, has increased its staffing level to help process hearings. Since 1995, OAH has been authorized to hire an additional 35 positions, including 18 hearing officers. These added staffing resources have been essential to meeting the

demands of the workload increases. Unfortunately, the hearing officer corps continues to experience a high turnover rate which has hampered OAH's effort to maintain adequate hearing officer staffing levels to achieve timeliness.

In the spring of 1998 the OAH embarked on an extraordinary effort to eliminate the 11,000 unscheduled hearings involving Temporary Assistance to Needy Families. This effort concluded successfully and as of May 1998 the backlog was eliminated and new requests are now scheduled within three days of receipt. A similar effort involving employment related hearings reduced that backlog from 8,000 to 3,500. The OAH plans to schedule the remainder of these hearings in the fall of 1998.

3. Provide training and assistance to improve win rates at those districts whose outcome results indicate the need for such training and assistance.

RESPONSE The OTDA is engaged in several initiatives that will assist local districts in focusing on problem areas and improving their performance.

The Melrose project is the initial phase of developing an electronic case file which will transform the way in which local districts maintain client records and should virtually eliminate the instances where no file is available at hearings. The redesign of the Welfare Management System (WMS) will furnish a true common intake mechanism for multiple federal programs (TANF, Food Assistance, Medicaid, Title XX) in New York. Also, with regard to HRA, at least as an interim measure, it is worth examining its performance at the employment hearing site. At that site, HRA has been successful.

The OTDA has been developing benchmarks using hearings data for inclusion in quarterly reports, to provide comparative analysis of local district performance and identify program implementation deficiencies toward which necessary resources can be directed. The OTDA now charges back to local districts litigation related attorneys' fees where the cause of the litigation was solely the local district's failure to comply with an OAH directive or decision.

Most recently the OTDA worked with the Office of Children and Family Services and the Department of Labor to develop a teletraining program. This program was presented on August 18, 1998, and provided an overview of local district responsibilities in the administrative fair hearing process beginning with the receipt of a request for an administrative fair hearing, and concluding with the implementation of the Decision after Fair Hearing.

The Agenda included:

- Pre-hearing process, preparation, and
- fair hearing information systems (FHIS)
- aid continuing directives
- conferences
- fair hearing summaries and evidence packets
- case records

Presenting a case at the fair hearing

- notices
- burden of proof
- evidence
- witnesses
- examination of witnesses

Post hearing implementation

- case closings and implementing recoveries in closed cases

The program was designed for Commissioners, Program Directors, Supervisors, and Caseworkers.

The teletraining was provided by the NYS Office of Children and Family Services and the NYS Office of Temporary and Disability Assistance through a contract to the SUNY Research Foundation, Distance Learning Project and the Professional Development Program, Rockefeller College, University at Albany.

4. Review the potential improvements in the Fair Hearings process cited by the districts to determine if their implementation can improve the process.

RESPONSE The OAH will continue its long-standing efforts to work with local districts to address expressed concerns and suggestions for improvement. OAH continuously attempts to accommodate scheduling requests consistent with regulatory requirements and timeliness standards.

The OAH provides daily automated information communication to every local district and HRA center ensuring there is no delay in transmitting hearings information. These entities also have inquiry capabilities into OAH's database. The OAH provided training to over 2,000 local district staff in the past three years on hearings' processes and utilizing hearings' data. The OAH convened a workgroup of local district staff to redesign statistical reports to meet their needs and implemented these design changes. Utilizing consultant staff from the City University of New York, the OAH headed a two-year effort to improve HRA's preparation of evidence packets for hearings. In an effort to assist local districts in improving their hearings performance, the OAH worked extensively to prepare trainers from the State University of New York-Buffalo to deliver training on hearings preparation and presentation.

Hearing adjournment practices are constantly monitored by OAH staff and have resulted in a reduction of adjournment volume over the past several years. Nonetheless, there are limitations on the extent to which adjournments can be restricted since appellants have a right to an adjournment when they have a "good cause" need for such. Cases identified as potentially abusing adjournment rights are earmarked to ensure supervisory review of subsequent adjournment requests. In certain circumstances central office staff will refuse adjournment requests and require that the request be made to the hearing officer for evaluation and determination on the scheduled date.

5. Establish adequate systems support to enable district staff to make corrections to benefit payments more promptly.

RESPONSE Programs linking WMS with FHIS have been discussed. However, all proposals are currently in abeyance due in large part to Y2K programming needs. Local districts can use data available from existing reports and data bases to develop local tracking procedures (paper or automated).

6. Ensure Fair Hearings decisions are implemented timely.

RESPONSE With regard to ensuring timely implementation of decisions by, performance monitoring of and assistance to local districts, the OTDA has and continues to endeavor to enhance local district capabilities in these areas in a variety of ways.

The OAH mails issued decisions promptly to each local district and every HRA income support center on a daily basis. In the past year, working closely with local districts, the OAH developed and implemented an automated compliance tracking system. This process enables OAH to electronically transmit notification of compliance complaints to every district/center within twenty-four hours of receipt. The district/center responds to this notification electronically to enable OAH compliance monitoring staff to assess the action taken. This staff communicates with appellants and district/center staff to ensure the issued decision is fully complied with. In those instances where OAH compliance staff are unable to resolve the matter the case is referred to appropriate program staff for direct intervention at the local level.

7. Make the appropriate retroactive benefit payments for the underpayment identified.

RESPONSE Lacking system support linking WMS and FHIS (see # 5 above), this will continue to require local district input to assure timely issuance of retroactive payments. DTA monitoring (#1 above) will be attentive to identifying local problems and will work with the local districts to remedy them.

8. Establish a record of the outstanding overpayments identified. Assess whether these overpayments are collectable and, if so, renew recovery efforts, and
9. Ensure the necessary steps are taken to actively recover public assistance overpayments for former recipients. This should include, but not necessarily be limited to:
 - . Notifying the former recipient by letter about the amount of the overpayment and request that repayment be made;
 - . Maintaining a record of the outstanding overpayment to former recipient;
 - . Routinely reviewing closed public assistance cases with outstanding overpayments so that recovery action can be initiated as quickly as possible; and
 - . Forwarding uncollectible cases to a collection agency for recoupment.

RESPONSE**TO 8 & 9**

As in # 7 above, lacking automated reports from WMS, each district will have to establish their own tracking system for overpayments due and potentially collectable.

Under Welfare Reform, the State has the flexibility to modify the \$35 threshold established in 1985 under DEFRA. This threshold required that recovery of an overpayment from an individual no longer receiving public assistance be waived if the amount owed was less than \$35. It also required that the district must make a reasonable effort to collect the overpayment when it was \$35 or greater. The State has opted to modify the threshold amount to \$125 and to make the waiver of the collection of amounts under \$125 optional with the local district. Regulations implementing these changes were filed and an Administrative Directive (98 ADM-12) describing the changes was issued to local districts on July 28, 1998. An Administrative Directive (ADM) describing the changes has been prepared and will be issued upon the filing of the regulations. This ADM advises that when the overpayment is \$125 or more and does not involve fraud, the local district must make a reasonable effort to collect the overpayment. The required steps for doing this are detailed in the directive. In addition to receipt of the ADM, local district staff will be alerted at the August teleconference of the above changes and of the ADM being issued.

10. Ensure districts maintain case record documentation to support their benefit determinations

RESPONSE The need to document evidence and the availability of documentation for use at the Fair Hearing will be highlighted throughout the August 18 statewide Fair Hearing Teleconference. Additionally, case record establishment and data maintenance is an area constantly raised by state staff and local staff, especially with regard to the increasing use of electronic data storage. DTA staff constantly stress the need for local districts to establish reliable case records and to have data available for review. Staff is available to review local districts case record procedures and include this issue in their field monitoring and other contact with local district staff.

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(518) 473-4775

February 23, 1998

Mr. Michael F. Cantwell
Associate State Accounts Auditor
Office of the State Comptroller
Management Audit Bureau
A.E. Smith State Office Building
13th Floor
Albany, NY 12236

Dear Mr. Cantwell:

I am writing in response to your letter of January 29, 1998, in which you request comments from the Office of Temporary and Disability Assistance (OTDA) on the preliminary audit findings concerning the hearings process in the Office of Administrative Hearings (OAH).

The findings recommend that OTDA ensure a timely hearings process and timely implementation of decisions by local districts, monitor local district hearings performance and provide training and assistance where necessary. As a general proposition, we do not disagree with much of the draft audit, nor its findings. However, some comments are indicated to provide a clearer context for the audit findings.

Timely issuance of hearings decisions is an issue that arises as the volume of hearings requests increases significantly and available resources become strained. As a result of numerous and substantial welfare reforms enacted at the federal and State level, in the past three years, the OTDA has experienced an unprecedented rise in hearings requests which, despite additional funding and staff, has outpaced our efforts to achieve timely issuance. Workload has grown from 143,679 requests in 1994, to 179,251 in 1995, 202,340 in 1996, and 211,149 in 1997. In addition to the impact of the increased request rate on our operation, there is necessarily a concomitant impact upon local districts. In short, as the increased request rate affects our performance, it also affects the districts' ability to perform their part of the process. In recognition of the increased request rate, this Office, working with the cooperation of the Division of the Budget, has increased its staffing level to help process hearings. Since 1995, the OAH has been authorized to hire an additional 35 positions, including 18 hearing officers. These added staffing resources have been

essential to meeting the demands of the workload increases. Unfortunately, the hearing officer corps continues to experience a high turnover rate which has hampered OAH's effort to maintain adequate hearing officer staffing levels to achieve timeliness.

The OTDA is embarking on an extraordinary effort to eliminate the backlog of 17,500 unscheduled hearings involving Temporary Assistance to Needy Families, and Food Assistance and Employment, which commences on March 2, 1998. During this effort, the OAH will schedule over 1,500 cases per day. We are hopeful of returning to timely processing by May, 1998.

With regard to ensuring timely implementation of decisions by, performance monitoring of and assistance to local districts, the OTDA has and continues to endeavor to enhance local district capabilities in these areas in a variety of ways.

The OAH provides daily automated information communication to every local district and HRA center ensuring there is no delay in transmitting hearings information. These entities also have inquiry capabilities into OAH's database. The OAH provided training to over 2,000 local district staff in the past three years on hearings' processes and utilizing hearings' data. The OAH convened a workgroup of local district staff to redesign statistical reports to meet their needs and implemented these design changes. Utilizing consultant staff from the City University of New York, the OAH headed a two-year effort to improve HRA's preparation of evidence packets for hearings. In an effort to assist local districts in improving their hearings performance, the OAH worked extensively to prepare trainers from the State University of New York-Buffalo to deliver training on hearings preparation and presentation.

The OTDA is engaged in several other initiatives that will assist local districts in focusing on problem areas and improving their performance.

The Melrose project is the initial phase of developing an electronic case file which will transform the way in which local districts maintain client records and should virtually eliminate the instances where no file is available at hearings. The redesign of the Welfare Management System (WMS) will furnish a true common intake mechanism for multiple federal programs (TANF, Food Assistance, Medicaid, Title XX) in New York. Also, with regard to HRA, at least as an interim measure, it is worth examining its performance at the employment hearing site. At that site, HRA has been successful.

Most recently, the OTDA has been developing benchmarks using hearings data for inclusion in quarterly reports, to provide comparative analysis of local district performance and identify program implementation deficiencies toward which necessary resources can be directed. The OTDA now charges back to local districts litigation related attorneys' fees where the cause of the litigation was solely the local district's failure to comply with an OAH directive or decision.

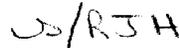
In addition to the audit recommendations another area that requires comment concerns the cost avoidance conclusions that are set forth in the draft audit. While it is likely that the actual cost is substantial, we believe the number cited requires considerable refinement. First, although calculated over a 21 month period, it would (at least to the extent it represents a projection of potential savings) be more useful to display as a full annual amount.

Secondly, although described as a potential savings to New York State, it is not clear whether it reflects costs to districts, the state or the federal government. It would also be useful to display the calculation, by governmental entity, as well as by program. Finally, in this regard, we would like an opportunity for our budget staff to review any revised calculations.

Thirdly, the calculation does not appear to reflect any recognition of the costs associated with corrective action. For example, the largest single problem is the difficulty that HRA experiences in getting files to hearings. Resolution of this problem, prior to implementation of paperless records management, is labor intensive and undoubtedly expensive. That cost should be considered. For example, the OAH worked closely with HRA to prepare for the large increase in activity involving employment programs. As a result of this focused effort, HRA has achieved a significant improvement in positive hearing performance and outcomes despite a fourfold increase in hearing volume. These results involved a large commitment of funding, staff, and other resources. An examination of this investment should be instructive.

The OTDA will continue to explore new and creative ways to ensure that it provides local districts with the information, tools and training necessary to meet the ever-changing challenges of administering public assistance programs.

Sincerely,



Russell J. Hanks
Deputy General Counsel
Office of Administrative Hearings

RJH:mh

cc: Daniel Hogan
John E. Robitzek
David Avenius
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Jim White