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To: otda.dl.hear.nyc.aljs
Cc: Bailly, John (OTDA); Addamo, Sebastian (OTDA); Pedicone, Henry (OTDA); Amiraian, David (OTDA)
Subject: Training memorandum

This memorandum is sent to you as part of the proposed settlement terms in the Meachem v. Wing litigation. The upcoming training that has been scheduled will expound upon it.

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

M E M O R A N D U M

TO: All NYC ALJ's and SHO's

DATE: April 13, 2005

FROM: Russell J. Hanks

SUBJECT: Fair Hearing Training

It is the intention of the Office of Administrative Hearings to continue to provide CLE-accredited training to its hearing officers to reinforce the Office of Administrative Hearings' objective to provide the best possible hearings for the parties before us. We have begun training on and continue to develop a training module dealing with, among other items, proof of mailing and related issues. The curriculum for that on-going training will include the following general principles:

- Defining the issue for review

At the beginning of a hearing, the hearing officer should confirm and clarify the hearing issue requested by the appellant.

- Introduction of documents at the hearing

As documents are being offered as evidence at a hearing, the hearing officer should clearly identify them for the record and indicate on the record that each party has a copy or is being shown a copy of the documents presented.

A collection of documents, such as an evidence packet, should be separately identified to the extent practicable. Each document in a collection should be described by the hearing officer and then marked separately for identification. After a document has been offered as evidence, the hearing officer should indicate on the "green sheet," as well as on the record whether a document is or is not being accepted into evidence. If the hearing officer does not accept a document into evidence, he/she should explain the reason on the record. If the hearing officer chooses not to accept into evidence a document marked for identification, the hearing officer should explain the reason on the record but the document will nonetheless be made part of the fair hearing record. In what is anticipated to be rare instances, if a party offers into evidence voluminous documents that are clearly completely irrelevant to the issue or issues of the hearing, the hearing officer has the discretion not to mark the documents into evidence nor place them in the fair hearing file but should describe the documents and explain why they are irrelevant.

In addition to checking that both sides either have the document, or have been shown it, the hearing officer should give the party being presented with the document an opportunity to review it and ask any questions with regard to the document.

- Mailing affidavits

In cases where affidavits are offered to establish the local agency's procedures with respect to mailing a document, the hearing officer should evaluate whether the affidavit is appropriate for the type of document mailed, and determine whether the presumption of mailing the document was established in the appellant's case. To that end, the evidence presented should correspond with the process described in the affidavit. The hearing officer should also evaluate whether the agency has the appellant's correct address in its records, and, if not, whether the appellant ever properly and timely notified the agency of the his/her correct address.

In sum, the hearing officer should examine and consider all the documents and other evidence in the record in order to determine whether or not the mailing procedure alleged in the affidavit(s) was used for the mailing in question.

- Developing the hearing record

The hearing officer's duties include the responsibility to elicit evidence, if necessary, particularly where the appellant demonstrates difficulty or inability to question a witness (See 18 NYCRR §358-5.6(b)(3), but not to the extent of acting as an appellant's representative.

The recording equipment should be on during the entire hearing. If there is any conversation between the hearing officer and the parties, or between the parties before the recording equipment is turned on, the hearing officer should summarize the conversations on the record. If the hearing officer turns off the recording equipment during the hearing, he or she should state on the record the reason. When the recording equipment is turned back on, the hearing officer should ask the parties if there was any conversation while the equipment was off and, if so, what was said.

If the appellant alleges non-receipt of a mailed document, the hearing officer should explain to both parties that the agency will first be asked to provide evidence that establishes the document was properly mailed and, if mailing is established, the appellant will have a full and fair opportunity to explain why the document at issue was not received. The hearing officer may find an appellant's uncorroborated testimony as sufficient to rebut the agency's claim that the appellant was mailed a notice. If the appellant identifies a document which appears to the hearing officer can corroborate the appellant's testimony on a material issue, the hearing officer should ask the appellant whether he or she would like an adjournment for that purpose and, if so, an adjournment should be granted. The hearing officer may issue subpoenas or take other action, pursuant to 18 NYCRR 358-5.6(b)(8), to compel production of either witnesses or documents.

- Fair Hearing Decisions

When a decision adverse to the appellant turns on the credibility of the appellant, the basis for the determination should be included in the decision. Please note that the lack of documentary evidence is not a per se basis for finding an appellant's testimony incredible. A hearing officer may find uncorroborated testimony to be credible, especially where it is found to be uncontradicted or internally consistent.

I appreciate the warm reception our CLE-accredited training has received from hearing officers and the interest expressed in on-going training. We are continuing to develop and update our curricula and welcome your recommendations for additional topics of concern. As always, hearing officers can refer to the 2002 edition of the Manual For Administrative Law Judges and Hearing Officers for guidance.