

**FREQUENTLY ASKED QUESTION REGARDING HEARINGS
PURSUANT TO SSL §§ 450 & 455 Adoption Subsidy Payments**

Q: What is an adoption subsidy payment?

A: A social services official shall make monthly payments for the care and maintenance of a handicapped or hard to place child whom a social services official or voluntary authorized agency has placed out for adoption or who has been adopted, and who is residing in such social services district. Such payments shall be made until the child's twenty-first birthday to persons with whom the child has been placed, or to persons who have adopted the child and who applied for such payments prior to the adoption, pursuant to a written agreement therefore between such official and such persons; however, that an application may be made subsequent to the adoption if the adoptive parents first become aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption.

Subdivision 3 of this statute provides that the amount of the monthly payments shall be determined pursuant to state Regulations. Section 421.24(c)(14) of 18 NYCRR specifically authorizes an adoptive parent to request a change in the amount paid under the agreement. Such a request is reviewed by the local social services official and, if approved by the local district, is subject to the approval of the State Adoption Service.

Q: What are the types of Adoption subsidy rate payments?

A: Adoption subsidy rates are based on the same rates paid for foster care services. At all times relevant to the hearing, the foster care system provided for three board rates. A foster child qualifies for a "normal" (also known as the "basic" rate), "special" or "exceptional" rate, depending on his/her physical and mental condition. A foster child qualifies for a "normal" (also known as the "basic" rate), "special" or "exceptional" rate, depending on his/her physical and mental condition. The definitions of "basic," "special" & "exceptional" are found in **18 NYCRR § 427.6(c)**

Basic handicapped rate § 421.24-a(2) same as hard-to-place rate

Special rate defined in § 427.6(c)

Exceptional defined in § 427.6 (d)

Timing of applications: **SSL § 453:** A maintenance subsidy application must be filed prior to the date of adoption.

Q: How does a child qualify for a Special or Exceptional rate adoption subsidy?

A: A child qualifies for a "normal", "special" or "exceptional" rate, depending on his physical and mental condition. Pursuant to **18 NYCRR § 427.6(c)** and **(d)**, children requiring "special" and "exceptional" foster care services are defined in part as follows:

(c) If approved by the department, social services districts are eligible to receive State reimbursement for payments for special foster care services made on behalf of children who:

(2) suffer from pronounced physical conditions as a result of which a physician certifies that the child requires a high degree of physical care; or...

(4) have been diagnosed by a qualified psychiatrist or psychologist as being moderately developmentally disabled, emotionally disturbed or having a behavioral disorder to the extent that they require a high degree of supervision.

- (1) If approved by the department, social services districts are eligible to receive State reimbursement for payments for exceptional foster care services made on behalf of children who:
- (2) require, as certified by a physician, 24-hour-a-day care provided by qualified nurses, or persons closely supervised by qualified nurses or physicians; or
- (3) have severe behavioral problems characterized by the infliction of violence on themselves, other persons or their physical surroundings, and who have been certified by a qualified psychiatrist as requiring high levels of individual supervision in the home; or
- (4) have been diagnosed by a qualified physician as having severe mental illness, such as child schizophrenia, severe developmental disabilities, brain damage, or autism....

Q: What is the Appellant’s Right to Appeal an adoption subsidy case?

A: Pursuant to Section 455 of the Social Services Law (SSL), any person aggrieved by the decision of a social services official not to make adoption subsidy payments may appeal to the New York State Office of Children and Family Services.

Q: How do I request an adoption subsidy Hearing?

A: Hearings concerning the removal of foster children from a household may be requested by writing to:

Beth Mancini
Office of Children and Family Services—
Special Hearings Bureau
52 Washington St.
Rensselaer, NY 12144

Q: What should I bring to the Hearing?

A: If after your request, you receive a letter from BSH telling you to appear for a hearing, you must bring with you to the hearing, a copy of the letter, as well as three copies of all documents you want the ALJ to consider as evidence. You should also bring any witnesses you want to have testify for you at the hearing. **You must not bring young children or infants to the hearing as they will not be permitted in the hearing room, and there is no one at the location to watch the children while you are in the hearing.**

Q May I be represented by an attorney at the hearing?

A: Yes. You may hire an attorney but this office will not **appoint** or provide an attorney to represent you, nor pay for any attorney you may choose to hire. If you desire legal assistance and cannot afford an attorney, you may be able to obtain free legal assistance by contacting your local legal aid organization. BSH does not provide attorney’s to Appellants.

Q: May I represent myself at the hearing?

A: Yes. This is known as “Pro se” representation.

Q: May I have someone who is not an attorney assist me at the hearing?

A: Yes. However, that person cannot also be a witness on your behalf.

Q: Will I be provided a translator at my hearing if I have difficulty understanding English?

A: Yes. You or someone on your behalf will need to call the phone number on your scheduling notice and advise what language you speak. A translator for that language will be present at the hearing at no cost to you.

Q: What if I need to adjourn my hearing?

A: Adjournment requests must be made, in writing to the assigned ALJ at least five days prior to the scheduled hearing date. Requests made by phone and/or in less than five days prior MAY be granted under extraordinary circumstances. The adjournment reason must be stated and, where possible, supported by documentation.

Q: What happens if I fail to appear at my hearing?

A: You will be deemed to be in default and the Agency's action or determination will be sustained.

Q: What is the evidence standard at the hearing?

A: As with all state administrative hearings, the rules of evidence are relaxed. Hearsay is admissible and may be relied upon for crucial factual determinations. Admissibility does not equate to reliability/credibility.

Q: Who has the burden of proof at the hearing?

A: The Appellant has the burden of prove on hearings involving the issues of eligibility for example on a request for an upgrade of the subsidy rate; and the Agency has the burden on a denial for example a denial of an application for subsidy.

Q: What issues are decided at the hearing?

- A: 1. Date when the subsidy is given (pick-up date)
2. Adequacy of the subsidy (level of payment) –Upgrade Requests
3. Denial or discontinuance of a subsidy by City or State
4. Was an application made?
5. Does child meet any of the criteria for eligibility?
6. Pre-existing condition issues
7. Retroactive Payment issues
8. Reimbursable Adoption Expenses
9. Subsidy payments as it relates to the out of home child, incarcerated child and deceased adoptive parent.

Q: What are the facts to be established at the Hearing?

A: Child's birth name: if different from adoptive name (may be important just to establish that earlier records referring to child "x" actually refers to child who is subject of the hearing).

Child's Information: date of birth; date placed into the Appellant's home; date the Adoption Placement Agreement is signed; date Adoption Subsidy Agreement is signed; and date of adoption.

Rate Appellant received for child, while child was in foster care: (pursue diligently if child received higher rate in foster care than now receiving as a subsidy. A lower subsidy amount is

not uncommon but it should raise a flag, as it may be indicative of serious agency error. Be sure that any difference is adequately explained on the record

Names and titles of all personnel: (State, City or County and private agency) who have made decisions on the case.

In Medical Cases: Exact diagnoses and dates they were made; names of physicians and their exact specialties (the emotional handicaps have to be certified by psychologists or psychiatrists). If an internist or neurologists writes of some mental/emotional condition, the ALJ may have to persuade the parent to withdraw present case and get more documentation from the appropriate specialist). For subsidies, evaluations by non-physicians will not suffice as proof of a condition but may serve to suggest avenues that the Appellant should explore with a physician. Be careful of agency “medical coordinators” who are often nurses or social workers. “Therapist” may refer to non-Ph.D. or even to speech or occupational therapists. School district IEPs are rarely probative.

Q: What is a hearing via video conference?

A: Any hearing may be held using video-conference equipment. The proceedings will be conducted in a manner that is similar to when all parties are in the same room. Participants will be required to sit in front of a television monitor and can see the ALJ at the other location. The ALJ will be able to see, hear and speak with you and the other side. Documents the parties want to show the ALJ can be sent to the Judge using a scanner in the hearing room. The ALJ will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using audio means only. Only one person shall talk at a time as directed by the ALJ.

Q: How will the Agency present its evidence?

A: The agency may present evidence in the form of witness testimony or documents they prepared or obtained.

Q: When can I review what will be offered into evidence by the investigating agency?

A: Pursuant to OCFS regulations regarding your hearing, you are entitled to a copy of all documentary evidence the agency intends to introduce as exhibits at the hearing. These documents will be provided to you upon request or at the start of your hearing.

Q: Can I challenge the evidence offered by the agency?

A: Yes. You may object to the documents being introduced at the hearing and the ALJ will decide if the documents are allowed into evidence. You will also be given the opportunity to question any witnesses who testify for the agency: this is known as cross-examination. The agency will also have an opportunity to challenge the evidence offered by you and to ask questions of you and any witnesses you call to testify.

Q: How can I present my evidence?

A: First, you can testify. Your own testimony is considered to be “evidence.” Second, you can submit any evidentiary documentation that directly relates to issue to be determined. Please bring to the hearing an original and two copies of any document or photograph that you wish to present. Audio or video recordings will be retained by the ALJ.

Q: May I present witnesses to testify on my behalf?

A: Yes. Your witness testimony should directly relate to issue at the hearing.

Q: What should I do if my witness is unable to appear in person?

A: You may present statements, sworn affidavits or letters from witnesses who cannot appear in person. Letters should be dated, signed and, if possible, acknowledged before a Notary Public. Please be advised that the ALJ can give less weight to such statements, affidavits, or letters because they are not subject to cross-examination.

Q: Is the hearing recorded?

A: Yes. Speak loudly and clearly. Avoid gestures as they will not be picked up by the recording device.

Q: How will the outcome of my hearing be communicated to me?

A: Once the hearing is over, a written decision will be mailed to you and to your attorney or other representative if you have one. It is your responsibility to keep our office informed of any change of address.

Q: What happens if the decision says I won my hearing?

A: The decision will explain and give directives to the Agency with respect to the adoption subsidy issue heard reversing or remanding the Agency's determination.

Q: What happens if the decision says I lost my hearing?

A: The decision will sustain the Agency's determination and you may bring a lawsuit in accordance with Article 78 of the Civil Practice Law and Rules. If you wish to do so and do not know how, you may contact the legal resources available to you such as County Bar Association, Legal Aid, Legal Services, etc... You must start such a lawsuit within four months after the date of the decision.

**FREQUENTLY ASKED QUESTION REGARDING HEARINGS
PURSUANT TO SSL § 400 Foster Care Removal**

Q: What is a foster care hearing and how is it initiated?

A: Whenever a social services official or another authorized agency acting on his or her behalf proposes to remove a child in foster family care from the foster family home, he/she or such other authorized agency, as may be appropriate, must notify the foster family parents of the intention to remove such child. This notice must be in writing. Such notification must be given at least 10 days prior to the proposed effective date of the removal, except where the health or safety of the child requires that the child be removed immediately from the foster family home. The regulation do not require that a notice list the reasons for the removal. Such notification must further advise the foster family parents that they may request a conference with the social services official or a designated employee of the social services district at which time the foster parents, with or without a representative, may appear to have the proposed action reviewed, be advised of the reasons therefore and be afforded an opportunity to submit reasons why the child should not be removed. Each social services official must instruct and require any authorized agency acting on the official's behalf to furnish notice in accordance with the provisions of this section. Foster parents who do not object to the removal of the child from their home may waive in writing their right to the 10-day notice, provided, that such waiver shall not be executed prior to the social services official's or authorized agency's determination to remove the child from the foster home and the receipt by the foster parents of notification of such determination.

Q: What are the most common reasons for a foster child's removal from a home?

A: There are various reasons under which the local district (or a foster care agency) exercising its discretionary powers as granted by statute can act in the removal of a child in foster care.

1. Family Court Ordered Removal
2. Alleged Abuse and/or Maltreatment
3. Alleged Lack of Appropriate Guardianship/Supervision
4. Sibling Reunification
5. Return to Parent(s)
6. Permanency Plan Goal
7. Trial Discharge
8. Unhealthy and Dirty Living Conditions
9. Health and Safety Issues
10. Financial Irregularities
11. SCR Indicated Reports/Criminal Convictions
12. Other Miscellaneous Reasons

Q: What is the Appellant's Right to Appeal a foster care removal Hearing?

A: Pursuant to § 400 of the Social Services Law (SSL), any person who is aggrieved by a Social Services official's determination to remove a child from a foster care placement in a family home may appeal that determination to the New York State Office of Children and Family Services (the Office). Social Services Law § 400 provides: When any child shall have been placed in an institution or in a family home by a social services official, the social services official may

remove such child from such institution or family home and make such disposition of such child as is provided by law.

Q: How do I request a foster care removal Hearing?

A: Hearings concerning foster care removals may be requested by writing to:

Beth Mancini

Office of Children and Family Services—

Special Hearings Bureau

52 Washington St.

Rensselaer, NY 12144

When foster care parents are requesting a hearing, the letter to the Bureau of Special Hearings, letter should contain the following:

- Child's name and CIN #
- Foster Parent's name, address and daytime phone #
- The name and address of the Foster Care Agency that placed the child and the name of a contact person at that Agency.
- A copy of the conference determination (Independent Review) - if an Independent Review Conference was held
- A brief explanation that the child was or is being removed and when.
- Also, in NYC requestors can contact Kathy Guertin and request the Independent Review if they have not done so. (212-676-9002)

Q: What is an Independent Review?

A: The Independent Review decision is merely evidence of the local district's final, official determination regarding the removal of the child(ren) and should be marked into the hearing record for that reason. The Independent Review decision can be used as a guide to limit the issues to be reviewed at the hearing.

Q: What should I bring to the Hearing?

A: If after your request, you receive a letter from BSH telling you to appear for a hearing, you must bring with you to the hearing, a copy of the letter, as well as three copies of all documents you want the ALJ to consider as evidence. You should also bring any witnesses you want to have testify for you at the hearing. **You must not bring young children or infants to the hearing as they will not be permitted in the hearing room, and there is no one at the location to watch the children while you are in the hearing.**

Q May I be represented by an attorney at the hearing?

A: Yes. You may hire an attorney but this office will not **appoint** or provide an attorney to represent you, nor pay for any attorney you may choose to hire. If you desire legal assistance and cannot afford an attorney, you may be able to obtain free legal assistance by contacting your local legal aid organization. BSH does not provide attorney's to Appellants.

Q: May I represent myself at the hearing?

A: Yes. This is known as "Pro se" representation.

Q: May I have someone who is not an attorney assist me at the hearing?

A: Yes. However, that person cannot also be a witness on your behalf.

Q: Will I be provided a translator at my hearing if I have difficulty understanding English?

A: Yes. You or someone on your behalf will need to call the phone number on your scheduling notice and advise what language you speak. A translator for that language will be present at the hearing at no cost to you.

Q: What if I need to adjourn my hearing?

A: Adjournment requests must be made, in writing to the assigned ALJ at least five days prior to the scheduled hearing date. Requests made by phone and/or in less than five days prior MAY be granted under extraordinary circumstances. The adjournment reason must be stated and, where possible, supported by documentation.

Q: What happens if I fail to appear at my hearing?

A: You will be deemed to be in default and the Agency's removal action will be sustained.

Q: What is the evidence standard at the hearing?

A: As with all state administrative hearings, the rules of evidence are relaxed. Hearsay is admissible and may be relied upon for crucial factual determinations. Admissibility does not equate to reliability/credibility. Probably the most contentious issue in removal hearings is the consideration of evidence relating to *post-removal* events. Normally, the appropriate evidence to take in is evidence of *the information the foster care agency had at the time it made the removal determination*. Note in Foster Care Removal hearings the purpose of the hearing is to determine whether or not the local agency's decision to remove the foster child from the Appellant's home was a proper exercise of the Agency's discretion. Further, the standard of review is whether the decision to remove the foster child was arbitrary and capricious. Under Social Services Law § 400 "arbitrary and capricious" means lacking in substantial evidence. In addition, under N.Y. CPLR § 7083, the arbitrary action is "action without sound basis in reason and is generally taken without regard to the facts.

Q: Who has the burden of proof at the hearing?

A: The foster parent (Appellant) has the burden of proving that the foster care agency's removal determination was "arbitrary and capricious." If the foster care agency's action was deemed reasonable, it must be sustained. Although the burden is on the Appellant to show that the foster care agency's determination was arbitrary, the foster care agency goes forward first at the hearing in the presentation of evidence.

Q: What issues are decided at the hearing?

A: Whether the Agency's determination to remove the foster child from the Appellant's foster care home was a proper exercise of the Agency's discretion.

Q: What is a hearing via video conference?

A: Any hearing may be held using video-conference equipment. The proceedings will be conducted in a manner that is similar to when all parties are in the same room. Participants will be required to sit in front of a television monitor and can see the ALJ at the other location. The ALJ will be able to see, hear and speak with you and the other side. Documents the parties want to show the ALJ can be sent to the Judge using a scanner in the hearing room. The ALJ will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using audio means only. Only one person shall talk at a time as directed by the ALJ.

Q: How will the Agency present its evidence?

A: The agency may present evidence in the form of witness testimony or documents they prepared or obtained during the course of the removal.

Q: When can I review what will be offered into evidence by the investigating agency?

A: Pursuant to OCFS regulations regarding your hearing, you are entitled to a copy of all documentary evidence the agency intends to introduce as exhibits at the hearing. These documents will be provided to you upon request or at the start of your hearing.

Q: Can I challenge the evidence offered by the agency?

A: Yes. You may object to the documents being introduced at the hearing and the ALJ will decide if the documents are allowed into evidence. You will also be given the opportunity to question any witnesses who testify for the agency: this is known as cross-examination. The agency will also have an opportunity to challenge the evidence offered by you and to ask questions of you and any witnesses you call to testify.

Q: How can I present my evidence?

A: First, you can testify. Your own testimony is considered to be “evidence.” Second, you can submit any evidentiary documentation that directly relates to the removal of the child from your foster home. Please bring to the hearing an original and two copies of any document or photograph that you wish to present. Audio or video recordings will be retained by the ALJ.

Q: May I present witnesses to testify on my behalf?

A: Yes. Your witness testimony should directly relate to issue of the removal and the circumstances leading to it.

Q: What should I do if my witness is unable to appear in person?

A: You may present statements, sworn affidavits or letters from witnesses who cannot appear in person. Letters should be dated, signed and, if possible, acknowledged before a Notary Public. Please be advised that the ALJ can give less weight to such statements, affidavits, or letters because they are not subject to cross-examination.

Q: Is the hearing recorded?

A: Yes. Speak loudly and clearly. Avoid gestures as they will not be picked up by the recording device.

Q: How will the outcome of my hearing be communicated to me?

A: Once the hearing is over, a written decision will be mailed to you and to your attorney or other representative if you have one. It is your responsibility to keep our office informed of any change of address.

Q: What happens if the decision says I won my hearing?

A: The decision will explain and give directives to the Agency, reversing or remanding the Agency’s removal determination.

Q: What happens if the decision says I lost my hearing?

A: The decision will sustain the Agency’s removal determination and you may bring a lawsuit in accordance with Article 78 of the Civil Practice Law and Rules. If you wish to do so and do not know how, you may contact the legal resources available to you such as County Bar Association, Legal Aid, Legal Services, etc... You must start such a lawsuit within four months after the date of the decision.