

## **FREQUENTLY ASKED QUESTION REGARDING HEARINGS PURSUANT TO SSL §§ 422 AND 424**

### **Why did I get a letter asking me to show up for an initial appearance or hearing?**

**A:** You are considered to be the Appellant(s) in this matter and have been scheduled for either an initial appearance or a full hearing pursuant to section 422 and/or 424-a of the Social Services Law (SSL). If the letter you receive from the New York State Office of Children and Family Services Bureau of Special Hearings (BSH) tells you that you are to appear for an initial appearance, it means you are not having your full hearing that day. You will meet with the Administrative Law Judge (ALJ) and the other side to discuss what will happen at the hearing and how you can prepare for the hearing. At this initial appearance, you will be given a date by the ALJ to come back for a full hearing. You should not bring any witnesses to the initial appearance because the hearing will not begin on that date. If the letter that you received from BSH tells you that you are to appear for a full hearing, see the answer to next question.

### **Q: What should I bring to the Hearing?**

**A:** If the letter you receive from BSH tells 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. \*Note: If the report(s) stem from employment where you were a member of a union at the time of the report, check with your union to see if they will assist you with legal representation. 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 initial appearance and/or hearing?**

**A:** You will be deemed to be in default. The report will be retained by the State Central Register until ten years after the 18th birthday of the youngest child named in the report, whether or not that child was

considered abused or maltreated. The existence of the report will be disclosed to licensing and provider agencies authorized to inquire pursuant to SSL § 424-a.

**Q: What is the evidence standard at the hearing?**

**A:** The investigating agency must show that the indicated findings are supported by a “fair preponderance of the evidence” defined as “evidence which outweighs other evidence offered to oppose it.” 18 NYCRR 424.10.

**Q: What issues are decided at the hearing?**

**A:** If your hearing is held pursuant to SSL §§ 422 or 424-a, the investigating agency has the burden of proving by a fair preponderance of the evidence that the abuse or maltreatment alleged occurred. If your hearing is held pursuant to SSL § 422, you have the burden of proving whether the abuse or maltreatment, if proven, is no longer relevant and reasonably related to child care issues (see “Guidelines For Determining Whether Indicated Instances of Child Abuse And Maltreatment Are Relevant And Reasonably Related to Employment Or Licensure” in the SCR Packet).

**Q What is a hearing via video conference:**

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 investigating agency present its evidence?**

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

**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 investigating agency intends to introduce as exhibits at the hearing. These documents will be provided to you at the initial appearance or mailed to you provided to the start of your hearing.

**Q: Can I challenge the evidence offered by the investigating 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 investigating agency: this is known as cross-examination. The investigating 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: What is the State Central Register (SCR) Packet?**

**A:** Prior to your first appearance, you should receive a packet of information from the New York State Central Register of Child Abuse and Maltreatment. This will be referred to as the SCR packet. Please advise the ALJ at your first appearance if you have not received this packet. The SCR Packet is entered into evidence at the hearing. It is not, however, entered into evidence to prove the allegations against you.

It is presented to establish what information is on file at the State Central Register that you are seeking to have amended.

**Q: How can I present my evidence?**

**A:** First, you can testify. Your own testimony is considered to be “evidence.” You have the right to not testify, but unlike criminal proceedings, your silence may be held against you. Second, you can submit any evidentiary documentation that directly relates to the findings contained in the indicated report(s). 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. If your hearing is being held pursuant to SSL § 422, you should also be prepared to present evidence regarding any efforts at rehabilitation since the time the report was made. For example, if you and/or your child or children have completed counseling, treatment, educational or training programs you should bring documentation to establish successful completion. This evidence will be considered in determining if the report is no longer relevant and reasonably related to child care issues. For a more detailed description of guidelines regarding this issue you can review the SCR Stip Packet which has that information.

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

**A:** Yes. Your witness testimony should directly relate to the findings contained in the indicated reports(s) or to the issue of whether the report is still relevant and reasonably related to child care.

**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 that the indicated report or reports will be amended to reflect that you did not do the acts of abuse or maltreatment. The report or reports will not be disclosed to agencies who ask about them.

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

**A:** If the decision states that the report or reports will remain indicated against you because the investigating agency proved the abuse or maltreatment, 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.