§ 22. Appeals and fair hearings; judicial review. 1. Any person described in subdivision three of this section, or any individual authorized to act on behalf of any such person, may appeal to the department from decisions of social services officials or failures to make decisions upon grounds specified in subdivision five of this section. The department shall review the case and give such person an opportunity for a fair hearing thereon. The department may also, on its own motion, review any decision made or any case in which a decision has not been made by a social services official within the time specified by law or regulations of the department. The department may make such additional investigation as it may deem necessary, and the commissioner shall make such decision as is justified and is in conformity with the provisions of this chapter, the regulations of the department, a comprehensive annual services program plan then in effect pursuant to title twenty of the federal social security act and any other applicable provisions of law.

2. In connection with any appeal pursuant to this section, with or without a fair hearing, the commissioner may designate and authorize one or more appropriate members of his staff to consider and decide such appeals. Any staff member so designated and authorized shall have authority to decide such appeals on behalf of the commissioner with the same force and effect as if the commissioner had made the decisions. Fair hearings held in connection with such appeals shall be held on behalf of the commissioner by members of his staff who are employed for such purposes or who have been designated and authorized by him therefor. The provisions of this subdivision shall apply to fair hearings conducted pursuant to subdivision eight of section four hundred twenty-two of this chapter, and to any hearing required pursuant to this chapter concerning the denial, suspension or revocation of any permit, certificate or license, and to any hearing held pursuant to section four hundred fifty-five of this chapter.

* 2-a. With regard to fair hearings held in connection with appeals for integrated fair hearing and appeals processes for individuals dually eligible for medical assistance and benefits available under titles XVIII and XIX of the federal social security act, the commissioner may contract for the sole purpose of assisting staff of the office for such

purpose.

* NB Expires January 1, 2028

3. Persons entitled to appeal to the department pursuant to this section shall include:

(a) Applicants for or recipients of aid to dependent children, emergency assistance for families with dependent children, home relief, veteran assistance, medical assistance for needy persons and any service authorized or required to be made available in the geographic area in which such person resides, pursuant to the provisions of this chapter;

(b) Applicants for or participants in the food stamp program, pursuant to section ninety-five of this chapter and regulations of the department;

(c) Applicants for or recipients of emergency assistance for aged, blind and disabled persons, pursuant to title eight of article five of this chapter, so long as such emergency assistance is available pursuant to such law;

(d) Aggrieved persons described in section four hundred of this chapter;

* (e) Aggrieved persons, agencies or social services districts described in section three hundred seventy-two-e of this chapter;

* NB Effective until June 30, 2027

* (e) Aggrieved persons, agencies or social services districts described in sections one hundred fifty-three-d, three hundred seventy-two-e and three hundred ninety-eight-b of this chapter;

* NB Effective June 30, 2027

(f) Unless an agreement is in effect for federal administration of additional state payments pursuant to section two hundred eleven of this chapter, applicants for and recipients of additional state payments as defined in subdivision two of section two hundred eight of this chapter; and

(g) Other persons entitled to an opportunity for fair hearings pursuant to regulations of the department.

4. (a) Except as provided in paragraph (c) of subdivision two of section four hundred twenty-four-a of this chapter and in paragraph (b) of this subdivision, any appeal pursuant to this section must be

requested within sixty days after the date of the action or failure to act complained of.

(b) Unless a different period is mandated by federal law or regulations, a person is allowed to request a fair hearing on any action of a social services district relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. For purposes of this paragraph, such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

5. Grounds for such appeals shall be specified in regulations of the department, but shall include at least the following:

(a) Denial of any application.

(b) Failure to act upon any application within thirty days after filing, except applications for home relief, or failure to comply with laws and regulations requiring that priority be given to certain applications for assistance, or failure to act on any application for home relief within forty-five days after filing.

(c) Inadequacy in amount or manner of payment of assistance.

(d) Discontinuance in whole or in part of assistance, or termination of a service authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.

(e) Failure to permit a parent or guardian to visit the child or failure to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state consolidated services plan, to the child and to the parent or guardian, pursuant to an instrument executed under section three hundred eighty-four-a of this chapter.

(f) Failure to provide adoption services or assistance to a prospective adoptive parent on behalf of a child freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act pursuant to section three hundred seventy-two-b of this chapter and the local social services district's consolidated services plan.

6. In scheduling fair hearings on appeals concerning applications for emergency assistance pursuant to section three hundred fifty-j or title eight of article five of this chapter, the department shall give priority to the hearing and determination of such appeals.

7. For the purposes of this section, except subdivision nine, social services officials shall include the persons described in subdivision fourteen of section two of this chapter and also the head of any bureau of the department which exercises responsibility pursuant to this chapter for determining eligibility for and furnishing public assistance and care to persons in family care pursuant to section one hundred thirty-eight-a of this chapter, or for determining eligibility for and furnishing medical assistance pursuant to subdivision two, three or four of section three hundred sixty-five of this chapter, or for determining eligibility for and furnishing services pursuant to section two hundred fifty-three of this chapter.

8. The department shall promulgate such regulations, not inconsistent with federal or state law, as may be necessary to implement the provisions of this section. Such regulations shall require that a copy of all decisions made concerning appeals pursuant to this section shall be sent to each party to such appeals and their representatives, if any.

9. (a) All decisions of the commissioner pursuant to this section shall be binding upon the social services districts involved and shall be complied with by the social services officials thereof.

(b) Any aggrieved party to an appeal, including a social services official provided an application by any such social services official has not been determined by any federal agency to be in violation of federal law, may apply for review as provided in article seventy-eight of the civil practice law and rules.

(c) The provisions of paragraph (a) shall be applicable to a social services official after the decision of the commissioner becomes final and binding unless a court stays such decision. No such stay shall be issued by any court unless the social services official establishes that irreputable harm will result if a stay is not granted, and the

probability that he will succeed on the merits. In an action or proceeding to review a decision of the commissioner, the applicant or recipient and his representative, if any, shall be served with copies of all pleadings and shall be allowed to intervene in such action or proceeding as a matter of right. Notwithstanding any provision of the civil practice law and rules or any other law to the contrary, any application by a social services official for a stay in a proceeding commenced by such official pursuant to this section shall be determined by the appropriate appellate division, and not by a justice of the supreme court. Whenever the commissioner has sustained an appeal by a recipient of public assistance or care with respect to benefits which were continued pending the fair hearing decision, the appellate division shall not stay the fair hearing decision prior to the initial determination of the proceeding initiated pursuant to this section for the review of such fair hearing decision.

(d) Every person entitled to a benefit pursuant to a decision of the commissioner under this section, shall be advised to contact the department in a manner specified by department regulations, in the event that a local social services district does not comply with such decision.

10. In connection with every determination of an appeal pursuant to this section, the department shall inform every party thereto, and his representative, if any, of the availability of judicial review and the time limitation thereon.

11. The provisions of subdivisions three and four of section twenty of this chapter shall be applicable to state reimbursement otherwise payable to any social services district in the event of the failure of a social services official to comply with a commissioner's determination upon an appeal within the time required by regulations of the department or such additional time as the commissioner may allow. In the event that the court stays any such determination in a proceeding pursuant to article seventy-eight of the civil practice law and rules, state reimbursement shall not be withheld or denied pursuant to this subdivision for non-compliance during such stay. Nothing in this subdivision shall limit the power of a court in a proceeding pursuant to

article seventy-eight of the civil practice law and rules to order a social services official to comply with a commissioner's determination upon an appeal.

12. Every applicant or recipient of public assistance and care shall be informed in writing, through the distribution of an informational pamphlet, at the time of application and at the time of any action affecting his receipt of assistance or care:

(a) of his right to an appeal or fair hearing;

(b) of the method by which he may obtain an appeal or fair hearing;

(c) of his right to representation by legal counsel, or by a relative, friend, or other spokesmen, or that he may represent himself;

(d) of the availability of community legal services to assist him in the appeal or fair hearings process;

(e) of the nature of the precedures to be followed throughout an appeal or fair hearing;

(f) of the types of information he may wish to submit at an appeal or fair hearing;

(g) of any additional information which would clarify the appeals and fair hearings procedure for applicants and recipients of public assistance and care, and would assist such persons in more adequate preparation for such hearings.

13. Whenever under other provisions of this chapter an applicant or recipient of public assistance or care may appeal to the department a decision of a social services official, or the failure of such official to act on his application within the required period, and may request a fair hearing thereon, if such applicant or recipient requires legal services in connection with such an appeal and fair hearing and such services are not otherwise available to him, the social services official shall, upon request, make provision for payment for such legal services if required by federal law or regulations.

14. To provide an analysis of the outcome of the fair hearings process within the office of temporary and disability assistance to identify inadequacies and potential improvements in the functioning of the fair hearings system, such office shall prepare for inclusion in the annual

report required by subdivision (d) of section seventeen of this article to be filed with the governor and the legislature prior to the fifteenth day of December of each year, a report containing with respect to income maintenance programs, including the family assistance program, the safety net assistance program, the medical assistance program and any other program, the number of affirmations and reversals by local districts and by program including a breakdown by local districts of the number of fair hearings requested by program and the number of fair hearings held by program, formal requests by local districts and recipients for reconsideration or rehearing of appeals, and a summary of court actions on hearing decisions.