

HH0004 - Health Homes (HH) and Home and Community Based Services (HCBS) Notices and Fair Hearings Policy

These Frequently Asked Questions (FAQ) are provided in response to questions submitted during the HH0004 - Health Home Fair Hearing Policy webinar training on July 20, 2026. These FAQs and the HH0004 - Health Home Fair Hearing Policy can be accessed on the [Health Home Policy and Updates](#) webpage under *Eligibility*.

Please submit any questions related to these FAQs to the [Health Home Bureau Mail Log](#) or reach out to healthhomes@health.ny.gov with questions and/or feedback.

Category	Questions/Comments	Response
Reasons for filing a Fair Hearing	For what reasons can a fair hearing be filed, is it only related to eligibility reasons for the health home and children's waiver	Please refer to policy HH0004, which outlines the reasons why a Fair Hearing can be requested by a member.
Conflict of Interest	Would you be able to further explain or give an example of what this paragraph means? Attending on behalf of or as a witness for the member constitutes a conflict of interest for the provider representing the Health Home (HH) Children and Youth Evaluation Services (C-YES)/Qualified Individual Identified by the State (QIIS) finds their designee is not performing their role as representative, the Health Home/Department of Health/Office of Mental Health reserves the right to directly assume all activities related to the Fair Hearing process. Health Home (HH) reports to the Department through the Fair Hearing mail log cc: DOH liaison, any provider's (Care Management Agency) conduct that deliberately or otherwise undermines the appropriate fulfillment of the role of Health Home (HH) representative regarding the decision of the Notice of Determination/Notice of Decision.	The entity selected by the Health Home (HH)/Children and Youth Evaluation Services (C-YES)/Qualified Individual Identified by the State (QIIS) to represent the Health Home or Children's Waiver program at the Fair Hearing must understand their role and be capable of executing that role on behalf of the Health Home Program and not as a representative of the member. Representing the member at the Fair Hearing is a conflict of interest for the Health Home and CMA, as they need to represent their role as either a HH or CM, the policies and requirements of the HH program. If the selected entity does not conduct their role as representative on behalf of the Health Home (HH)/Children and Youth Evaluation Services (C-YES)/Qualified Individual Identified by the State (QIIS), the Health Home assumes the responsibility as representative at the Fair Hearing. In the event actions of the representative are identified as undermining the fulfillment of the role as representative (e.g. deliberately acting on behalf of the member) this activity is reported to the Department.

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Conflict of Interest	Would DOH support Health Home guidance that CMs should not be filing Fair Hearing requests on behalf of members, nor cancelling Fair Hearing requests on behalf of members? That they need to explain the members' options and provide technical assistance as they would with other formal government paperwork, but should they not actually be completing the forms (paper or online) themselves?	The HH/CMA/QIIS role is to provide guidance and education to the member and their family or other supports on how they can file a Fair Hearing (with/without Aid Continuing) or how to withdraw a Fair Hearing request. The Health Home/CMA/QIIS care managers should not complete and file a Fair Hearing nor submit a request to withdraw a Fair Hearing for/on behalf of the member, to ensure there is not an appearance of impropriety by the HH/CMA/QIIS. The member must have choice/decision making power to do this after receiving appropriate information and education. The member or the member's representative submits directly to OTDA to request or withdraw a Fair Hearing.
Completing Assessments while awaiting a Fair Hearing with Aid Continuing	It was my understanding that if the FH is not adjudicated but the ATC is in place prior to the next assessment it is incumbent on the provider to continue until the denial or reduction is fully adjudicated so that is what is confusing in your guidance. The FH calendar is quite delayed so this does happen quite often so how can the regulation that guides this process be overwritten? Can you direct us to the regulatory language so we can advise the members properly as to why their services cannot continue under the original ATC?	Children's Waiver and Health Home eligibility and enrollment must be conducted as outlined in policy and cannot be waived due to a pre-existing fair hearing with ATC. When filing ATC, it is specific to the specific action taken (NOD for ineligibility or reduction of services) and is not applicable to not subsequent actions or determinations. In regards to the Children's Waiver, Eligibility Assessments for HCBS only afford the recipient 1 year of eligibility. When that year has passed, the foundation for the eligibility for HCBS has also passed. However, if a hearing determination has not been made within the 1 year eligibility period, HCBS would continue regardless of the outcome of the subsequent Eligibility Assessment. If a FH is found in favor of the member, but transpires after the member has received more than a year of HCBS, then after the adjudication happens, the member will have already received services for the entire duration that the Fair Hearing Determination in their favor afforded them. That is why policy emphasizes the need to do a subsequent Eligibility Assessment before the year has passed. That Eligibility Assessment can then either support ongoing service for the member or become evidence for next steps for the HH, CMA, HCBS provider, member to take subsequent actions. Please note that HCBS could be increased following a subsequent eligibility assessment if the child is found eligible for a greater f/s/d than they were receiving ATC for.

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Multiple Fair Hearing with Aid Continuing requests for the same member	How should a HH/CMA act on a subsequent Notice of Determination (NOD) if a member requested another Fair Hearing with Aid Continuing?	A member may have more than one Fair Hearing with Aid Continuing at a given time. Each NOD received by a member is considered separate and distinct and it is the members' choice whether to request a Fair Hearing with/without Aid Continuing for each one. For example: upon receiving an NOD because they were identified as no longer eligible for continued enrollment, the member requested and was granted a Fair Hearing with Aid Continuing. While awaiting the Fair Hearing to be held, their next assessment was completed (YA, CEST) which identified that the member is still not eligible for continued HH enrollment. An NOD was issued to the member and they chose to request and were granted a Fair Hearing with Aid Continuing for the new NOD. Therefore, the member now has two active Fair Hearing requests pending. Until a Fair Hearing decision is rendered, the HHCM must continue to serve the member. The HH may consider submitting a PHD for the first FH once the time period (YA, annual or 6-month CEST) has expired and the fair hearing has yet to be heard and/or an AC challenge for the second, because the member continue to be ineligible for the program and already has been receiving services pending the first fair hearing with ATC. Alternatively, if the new assessment identifies the member as now being eligible for continued enrollment, the HH could consider submitting a PHD for the first NOD, as the member is now eligible and will be enrolled so the fair hearing is not necessary. The CMAs are encouraged to consult with their Health Home when these situations occur.
Reopening a member's case	Once a member requested a fair hearing - we as HH should wait until OTDA accepts aid continuing and reopen the case?	It is appropriate for the HH to wait for notice from OTDA before taking action. Policy indicates that if the member requested a FH without AC, the HH does not reopen the case. Alternatively, if the member requests and is granted a FH with AC, the case is reopened. This is outlined in policy HH0004.
Selection of Initial Appropriateness (IA) code when reopening a member's case	Which Initial Appropriateness (IA) code do you use when you reopen the case?	When reopening a case, use the Initial Appropriateness (IA) that applied when the member was initially enrolled, if it still applies now. If it no longer applies then select another applicable IA code. If there is none, you must contact the Department for case guidance.

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CES Tool	What if the reason they are being disenrolled is following the decision of the CES tool? Do we continue completing the CES tool every 6 months?	Yes, the CES Tool must continue to be completed every six (6) months from the date of the previous CES Tool while the member is awaiting their Decision After Fair Hearing once the Fair Hearing with Aid Continuing is held. The Guidance for Use of CES Tool can be found at this link: https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/docs/ces_tool_guidance.pdf
CES Tool	If a member has a pending FH with AC and we complete another CEST which recommends disenrollment, can we disenroll the member?	No. Until the first pended Fair Hearing with Aid Continuing is held and a decision rendered, the member must continue to be served. An NOD is issued for the new CES Tool decision (disenrollment) and the member can request a Fair Hearing with Aid Continuing. The HH may consider submitting a PHD on the initial FH and/or requesting an AC Challenge for the new FH with AC request.
CES Tool	If a member is found ineligible due to CEST and the member requests an FH with AC and then 6 months later the CMA completes another CEST and are found ineligible again, but member does not request another FH. The CMA cannot disenroll the member and act on that new NOD? If that's true, can they request PHD on the old fair hearing and aid continuing?	The HH is to continue to serve the member until any and all FH are resolved. The HH could elect to use a second consecutive CES Tool finding that a member is not eligible by policy as evidence for an A/C challenge.
Notification to HH/CMAs when member has requested FH with AC	How do we find out they have been granted ATC (ie the client did this on their own)? Also (for the HHCM), can we reopen the CCP and Assessment or do we need to complete a new one when this happens?	OTDA sends notification to the Department when a members' request for Fair Hearing (with/without Aid Continuing) has been granted. DOH forwards that notification to the Health Home. If the case has been closed, it needs to be reopened and the timeframes for reassessment continue.
Member loses Medicaid awaiting a Fair Hearing with Aid Continuing	What if the member loses their Medicaid during the timeframe that you are providing services during the "aid to continue" timeframe. Do we keep them enrolled in the Health Home?	Yes, if Medicaid coverage stopped due to an administrative issue e.g. missing a renewal deadline. The member should be assisted with completing the missing renewal paperwork to reinstate their coverage. If the member is no longer eligible for Medicaid or coverage that is compatible with HH enrollment, the member may appeal the decisions with OTDA. The HH should also notify OTDA as the loss of Medicaid coverage impacts continued enrollment in the HH Program. The member also has FH rights in association with their Medicaid enrollment and may elect to exercise those rights as well.

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Children's HCBS NODs	Doesn't the DOH-5287 have a denial section? Why are there 2 forms with the same purpose?	DOH 5288 is the Decision for Discontinuance in the NYS 1915c Children's Waiver. The DOH 5287 is for Decision for Enrollment or Denial of Enrollment in the NYS 1915c Children's Waiver.
Children's HCBS Waiver member transitioning to OPDWW Children's HCBS Waiver while awaiting their Fair Hearing	When a member receives Aid Continuing within the DOH Children's HCBS Waiver but is approved/completes a transfer to OPWDD Children's HCBS Waiver, what happens to the DOH HH HCBS Fair Hearing? Are there steps that the HH/CMA needs to complete prior to this transfer?	If someone has a pending FH with Aid Continuing, this means services must be provided at the same level/amount and same program, therefore, the member cannot be transferred during this time, unless the member withdraws the FH for a transfer to occur. Otherwise that is considered a disenrollment from the Children's Waiver which the provider is not allowed to do because of the Fair Hearing with Aid Continuing. The option for the member to withdraw the Fair Hearing should be discussed at meetings between the Health Home Care Manager, OPWDD, member and family.
Issuing Pre-Hearing Determination (PHD) when member is deemed eligible now?	What if you file a PHD because member is eligible now (recent hospital discharge) but for six months prior there was no reason for eligibility?	If an NOD was issued to a member for disenrollment and while they are awaiting their Fair Hearing with Aid Continuing they enter a hospital and upon discharge, are now identified as eligible for HH enrollment, a PHD can be requested and if granted, the Fair Hearing would not be held and member would continue to be served with the new eligibility determination driving their POC.
Evidence Packet	What will happen with the evidence package if you go for the PHD and another fair hearing needs to be called?	A separate Evidence Packet is submitted to OTDA and to the member specific to the NOD issued when the member requests Fair Hearing. If there are multiple Fair Hearing with Aid Continuing requests submitted by the member and granted by OTDA, the Evidence Packet for each request is maintained by OTDA as evidence for when that Fair Hearing is held. If a PHD was requested and granted by OTDA, the Evidence Packet is maintained but no longer needed as the Fair Hearing will no longer be held.
Evidence Packet	The package cannot be emailed to the family; it must be sent by mail only?	Yes, this is an OTDA requirement.
K code	There is typically a long lag between when the family requests the fair hearing for HCBS and when the k code is restored in IRAM's. Are agencies expected to provide services to a member with no active k code?	If a member has filed a Fair Hearing with ATC and the K-codes are not put back on the member's Medicaid file, please notify your Health Home and DOH capacity management. Usually EMedNY/ePACES will show re-instated k-codes within 3 days and can be backdated for the required coverage period.

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Aid Continuing Proof of Eligibility	Will Aid Continuing be proof of eligibility if the chart gets audited by OMIG in 4 years?	Aid continuing is not proof of eligibility. A member can choose a FH with or without AC. If they request AC and it is granted by OTDA, then the CM is required by statute to continue to provide the services. The CM must then follow the OTDA judges decision and ensure continued enrollment or discharge is according to HH policy and the annual/6month eligibility determination. The department is in discussion with OMIG on this matter and Health Homes will be notified when the department has additional information
CYES/CSPOA role in FH process	Could you clarify further CYES/CSPOA's role in fair hearings that occur after initial eligibility? Generally, CSPOA takes a step back once a youth completes the CYES process and is assigned a care manager.	The C-YES/SPOA would only be involved in a Fair Hearing where they conducted the HCBS Eligibility Determination.