



---

# How To

---

# Win Your

---

# Fair Hearing

---

The Legal Aid Society

The Legal Aid Society's Public Benefits Education Project

# Table of Contents

## Chapter 1

What is a Fair Hearing? ..... 1

## Chapter 2

How Can I Win my Fair Hearing? ..... 11

## Chapter 3

What Happens After My Fair Hearing? ..... 21

Important Terms ..... 24

Sample Fair Hearing Request Form ..... 27

Sample Evidence Packet Request Form ..... 29

Fair Hearing Compliance Unit Phone Numbers . .30

This Booklet was made possible by funds from the Charles H. Revson Foundation. The statements made and views expressed, however, are solely the responsibility of The Legal Aid Society.

To get other Booklets or Fact Sheets in this series, call The Legal Aid Society at (888) 218-6974 or visit [www.legal-aid.org](http://www.legal-aid.org).

To get information about The Legal Aid Society or to find a Legal Aid office that serves your area, call (212) 577-3300.

The Legal Aid Society's Public Benefits Education Project  
April 1, 2004

# Chapter 1

## What is a Fair Hearing?

A fair hearing is your chance to tell your story. The City welfare center also gets to tell its side of the story. A lawyer from the New York State Fair Hearing Office is the judge who decides who is right. You will get a written decision in the mail.

## Why should I ask for a fair hearing?

Benefits include cash assistance, food stamps, Medicaid, and childcare paid through your welfare center.

Ask for a fair hearing to appeal a change in your benefits made by your welfare center. If you win, you should get back all your lost benefits. Also ask for a fair hearing when your welfare center does not give you new benefits.

### Here are some examples:

- Your welfare center cuts off or reduces your benefits, and you think it is wrong.
- You are given a workfare assignment, and you think it is dangerous to your health or safety.
- Your welfare center stops paying or will not give you child care expenses, storage fees, or a pregnancy allowance.
- Your welfare center refuses to approve your application for benefits.
- Your welfare center does not add your baby to your budget.
- Your welfare center does nothing to stop your electric or gas from being cut-off.

These are just some examples. Remember you must apply to your welfare center for new benefits before you ask for a fair hearing. Ask for a fair hearing if you do not get an answer right away or if you are denied.

## When should I ask for a fair hearing?

Right away! You should ask for a fair hearing the moment you have a problem with your benefits. Ask for a fair hearing even if you do not get a letter from your welfare center about a change in your benefits. You do not have to go to the hearing if you solve your problem.

If you are getting benefits, your welfare center must send you a written letter called a Notice of Intent or Notice of Decision before it can change your benefits.

The Notice must be sent to you at least 10 days before your benefits can be changed.

The Notice of Intent or Notice of Decision must explain:

How, Why and When your welfare center is going to change your benefits.

## When you get a Notice of Intent or Notice of Decision, remember these two important rules:

### Rule #1

Ask for a fair hearing and ask for aid continuing before the date the Notice says your benefits will change. The sooner the better. With aid continuing your benefits will not be cut off or reduced for weeks or months while you wait for a fair hearing decision.

### Rule #2

Save the Notice together with the envelope. If the Notice takes too long to reach you and you miss the deadline for requesting a fair hearing, you can still try to get aid continuing. You must explain that your Notice arrived late. The date on the envelope is your proof.

You have 60 days to ask for a fair hearing for

#### What is aid continuing?

Aid continuing means your benefits will stay the same unless you lose your fair hearing. To get aid continuing you must ask for a hearing before the date your benefits are supposed to change. This is usually 10 days from the date of the Notice of Intent or Notice of Decision. You can also get aid continuing if you never received a Notice.

welfare or Medicaid. You have 90 days to ask for a fair hearing for food stamps. If you did not get a Notice of Intent, Notice of Decision, or notice denying you new benefits, there is no 60-day or 90-day deadline.

Ask for a fair hearing even if you cannot get aid continuing. If you win you should get back all your lost benefits.

If you have an emergency, ask for an emergency fair hearing.

An emergency is when:

- you do not have food or a place to live,
- you have a notice of eviction, or
- your gas or electricity is going to be shut off.

An emergency fair hearing can be held in a few days and is decided faster than other hearings. Call (800) 205-0110 on Monday to Friday between 8:00 AM and 5:00 PM to ask for an emergency fair hearing.

## How do I ask for a fair hearing?

You can ask for a hearing in person, mail, phone, fax, or online with an E-Request. Keep a copy of your request.

Tell the worker if you need: an interpreter, a certain day of the week or time for your hearing, or other special help at your hearing.

### In person

Bring your Notice of Intent, Notice of Decision, or notice that says your application for benefits was denied (and the envelope), and other papers that show why you want a hearing, to one of these offices:

#### Fair Hearing Office

14 Boerum Place

(corner of Boerum and Livingston Streets)

Brooklyn

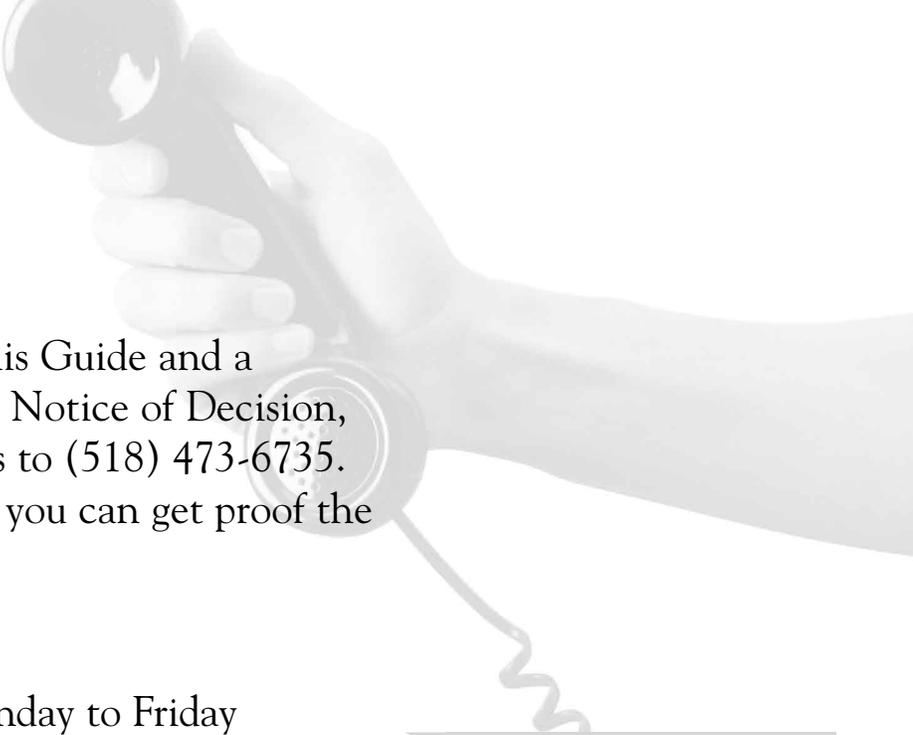
#### Medicaid Fair Hearing Office

330 W. 34th Street, 3rd Floor

Manhattan

If you cannot travel to a fair hearing, ask for a telephone fair hearing. This is called a home-bound hearing.





By fax

Fax the form at the back of this Guide and a copy of your Notice of Intent, Notice of Decision, or notice denying you benefits to (518) 473-6735. Sending a fax is good because you can get proof the fax was received.

By telephone

Call 1 (800) 342-3334 on Monday to Friday between 8:00 AM and 5:00 PM. Give your address and social security number when you call. This is the hardest way to ask for a fair hearing because the phone is often busy. If you can't get through, remember to mail, fax, use E-Request, or deliver your request within 10 days of the date on your Notice of Intent, Notice of Decision, or notice denying you benefits. Otherwise, you may not get aid continuing.

Any time you speak to someone from the Fair Hearing Office for any reason, write down the date and the worker's name (you can ask them to spell it).

By mail

Mail the form on page 27 of this Guide and a copy of your Notice of Intent, Notice of Decision, or notice denying you benefits to:

Office of Temporary and Disability Assistance  
Fair Hearings  
P.O. Box 1930  
Albany, New York 12201-1930

By E-Request (online)

You can request a hearing online at:  
<http://www.otda.state.ny.us/oah>

## What happens after I ask for my fair hearing?

In 1 to 2 weeks you will get a letter telling you that your hearing request was received. This letter is called an Acknowledgement of Fair Hearing Request and Confirmation of Aid Status. It will say if you got aid continuing.

Call the Fair Hearing Office (800)-342-3334 if you do not get this letter.

Next you will get a letter called a Notice of Fair Hearing. It tells you when and where your fair hearing will be held. Box B tells you if you have Aid Continuing. (See page 4 of this Guide.)

After you ask for your fair hearing, you can try to fix your problem at your welfare center.

Ask for a conference. Do not withdraw your Fair Hearing request at your conference unless you get proof in writing that all problems with your case have been fixed by your welfare center.

### What is a Conference?

A conference is a meeting with a worker from your welfare center to discuss your case.

### What if I asked for aid continuing and my benefits were still cut off or reduced?

Tell your welfare center about the mistake. Bring the Acknowledgement of Fair Hearing Request or your Notice of Fair Hearing to the Fair Hearing and Compliance Unit of your welfare center.

Call (800) 342-3334 if you have problems.

## Can I change the date of my fair hearing?

Yes, if you have a good excuse. A good excuse can be an illness or that you need time to get more information or a lawyer.

The change is called an adjournment.

To get an adjournment call (877) 209-1134 on Monday to Friday between 8:00 AM and 5:00 PM, or go to the Fair Hearing Office.

If you do not go to your hearing, you will lose.

If you missed your hearing and did not ask for an adjournment, call or go to the Fair Hearing Office right away. You will get a new hearing date if you have a good excuse.

Should I go to the fair hearing if my worker tells me that the welfare center made a mistake?

Yes! This is the only way you can be sure the mistake will be corrected and to get all your lost benefits.



## Chapter 2

How Can I Win My Fair Hearing?

You can win your fair hearing by being prepared and knowing your rights.



# How can I get ready for my fair hearing?

Here is a check list:

- Get evidence
- Get witnesses
- Get organized

## Get evidence

Evidence is everything that supports your story. Think about the evidence you need after you ask for your fair hearing.

Write down dates and names of people you spoke to about your problem. Make sure you bring copies of your evidence to the hearing. Keep the originals for your own records.

Ask for a free copy of the evidence packet for your case. The evidence packet has all the papers that your welfare center will talk about at your hearing.

To get the evidence packet, call or write to the welfare office that sent you the Notice of Intent, Notice of Decision, or notice denying you benefits. If you did not get a notice, write to your welfare center. See page 29 of this Guide for a sample letter. Keep a copy of the letter you sent. Write down the name of the person you spoke to on the phone and the date. If you tell the judge you asked for the evidence packet and did not get it, you should win your hearing.

Evidence includes:

- doctor's letters
- receipts
- court papers
- rent receipts
- welfare papers

You can also look at your welfare file or case record at your welfare center. Your case record may have the evidence that supports your story. Tell the judge if your welfare center refuses to let you see your case record. The judge will let you see your case record at the hearing or will change the date of the hearing so you have time to see your case record later.

I asked my welfare center to send me papers from my case record. They didn't. Does this matter at the hearing?

Yes! You should win.

You must ask for the evidence packet and papers from your case record more than 5 work days before the hearing. If you do not receive anything within 3 days after the request was received, the Notice of Intent, Notice of Decision, or notice denying you benefits should be withdrawn. This is called a Rivera violation.

☑ Get witnesses

Often it is helpful to bring witnesses. A witness can be anyone who can support your story. You will need to ask your witness questions at the fair hearing. Write down questions and practice the questions and answers with your witness. The judge and the welfare center representative can also ask your witness questions at the fair hearing.

☑ Get organized

Your hearing may be very short and you may not get a chance to say everything you want. Plan what you want to say before your hearing.

Write down:

- What you want to say.
- Which papers you want to show the judge.
- Questions to ask the welfare center representative.
- Questions to ask your witness.

It can be easy to lose track of things at the hearing.  
Don't let anyone rush you.  
Relax and follow your plan!

## What should I do when I get to my fair hearing?

Check in with the receptionist. Ask to look at your case record before the hearing, even if you have seen it before. You may have to wait for a while. When the judge is ready to hear your case, you will be sent to a hearing room. A hearing room is not a courtroom. It is an office with a table and chairs.

## Who will be at my fair hearing?

The judge and a welfare worker will be there. The welfare worker is called the agency representative. He or she will try to show the judge that the city is right and you are wrong. The agency representative is usually not a lawyer and has never worked on your welfare problem.

Ask for an official interpreter if you do not speak English.

It is best to bring an advocate to help you win your fair hearing. Check with your local community center, hospital, school, legal services or Legal Aid office to find someone who can be your advocate. If you can't find an advocate, you can bring a family member or friend to help.

### What is a case record?

Your case record should have all of the papers about your welfare case. It should include more papers than the evidence packet.

### What is an advocate?

An advocate is a person who speaks for you at your hearing. This person should know your case and know how the welfare system works. An advocate can be a counselor, social worker, or legal worker.

## What does the judge do at the fair hearing?

The judge runs the hearing. The judge should start the hearing by using the telephone to turn on the recording equipment. This is called going on the record. The judge must record everything that is said when you are in the room.

The judge will explain the reason for the hearing. Tell the judge if you asked for a fair hearing for a different reason.

### What is On the Record?

Your hearing will be recorded. Everything recorded at the hearing and all evidence given to the judge is on the record. Make sure everything said is recorded. The recording may help you if you lose and appeal.



## How does the welfare center tell its side of the story?

The agency representative explains the welfare center's side of the story first. He or she will try to show the judge that the city is right and will give the judge evidence. This proof should be in the evidence packet.

Remember that the agency representative may not be from your welfare center and may never have worked on your problem.

Don't be afraid to ask questions and tell the judge if you disagree. For example, ask the judge to explain any papers or anything the agency representative says that you don't understand. The agency representative can later ask you and your witnesses questions.

Can I change the issue at my fair hearing?

No. The judge will hold the hearing only on the reason you gave when you asked for the hearing. If there is a new problem, ask for another fair hearing.

## What are my rights at the fair hearing?

Your fair hearing should be run fairly. Tell the judge if you think it is not.

- You have a right to speak up if your fair hearing seems unfair or if it is hard for you to represent yourself.
- You have a right to make objections. An objection is when you tell the judge that you disagree with something that was said or done. For example, you should object if you are not allowed to show evidence to the judge.
- You have a right to see your case record at the hearing. If your welfare center wants to change your benefits and doesn't bring your case record to the hearing, you should win your fair hearing. This is called a Rodriguez violation. The case record is all of the documents about your case from the center, not just the evidence packet.
- You have the right to see all papers the agency representative gives to the judge.
- You have the right to question the agency representative and any witnesses. Tell the judge if you think the agency representative or city witness says something untrue.



## When do I get to tell my story?

You tell your story after the agency representative tells the city's side of the story. Tell the judge dates of events and give the judge copies of papers that support your story. For example, if you talk about a notice sent by your welfare center, give the notice to the judge. The written proof you give to the judge is called an exhibit.

The judge may ask questions. Answer them the best you can. Tell the judge if the agency representative said something wrong. Tell your whole story and give all your proof to the judge.

The agency representative may also ask you questions. Answer them the best you can.

### What are exhibits?

Exhibits are papers given to the judge during the fair hearing. Make sure the judge numbers your exhibits. The judge must take a copy of each exhibit that goes on the record.

## Can I get carfare and money for childcare?

Yes. After your fair hearing, ask the judge or agency representative where to get your subway or bus carfare. If you have a note from your doctor that says you need to take a car service for medical reasons, you may get car service money too.

To get money for child care so that you can come to your fair hearing, you need a letter from your babysitter. The letter must say the babysitter's name and Social Security number, the names of your children, the date and hours of care, and the hourly rate of pay.





Notification

## Chapter 3

### What Happens After My Fair Hearing?

After your fair hearing you will get a decision in the mail. The decision will tell your Welfare center what to do. Your welfare center must obey the decision.



## When will I get a decision about my fair hearing?

You should receive a fair hearing decision in the mail a few weeks after your hearing. If more than 3 months go by from the date you requested your hearing, call the Fair Hearing Office in Albany at (800) 342-3334.

## What should I do if I win my fair hearing?

After the decision is made, your welfare center has 10 days to make the changes the judge ordered.

Welfare centers often do not obey fair hearing decisions. If your center ignores the decision, send a letter and a copy of the cover page of the Fair Hearing Decision to the address listed on it. In the letter, explain that your welfare center didn't obey the decision.

Also, bring a copy of the decision to the Fair Hearing Compliance Unit in your welfare center.

## What if I lose my fair hearing?

You can appeal the decision in court. You must file the appeal within 4 months of the date of your fair hearing decision in New York State Supreme Court. It is best to get help from an attorney. Contact The Legal Aid Society or a legal services office for more information.

What is an appeal?

An appeal is when you try to change a decision made by the judge.

You should request a copy of your fair hearing record and recording.

Write to:

Fair Hearing Transcript Unit  
New York State  
Office of Temporary and Disability Assistance  
P. O. Box 1930  
Albany, NY 12201-1930

## Important Terms

An **abandoned fair hearing or default** means that you did not show up for your hearing. Unless you ask right away to reschedule your hearing, you will automatically lose.

An **Acknowledgment of Fair Hearing Request and Confirmation of Aid Status** is a letter telling you that your request for a fair hearing has been received. The letter will also say whether you will get aid continuing while you wait for your hearing.

**Adjourn** means to change the date of the hearing.

An **administrative law judge** is a lawyer from the New York State Fair Hearing Office who runs your fair hearing and decides who wins. He or she is sometimes called the hearing officer.

An **advocate** is a person who speaks for you at your hearing. This person should know how the welfare system works. An advocate can be a friend, teacher, counselor, social worker, or legal worker.

**Agency representative** means a worker who represents the welfare center at your hearing. This agency is called the New York City Department of Social Services. It is also called the Human Resources Administration or 'HRA'. The agency representative will try to show the judge that the city is right and you are wrong.

**Aid continuing** means that your benefits will stay the same while you wait for your fair hearing decision. Aid continuing is important because it may take weeks or months to get a fair hearing decision.

An **appeal** is when you try to change a decision made by a welfare center or a judge.

The **case record** is a collection of all the papers about your case kept by your welfare center or other welfare office. It should include more papers than the evidence packet.

The **evidence packet** is a collection of papers your welfare center or other welfare office believes supports its case.

A **homebound hearing** is for someone who can not travel to a fair hearing office. The hearing will be done by telephone.

A **Decision After the Fair Hearing** is a letter telling you how your fair hearing was decided.

A **Notice of Intent or Notice of Decision** is a letter that you receive from a welfare office. Before your benefits can be changed, the welfare center must send you a Notice of Intent or Notice of Decision that says when and why your benefits will be changed.

Statements made **on the record** at your fair hearing are recorded. You can ask for a copy of the recording if you lose your hearing. The recording is important if you want to challenge your fair hearing decision in a court of law.

A **Rivera violation** means that you requested your evidence packet at least 5 work days before your hearing and the packet was not mailed to you within 3 days after the request was received. You should win your hearing if you requested your evidence packet in time. Make sure to say this to the judge.

A **Rodriguez violation** means the agency representative did not bring your complete case record to your fair hearing when the issue is a change in benefits. You should win your hearing if your case record is not at your fair hearing. Make sure to say this to the judge.

**FAIR HEARING REQUEST FORM — FAX OR MAIL**

P.O. BOX 1930  
ALBANY, NY 12201-1930

Please Print Information Clearly. Correct and Complete Information will Permit us to Promptly Schedule a fair Hearing

CASE NAME: \_\_\_\_\_  
(LAST) (FIRST) (MI)

STREET ADDRESS: \_\_\_\_\_ APT.#: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE #: ( ) \_\_\_\_\_ DATE of BIRTH: \_\_\_/\_\_\_/\_\_\_ SS#: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

MALE  FEMALE CASE #: \_\_\_\_\_ CIN #: \_\_\_\_\_ LOCAL AGENCY/CENTER #: \_\_\_\_\_

INTERPRETER NEEDED?  YES  NO LANGUAGE: \_\_\_\_\_

Is appellant homebound?  Yes  No If yes, provide medical documentation. Do not delay request to obtain medical. A phone number for representative or requester is required if you don't have a phone

Representative  Requester NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ PHONE#: ( ) \_\_\_\_\_  
AREA CODE

**DID APPELLANT RECEIVE A NOTICE FROM THE LOCAL SOCIAL SERVICES DEPARTMENT?**  
 Yes  No

(\*\*\*\*\* PLEASE ATTACH A COPY OF THE NOTICE WITH THIS FORM \*\*\*\*\*)

RESTRICTIONS Put an X in days or times you cannot attend hearing	LOCAL AGENCY ACTION		CATEGORY OF ASSISTANCE (definitions below box)						(indicate what type)
	FA	SNA	MA	FS	FAP	PCS	OTHER		
M T W T F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	
AM _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	
PM _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> _____	
* If Personal Care Services: Provide CASA # _____/Agency _____ & indicate type of services: _____									

If yes: Date of Notice: \_\_\_/\_\_\_/\_\_\_ Effective Date: \_\_\_/\_\_\_/\_\_\_ NOTICE #: \_\_\_\_\_ RTI#: \_\_\_\_\_  
FA=Family Assistance (formerly ADC) SNA=Safety Assistance (formerly HR) MA=Medicaid  
FS=Food Stamps FAP=Food Assistance Program PCS=Personal Care Services

Reason for requesting hearing (indicate time frames): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TODAY'S DATE \_\_\_\_\_

Cut or detach on dotted line.



sample form (back)

Letter to Ask for Your  
Fair Hearing Evidence Packet

The City of New York  
Human Resources Administration

---

\_\_\_\_\_ [date]

\_\_\_\_\_  
\_\_\_\_\_  
[address where your notice came from  
or else your welfare center address]

Re: \_\_\_\_\_  
[your name]

\_\_\_\_\_  
[your fair hearing number]

\_\_\_\_\_  
[your public assistance case number]

\_\_\_\_\_  
[your mailing address]

Dear HRA:

Pursuant to Rivera v. Bane, Index No. 45305-92 (Sup. Ct. N.Y. County Nov. 14, 1995)(judgment), please send me by mail “copies of the documents to be presented at the fair hearing,” 18 N.Y.C.R.R. 358-4.2(c).

I would also like copies of: [check or list any other documents you want]

\_\_\_ Medical reports from HS Systems, my doctors, and Medicaid.

\_\_\_ My WEP and Workfare time records, assessments and employability plans, and my Notice of Employability

\_\_\_ My drug and alcohol screening, assessments and referrals

\_\_\_ Print-out of my benefits from \_\_\_/\_\_\_/2004 to present

\_\_\_ Print-out showing the persons on my budget

\_\_\_ Other documents\_\_\_\_\_.

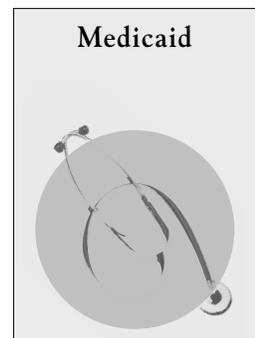
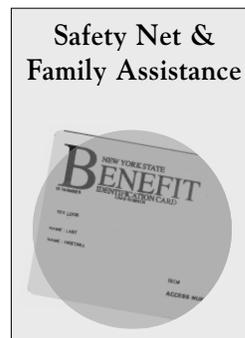
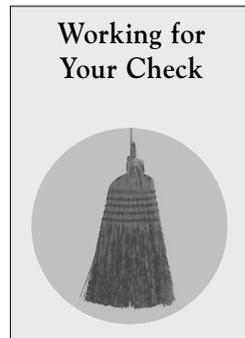
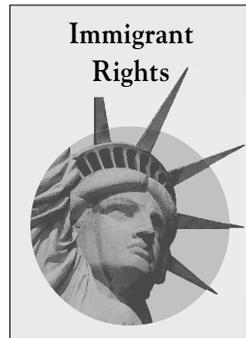
Sincerely,

\_\_\_\_\_  
[sign your name]

# Fair Hearing Compliance Unit Phone Numbers

Look for an insert in this booklet for the telephone number of the Fair Hearing Compliance Unit for your center. You can also get the list at [www.legal-aid.org](http://www.legal-aid.org).

# The Legal Aid Society's Public Benefits Education Project



To get other Booklets or Fact Sheets in this series,  
call The Legal Aid Society at (888) 218-6974 or visit [www.legal-aid.org](http://www.legal-aid.org).

To get information about The Legal Aid Society or to find a Legal Aid  
office that serves your area, call (212) 577-3300.