

# Challenging “Denial of Services for People with Developmental Disabilities in Self Direction”

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## Highlights

- **Burden of proof is on OPWDD to prove that a setting is segregated.**

**Any denial of service can be appealed thru a fair hearing.** Start your request at <http://otda.ny.gov/hearings/request/>

### News from Fair Hearings

**The Burden of Proof is on the Agency.** A family on Long Island has successfully challenged the refusal by New York State to pay for a "community class" from a Self-Direction provider. They had a Medicaid Fair Hearing that established that the State had failed to provide credible proof of their claim that the services were provided in a segregated setting. "Accordingly the Agency's action is not correct and is reversed."

[http://otda.ny.gov/fair%20hearing%20images/2016-3/Redacted\\_7220725N.pdf](http://otda.ny.gov/fair%20hearing%20images/2016-3/Redacted_7220725N.pdf)

**Fair Hearings for any refusal.** That decision established that a Medicaid Fair Hearing DOES have jurisdiction over a refusal by the State to pay for services due to a claim that the setting is not integrated. In addition, it appears that the State has an obligation to inform families of their due process rights whenever there is a refusal. Over the past few years, the State has consistently failed in this "duty to inform".

**Challenge to the Settings rule.** Acting on behalf of my son, we have challenged the validity of the “community class” category and the other narrow categories for which OPWDD will approve funding. This case has not yet been decided. When it does, it should show up on the OTDA (Office of Temporary and Disability Assistance) site as:

[http://otda.ny.gov/fair%20hearing%20images/2016-3/Redacted\\_7245277H.pdf](http://otda.ny.gov/fair%20hearing%20images/2016-3/Redacted_7245277H.pdf)

If that hearing does not result in eliminating the overly restrictive categories then the case will need to go to State or Federal court. This is only possible after the administrative appeals have been exhausted.

### **IF YOU HAVE BEEN REFUSED SERVICES**

You can take action if you have been refused services—whether provided under Self Direction or under the traditional service model, no matter how long ago that was. Call up your local DDRO and request the restoration of services based on hearing #7245277H, referenced above. Tell them that you will be requesting a Medicaid Fair Hearing if they do not provide the services. They may tell you that you are not entitled to a Medicaid Fair Hearing for this particular decision. If services were discontinued more than 30 days ago, then they may state that you are past the time limit to request a hearing. Ask them to put that in writing (they will not). Since they did not provide notification of your due process rights, the 30-day clock never started ticking. Go ahead and request the hearing no matter what—unless of course they restore your services based on your phone call.

**How to request a Hearing.** If you have been refused Medicaid Funded services, then you have a right to a Fair Hearing. This is true no matter the situation. Insist they fulfill their obligation to prove that their decision was appropriate. To file for a hearing, start here: <http://otda.ny.gov/hearings/request/>

Since the State did not inform you of your due process rights, select "My request is NOT about a notice." You will get a letter within a few days acknowledging your request. The hearing will probably occur within three weeks of the request-- and most likely a letter with the date of the hearing will come only a few days before the hearing.