



Policy Statement 91-5 (September 5, 1991)

***Limitations on Filing Requests for Reconsideration
of Orders Issued by Rent Administrators
and/or the Commissioner***

This policy statement is being issued to clarify and conform DHCR's policies with respect to requests for reconsideration of rent administrators' orders and determinations of Petitions for Administrative Review under all rent laws administered by the agency.

The laws provide for appeal of a rent administrator's order through the timely filing of a Petition for Administrative Review (PAR). Petitions for Administrative Review must be filed with the DHCR within 35 days of the issue date of the rent administrator's order. A PAR determination, which is a final order of the Commissioner, may be appealed by petitioning the court for judicial review, as provided in Article 78 of the Civil Practice Law and Rules, within 60 days of the issue date of the PAR determination.

The laws and regulations also permit the DHCR to reconsider a case on application of either party to a proceeding, or on its own initiative and upon notice to all affected parties where the DHCR finds that such order was the result of fraud, illegality or irregularity in a vital matter. However, issues not previously raised in the proceeding will not be entertained on reconsideration except to the extent that the issue constitutes new evidence not previously available.

In order to clarify and standardize procedures and time limitations for requests for reconsideration of DHCR orders issued under the four rent regulatory laws, the DHCR is adopting the following policy:

Requests for reconsideration of an order issued by a rent administrator based on an irregularity in a vital matter must be served on the DHCR within 95 days of the issue date of the order. Requests for reconsideration under this circumstance received more than 95 days from the issue date of the order will automatically be denied unless the requester can substantiate an inability to have made the request within the prescribed time period. For example, if the DHCR did not properly serve the order on the affected party within that time period, or new evidence was discovered which could not have been obtained earlier. The request for reconsideration must also contain sufficient evidence to substantiate the irregularity in a vital matter which affected the determination.

Requests for reconsideration of a Commissioner's order based on an irregularity in a vital matter must be made within 60 days of the issue date of the order unless the requester can substantiate why he or she could not reasonably have been expected to have made the request within the prescribed time period.

*This document is being reissued for informational purposes only.
The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.*



Requests for reconsideration of orders, issued by rent administrators or the Commissioner, based on fraud or illegality are not time limited. However, the requesting party must specify the facts and supply documentation as to what constituted the fraud or the illegality.

A request for reconsideration can not be granted on any grounds if a party has commenced an Article 78 proceeding to determine the merits of the Commissioner's order, or if a judgment has been filed for collection of the award granted in the subject order.

Fraud, illegality and irregularity in a vital matter are defined as follows:

Fraud False or misleading information which was known by a party to be false or misleading and which was relied upon as fact by the DHCR and affected the Rent Administrator's or Commissioner's order.

Illegality An action by DHCR which is contrary to the principles of law representing a complete defect in the proceedings.

Irregularity in a vital matter Failure by the agency to accurately calculate the rent or penalty, or to comply with established rules of practice and procedure.

When a request for reconsideration is granted, the case is reopened and the agency may order a stay of the prior order. If a stay is ordered, the conditions will be specified on the notice of proceeding or order reopening the case, which notice or order will be served on all parties to the prior order.

The grant or denial of a request for reconsideration is not subject to appeal within the agency. An order issued upon reconsideration, which modifies the substance of a prior order, has the effect of revoking the prior order to the extent that it is modified. The issue date and the effective date are as of the issuance of the new order. Therefore, a party may petition for administrative or judicial review, depending on whether the new order is issued by a rent administrator or the Commissioner, even if the time limit for appealing from the old order has expired.

When an order issued after a reconsideration merely corrects a prior order in a non-substantive area based on a typographical or clerical error, the issue date and effective date will remain as stated on the prior order.

A request for reconsideration does not stay the running of the PAR or Article 78 filing time limitations. Therefore, a request for reconsideration does not substitute for the filing of a PAR or Article 78 proceeding.

Elliot G. Sander
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for Rent Administration