

DEPARTMENT OF SOCIAL SERVICES

GENERAL RULES

(By authority conferred on the department of social services by section 6 of Act No. 280 of the Public Acts of 1939, as amended, being S400.6 of the Michigan Compiled Laws)

PART 9. HEARINGS, APPEALS, AND DECLARATORY RULINGS

R 400.901 Notice of right to hearing.

Rule 901. An applicant, recipient, or licensee shall be informed in writing at the time of application and at the time of any action affecting his claim:

- (a) Of his right to a hearing, as provided in R 400.903.
- (b) Of the method by which he may obtain a hearing, as provided in R 400.903.
- (c) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman or he may represent himself.

History: 1979 AC.

R 400.902 Notice of negative action.

Rule 902. (1) In cases of proposed action to discontinue, terminate, suspend, or reduce public assistance or services, the department shall mail a timely notice before a proposed change would be effective. Timely means that the notice is mailed at least 10 days before the action would become effective. A notice shall include the following:

- (a) A statement of what action the department intends to take.
 - (b) The reasons for the intended action.
 - (c) The specific regulations supporting the action.
 - (d) An explanation of the individual's right to request a hearing.
 - (e) The circumstances under which assistance or service is continued if a hearing is requested.
- (2) An agency may dispense with timely notice as provided in subrule (1), but shall send adequate notice as detailed in subrule (1) not later than the date upon which the action would become effective, when:
- (a) An agency has factual information confirming the death of a recipient or of the aid to dependent children payee when there is no relative available to serve as new payee.
 - (b) An agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this shall be the consequence of supplying such information.
 - (c) A recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan.
 - (d) A recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.
 - (e) A recipient's whereabouts are unknown and agency mail directed to him has been returned by the post office, indicating no known forwarding address. A recipient's check shall be made available to him if his whereabouts become known during the payment period covered by a returned check.
 - (f) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the state department.
 - (g) An aid to dependent children child is removed from the home as a result of a judicial determination.
 - (h) A change in level of medical care under the medical assistance program is prescribed by the recipient patient's physician.
 - (i) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance automatically terminates at the end of the specified period.
- (3) When the changes in either state or federal law require automatic grant adjustments for classes of recipients, timely notice of the grant adjustments shall be given which is adequate if it includes a statement of the

intended action, the reasons for the intended action, a statement of the specific change in law requiring the action, and a statement of the circumstances under which a hearing may be obtained and assistance continued.

History: 1979 AC.

R 400.903 Right to hearing.

Rule 903. (1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance.

(2) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial, suspension, or exclusion from a service program or failure to take into account a recipient's choice of service.

(3) A hearing shall not be granted when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

(4) An applicant for, or holder of, a license issued by the department is entitled to a hearing based upon the denial, limitation, refusal to renew, or revocation of a license.

(5) A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the department personnel director.

History: 1979 AC.

R 400.904 Request for hearing; timeliness.

Rule 904. (1) A request for a hearing shall be in writing and signed by the claimant, petitioner, or on his behalf by his authorized representative.

(2) The request may be filed with the state department office in Lansing or a local county office. When filed with the local county department office, it shall be forwarded immediately to the state department office.

(3) Freedom to make a request for a hearing shall not be limited or interfered with in any way. The agency shall assist a claimant to submit and process his request.

(4) A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing.

(5) When a claimant requests a hearing within the timely notice period, assistance shall not be suspended, reduced, discontinued, or terminated until a decision is rendered after a hearing, unless:

(a) A determination is made at the hearing by the administrative law judge that the sole issue is one of state or federal law or policy. The administrative law judge shall inform a claimant promptly in writing that assistance is to be discontinued pending the final decision if the sole issue is one of state or federal law or policy, subject to this issue being reconsidered in the final decision.

(b) A subsequent change affecting a recipient's grant occurs while the hearing decision is pending and a recipient fails to request a hearing after notice of the subsequent change.

(6) When an appeal is filed from a written notice of revocation, denial, or refusal to renew a license within 30 days of receipt of the written notice, the denial, revocation, or refusal to review shall be held in abeyance pending the final decision.

History: 1979 AC.

R 400.905 Group hearings.

Rule 905. The department may respond to a series of individual requests for a hearing by conducting a single group hearing where the sole issue is one of state or federal law or policy or change in federal or state law. An individual claimant shall be permitted to present his own case or be represented by his authorized representative.

History: 1979 AC.

R 400.906 Denial or dismissal of request for hearing.

Rule 906. (1) The department shall deny or dismiss the request for a hearing if:

(a) A request is withdrawn by a claimant, counsel, or petitioner in writing prior to the signing of the final decision and order.

(b) The issue is one of state or federal law, requiring automatic grant adjustments for classes of recipients.

(c) A claimant abandons the hearing.

(d) The department has no jurisdiction over the matter.

(e) An issue is not appealable as authorized by R 400.903.

(2) Abandonment occurs if a claimant, without good cause therefor, fails to appear by himself or by his authorized representative at the scheduled hearing.

History: 1979 AC.

R 400.907 Place of hearing.

Rule 907. A hearing shall be conducted at a reasonable time, date, and place. A claimant shall have the opportunity to participate in a hearing in the county in which the claimant resides. A hearing may be conducted by telephone, by other electronic media, or face-to-face. A face-to-face hearing shall be conducted if a claimant or claimant's representative requests a face-to-face hearing. A licensing case may be heard in Lansing or Detroit or in a county where the petitioner maintains a place of business.

History: 1979 AC; 1993 AACCS.

R 400.908 Notice of hearing.

Rule 908. (1) Notice of the time, date, and place of hearing shall be mailed to the claimant, his representative of record, and the county department or state bureau involved at least 10 days before the date of hearing, except when otherwise required by law.

(2) A notice shall contain the section of the law and rule involved.

History: 1979 AC.

R 400.909 Administrative law judges.

Rule 909. A hearing shall be conducted by an impartial administrative law judge. An administrative law judge assigned to preside shall not have been involved in the initial determination of the action in question.

History: 1979 AC.

R 400.910 Powers of administrative judges.

Rule 910. (1) A presiding administrative law judge may:

(a) Administer oaths or affirmations.

(b) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence to the extent permitted by law.

(c) Provide for the taking of testimony by depositions.

(d) Regulate the course of a hearing, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

(2) When a hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at department expense and made part of the record, if considered necessary by an administrative law judge.

History: 1979 AC.

R 400.911 Considerations.

Rule 911. A hearing shall include consideration of:

(a) An agency action, or failure to act with reasonable promptness, on a claim for financial or medical assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, or discontinuance, termination, or reduction of such assistance.

(b) An agency decision regarding:

(i) Eligibility for financial or medical assistance in both initial and subsequent determinations.

(ii) Amount of financial or medical assistance or change in payments.

(iii) The manner or form of payment.

(iv) The denial, limitation or revocation of a license.

History: 1979 AC.

R 400.912 Rights of parties.

Rule 912. A party or his representative shall have opportunity:

(a) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) To present a case himself or with the aid of an authorized representative. A county department or a state department division involved in a hearing has the right to be represented by legal counsel and other representatives, including the county director or division head, and staff or former staff members directly involved in the issue presented. The regional office staff shall be available to assist.

(c) To bring witnesses.

(d) To establish all pertinent facts and circumstances.

(e) To advance any relevant arguments without undue interference.

(f) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

History: 1979 AC.

R 400.913 Evidence; oath.

Rule 913. (1) A witness or party testifying shall be put under oath or affirmation.

(2) Insofar as is practical, an administrative law judge shall follow the rules of evidence as applied in a nonjury civil case in circuit court. If necessary, evidence not admissible thereunder may be admitted, unless precluded by statute, if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. Incompetent, irrelevant, immaterial, or unduly repetitious evidence may be excluded. Objections to offers of evidence may be made and shall be noted in the record.

History: 1979 AC.

R 400.914 Subpoena.

Rule 914. (1) A department subpoena authorized by law shall be issued to a party upon request and a showing of need, general relevance to the issue involved, and the reasonable scope of the evidence sought requiring the attendance of witnesses and the production of identifiable records not exempt from disclosure by law.

(2) If a department subpoena is not obeyed, appearance of the subpoenaed individual or production of the subpoenaed records, documents, or books may be enforced as provided by law.

History: 1979 AC.

R 400.915 Adjournments; continuances.

Rule 915. An adjournment or continuance may be granted by an administrative law judge for good cause. Good cause includes the absence of material witnesses or relevant and necessary evidence.

History: 1979 AC.

R 400.916 Administrative law judge opinion; exceptions.

Rule 916. (1) An administrative law judge's opinion shall be prepared subsequent to a hearing and shall contain findings of fact, conclusions of law, and, if the administrative law judge has not been delegated final decision making authority, a recommendation as to the proper decision based exclusively on the testimony, evidence and other materials introduced at the hearing.

(2) If a final decision is to be made by the director, any party may, within 10 days of the administrative law judge's proposed decision, file exceptions for the consideration of the director. The exceptions shall be mailed to all parties and to the administrative law judge within the allotted time and shall be made a part of the record.

History: 1979 AC; 1993 AACCS.

R 400.917 Decisions.

Rule 917. (1) A decision shall be based exclusively on the administrative law judge's opinion, evidence, and other material introduced at the hearing.

(2) The record shall consist of the transcript or recording of testimony and exhibits, or an official report that contains the substance of what transpired at the hearing, together with all exhibits and requests filed in the proceeding and the recommendation of the administrative law judge. The record shall be available to the claimant at a place that is accessible to the claimant or the claimant's representative.

(3) Prompt, definitive, and final administrative action shall be taken within 90 days of the request for a hearing, unless otherwise provided by governing state or federal law or rules.

(4) All parties and their representatives shall be promptly notified, in writing, by mail, of the decision. The decision shall include the director's decision and order and the administrative law judge's opinion.

(5) The director shall have discretion to delegate final decision-making authority to the administrative law judge who hears the case or to supervisory administrative law judges in certain cases. Such delegation shall be in writing, shall be dated, and shall clearly specify the scope of the final decision making authority to be conferred.

History: 1979 AC; 1993 AACCS.

R 400.918 Retroactivity.

Rule 918. When a hearing decision is favorable to the claimant, or when the department decides in favor of the claimant prior to a hearing, the department shall make corrective retroactive payments promptly in accord with federal regulations.

History: 1979 AC.

R 400.919 Rehearing or reconsideration.

Rule 919. (1) A claimant or petitioner who has received an adverse hearing decision may file a written request for rehearing or reconsideration within 30 days after the decision. The request shall expressly set forth the reasons for the request. A request for rehearing or reconsideration will be granted if the record or hearing decision is deemed inadequate for purposes of judicial review.

(2) A rehearing may be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

(3) Reconsideration may be granted for any of the following reasons:

(a) The misapplication of manual policy or law in the hearing decision.

(b) Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the claimant.

(c) The failure of the administrative law judge to address other relevant issues in the hearing decision.

(4) The request for a rehearing or reconsideration shall be granted or denied and the parties shall be notified of the decision in writing.

(5) If reconsideration is granted, the decision may be modified without further proceedings. If a rehearing is granted, or if there is a need for further testimony for purposes of reconsideration, the hearing shall be noticed and conducted in the same manner as an original hearing.

History: 1979 AC; 1993 AACS.

R 400.920 Public access.

Rule 920. Copies of all decisions of the director shall be accessible to the public at the state office of the department in a form which shall not reveal the identity of any of the parties or witnesses.

History: 1979 AC.

R 400.921 Judicial review.

Rule 921. Decisions are appealable to the circuit court in the following manner:

- (a) Public assistance decisions are appealable within 30 days of receipt of the decision as to matters of law.
- (b) Other decisions are appealable as provided by applicable governing statute.

History: 1979 AC.

R 400.922 Child care and transportation.

Rule 922. Reasonable and necessary child care costs, not to exceed the rates established under the child care program, and transportation for the petitioner to and from the hearing at the standard travel rates shall be reimbursed wherever the total combined cost exceeds \$3.00. The presiding administrative law judge shall certify the need for the costs.

History: 1979 AC.

R 400.941. Debt Establishment

Rule 941. (1) When the department has determined that an overissuance of benefits has occurred, the department may elect to establish the existence and amount of the debt through an administrative hearing.

(2) The establishment of a debt by an administrative law judge of the department shall be enforceable in any manner provided by the administrative rule or law in addition to collection action in a court of appropriate jurisdiction.

(3) The department shall serve notice of the administrative hearing upon the affected individual by any of the following methods:

- (a) Regular first-class mail.
- (b) Certified mail.
- (c) Personal service.
- (d) Publication only if the individual's address is unknown.

(4) The administrative hearing shall be conducted in accordance with Act No. 306 of the Public Acts of 1969, as amended, being SS24.201 et seq. of the Michigan Compiled Laws.

(5) Evidence of an overissuance shall include 1 or both of the following:

- (a) Written acknowledgement by the individual of an overissuance.
- (b) Documentation showing when the overissuance occurred and the amount of the overissuance.

History: 1997 AACS.

R 400.951 Declaratory rulings.

Rule 51. (1) Upon receipt of a written request specifically asking that a declaratory ruling be issued by the department from an interested person or the agent of an interested person, as defined in section 5 of Act No. 306 of the Public Acts of 1969, as amended, being S24.205 of the Michigan Compiled Laws, the department

director or person specifically delegated by the department director may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the department or of a rule or order of the department.

(2) A request for a declaratory ruling shall contain all of the following information:

(a) A clear, concise, and complete statement of the actual state of facts upon which a requested ruling is to be based.

(b) The statute, rule, or order involved.

(c) A precise statement of the legal question or issue asked.

(d) The signature of the interested person making the request.

(3) The requester may submit with the request a brief or other reference to legal authorities upon which the person believes the declaratory ruling should be based.

(4) The request may be declined in any of the following situations:

(a) The subject matter of a request is frivolous on its face.

(b) The statement of actual facts or issues contained in a request is indefinite, incomplete, or lacks specificity.

(c) The same, or substantially the same, actual state of facts or issue of law is under investigation or is, or has been, the subject of a current action, order, judgment, or decree initiated, pending against, or obtained by the department, the attorney general, or a prosecuting attorney.

(5) If a department declines to issue a declaratory ruling, the interested person making the request shall be given notice, in writing, within 45 working days of receipt of the request. The denial shall include the facts upon which the denial has been made.

(6) If the department issues a declaratory ruling, it will be issued within 60 working days and shall contain all of the following:

(a) A statement or findings of fact.

(b) Conclusions of law supported by legal authority or reasoned opinion.

(c) The ruling or determination made.

History: 1985 AACCS.