

DEPARTMENT OF COMMUNITY HEALTH

OFFICE OF SERVICES TO THE AGING

PART 6. APPEALS AND APPEALS HEARINGS

R 400.20601 Notice of right to appeal; right to appeals hearing.

Rule 601. (1) The state agency director shall provide written notice to each affected party of those commission actions which are subject to appeal. The following actions are subject to appeal:

- (a) Commission action which denies an applicant's designation as a planning and service area.
- (b) Commission action which withdraws an area agency's designation.
- (c) Commission action which denies an area agency approval of its area plan or amendment thereto.
- (d) Commission action which terminates or suspends a grantee or which places a grantee on probation.
- (e) Terminating or altering a contract of a state agency contractor, except as provided by terms of the contract.

(2) The director of the state agency shall notify those parties specified in subrule (1) of this rule of all commission or state agency actions and those which may be appealed. Notice shall be provided in writing and contain all of the following:

- (a) A concise statement of the action and whether it may be appealed.
- (b) The basis for the action which makes it subject to appeal.
- (c) Reference or citation of law, rule, or regulation applicable to the action subject to appeal.
- (d) A statement to notify the affected party of right to appeal and the timeframe within which an appeal request must be initiated.

(3) Each party notified of the right to appeal and hearing shall be notified that this rule to R 400.20602 to R 400.20615 shall govern the method of proceeding.

History: 1983 AACCS.

R 400.20602 Request for hearing; timeliness.

Rule 602. (1) A written notice of appeal and request for an appeals hearing shall be made to the director. Requests made by public or private agencies shall certify that the request is officially endorsed by the agency's governing body.

(2) Freedom to make an appeal request shall not be limited or interfered with in any way. If needed, the office shall assist the party in filing and processing the request.

(3) Parties shall have 30 days from the mailing of notice provided by R 400.20601 to submit an appeal by certified mail and request an appeals hearing.

History: 1983 AACCS.

R 400.20603 Denial or dismissal of request for hearing.

Rule 603. (1) The director shall deny or dismiss the request for an appeals hearing under any of the following circumstances:

- (a) A request was not submitted within the 30 days provided.
- (b) A request is withdrawn by an aggrieved party through written notice before issuance of the final decision.
- (c) An aggrieved party abandons a hearing.
- (d) The office has no jurisdiction over the matter.
- (e) An issue is not appealable.

(2) Abandonment occurs if an aggrieved party, without good cause as determined by the hearing officer, fails to appear or be represented at the scheduled hearing.

(3) Written notice shall be given by the director to an aggrieved party stating the reasons for denial or dismissal as provided in subrule (2) of this rule.

History: 1983 AACCS.

R 400.20604 Hearings; place and notice.

Rule 604. (1) A hearing shall be conducted at a reasonable time, date, and place which will normally be in state facilities at Lansing.

(2) A notice of hearing shall be mailed to the aggrieved party or its representative of record not less than 10 days before the hearing date and shall include all of the following:

- (a) Time, date, and place of hearing.
- (b) A citation of the provision of the regulation, rule, or law involved.
- (c) A citation of the issue being heard.

History: 1983 AACCS.

R 400.20605 Hearings officer.

Rule 605. A hearing for each appeal of a state agency or commission action shall be conducted by a hearings officer. A hearings officer assigned to preside shall not have been involved in the initial determination of the action in question. As a general rule, a hearings officer will be an administrative law judge from within a principal department of state government.

History: 1983 AACCS.

R 400.20606 Powers of hearings officer.

Rule 606. A presiding hearings officer may do all of the following:

- (a) Administer oaths or affirmations.
- (b) Sign and issue subpoenas in the name of the agency, requiring the attendance and giving of testimony by witnesses or 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 the hearing, set the time and place for continued hearings, and fix the time for filing briefs and other documents.

History: 1983 AACCS.

R 400.20607 Hearing considerations.

Rule 607. A hearing shall include consideration of all of the following:

- (a) The manner by which the issue under appeal was guided by federal regulation, state law, the act, or rule.
- (b) The timeliness by which the office or commission acted on the issue being appealed.
- (c) The bearing or relationship to procedures issued by the director in accordance with state law or rule.

History: 1983 AACCS.

R 400.20608 Rights of parties.

Rule 608. A party to a hearing or its authorized representative shall have the opportunity to do all of the following:

- (a) Examine the contents of its file and all documents and records to be used by the office at the hearing at a reasonable time before the date of the hearing and during the hearing.
- (b) Represent the case directly or by an authorized representative. The office and commission have the right to be represented by legal counsel and other representatives.
- (c) Bring witnesses.
- (d) Establish all pertinent facts and circumstances.
- (e) Advance any relevant arguments without undue interference.
- (f) Question any testimony or evidence, including cross-examining adverse witnesses.

History: 1983 AACCS.

R 400.20609 Evidence; oath.

Rule 609. (1) A witness or party testifying shall be put under oath or affirmation.

(2) Insofar as practical, the hearings officer 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 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: 1983 AACS.

R 400.20610 Adjournments; continuances.

Rule 610. An adjournment or continuance may be granted by a hearings officer for good cause. Good cause includes the absence of material witnesses and necessary evidence.

History: 1983 AACS.

R 400.20611 Hearings officer's opinion.

Rule 611. A hearings officer's opinion shall be prepared in writing subsequent to the hearing and shall contain his or her findings of fact, conclusions of law, and a recommendation to the director as to the proper decision, based exclusively on the evidence and other materials introduced at the hearing.

History: 1983 AACS.

R 400.20612 Decisions.

Rule 612. (1) A decision, to be issued by the director, shall be based exclusively on the hearings officer's opinion, evidence, and other material introduced at the hearing.

(2) The record shall consist of an official report containing the substance of what transpired at the hearing, together with all exhibits and motions filed in the proceeding, and the recommendation of the hearings officer. The record shall be available to the grievant at a place accessible to the grievant or his or her representative of record.

(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 laws and rules.

(4) All parties and their representatives shall be promptly notified, in writing, by registered mail, of the decision, including the director's or commission's decision and order, including the hearings officer's opinion.

History: 1983 AACS.

R 400.20613 Retroactivity.

Rule 613. When a hearing decision is favorable to the aggrieved party the office shall make corrective retroactive actions in accordance with the requirements of state or federal regulation, rule, or law.

History: 1983 AACS.

R 400.20614 Rehearing following decision.

Rule 614. A hearing decision adverse to the aggrieved party is not subject to a rehearing upon the same issue, unless newly discovered, relevant evidence is to be presented.

History: 1983 AACS.

R 400.20615 Appeal of decisions.

Rule 615. Decisions made pursuant to R 400.20612 may be appealed as follows:

(a) To the U.S. commissioner on aging for those applicable matters related to the OAA and applicable federal regulations.

(b) To the circuit court of Ingham county.

History: 1983 AACCS.