

CHAPTER 275. APPEAL AND FAIR HEARING AND ADMINISTRATIVE DISQUALIFICATION HEARINGS

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Notes of Decisions

Hearing and appeal procedures set forth in this chapter relate only to hearing rights of welfare recipients and applicants; the General Rules of Administrative Practice, 1 Pa. Code §§ 35.1—35.251 govern the hearing rights of and is the applicable law for providers. *Northwestern Institute of Psychiatry v. Department of Public Welfare*, 513 A.2d 495 (Pa. Cmwlth. 1986).

Cross References

This chapter cited in 6 Pa. Code § 21.23 (relating to application process for domiciliary care service and the domiciliary care supplement); 55 Pa. Code § 41.1 (relating to scope); 55 Pa. Code § 107.4 (relating to procedures to assure nondiscrimination of participating agencies, institutions, organizations and vendors); 55 Pa. Code § 133.4 (relating to procedures); 55 Pa. Code § 140.126 (relating to notification of eligibility/ineligibility); 55 Pa. Code § 140.144 (relating to appeal rights for presumptive eligibility); 55 Pa. Code § 140.145 (relating to notice and appeal rights for MA applicants); 55 Pa. Code § 140.341 (relating to appeal and fair hearing); 55 Pa. Code § 140.531 (relating to notice, appeal and fair hearing); 55 Pa. Code § 140.791 (relating to appeal and fair hearing); 55 Pa. Code § 141.21 (relating to policy); 55 Pa. Code § 141.58 (relating to appeal rights); 55 Pa. Code § 142.23 (relating to requirements); 55 Pa. Code § 165.51 (relating to compliance review); Pa. Code § 165.81 (relating to fair hearing); 55 Pa. Code § 168.101 (relating to appeal and fair hearing); 55 Pa. Code § 187.26 (relating to noncooperation); 55 Pa. Code § 187.27 (relating to waiver of cooperation for good cause); 55 Pa. Code § 227.24 (relating to procedures); 55 Pa. Code § 299.22 (relating to eligibility requirements for SSA-administered optional SSP for DCS and PCS); 55 Pa. Code § 299.33 (relating to appeal and fair hearing); 55 Pa. Code § 231.24 (relating to procedures); 55 Pa. Code § 255.1 (relating to restitution and disqualification policy); 55 Pa. Code § 255.4 (relating to procedures); 55 Pa. Code § 258.13 (relating to appeals and jurisdiction); 55 Pa. Code § 281.5 (relating to ineligibility for time-out); 55 Pa. Code § 451.1 (relating to policy); 55 Pa. Code § 601.123 (relating to appeals and fair hearings); 55 Pa. Code § 1101.31 (relating to scope); 55 Pa. Code § 1101.94 (relating to recipient right of appeal); 55 Pa. Code § 1150.59 (relating to PSR program); 55 Pa. Code § 1181.83 (relating to inspections of care); 55 Pa. Code § 1181.85 (relating to facility utilization review requirements); 55 Pa. Code § 1181.504 (relating to background); 55 Pa. Code § 1181.561 (relating to process to appeal adverse determinations in the preadmission screening program); 55 Pa. Code § 1181.568 (relating to how long it will take to get a decision); 55 Pa. Code Ch. 1181 Appendix N (relating to right to appeal and fair hearing); 55 Pa. Code § 1187.158 (relating to appeals); 55 Pa. Code § 2050.52 (relating to appeals and fair hearings for applicants and clients); 55 Pa. Code § 2060.14 (relating to Departmental appeal and hearing request); 55 Pa. Code § 2070.42 (relating to appeals and fair hearings for applicants and clients); 55 Pa. Code § 3041.3 (relating to definitions); 55 Pa. Code § 3041.174 (relating to parent or caretaker rights and responsibilities); 55 Pa. Code § 3041.176 (relating to hearing procedures); 55 Pa. Code § 3041.189 (relating to disqualification); 55 Pa. Code § 3140.17 (relating to review of county plans and budgets); 55 Pa. Code § 3140.139 (relating to hearing and appeal); 55 Pa. Code § 3140.210 (relating to right to hearing and appeal); 55 Pa. Code § 5221.53 (relating to recipient right of appeal); 55 Pa. Code § 6210.107 (relating to recipient right of appeal of alternate care determinations); and 55 Pa. Code § 6210.108 (relating to facility utilization review).

Subchapter A. APPEAL AND FAIR HEARING**GENERAL PROVISIONS**

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Cross References

This subchapter cited in 55 Pa. Code § 275.22 (relating to combining a fair hearing and an administrative disqualification hearing).

GENERAL PROVISIONS**§ 275.1. Policy.**

(a) *Right to appeal and have a fair hearing.* The policy with regard to the right to appeal and have a fair hearing will be as follows:

(1) The freedom of the applicant or recipient to request a hearing is a fundamental right and is not to be limited or interfered with in any way.

(2) The regulations contained in this chapter, in accordance with the law, afford every person applying for or receiving a money payment, medical assistance, food stamps or services the right to appeal from a Departmental action or failure to act and to have a hearing if he is dissatisfied with a decision refusing or discontinuing assistance in whole or in part.

(3) As used in this chapter, the term departmental includes, in addition to County Assistance Offices, agencies which administer or provide social services under contractual arrangements with the Department.

(4) The term assistance as used in this chapter means a money payment, medical assistance, food stamps and services.

(i) *Right of appeal.* Therefore, the opportunity for a hearing will include the right of appeal from the following:

(A) A denial, suspension or discontinuance in whole or in part.

(B) A change in the amount of payment.

(C) A denial, discontinuance, reduction or exclusion from a Departmental service program including the failure to take into account the client's choice of a service or a determination that he must participate in a service program.

(D) The manner or form of payments, including restricted or protective payments. Exception: When the Department denies or discontinues a protective or vendor payment the right of appeal in this clause will not apply.

(E) Undue delay in making a payment adjustment or acting upon a request or application.

(F) Overpayment and reimbursement claims, including the computation of the amount of the claim and collection procedures.

(G) An action taken under the Child Support Enforcement Program (IV-D), that is, assignment or reassignment of support orders, reimbursement of delayed support payments, arrearages and the like.

(H) A denial of a request for a correction or a deletion in the case file.

(ii) *No right of appeal.* An appeal will be dismissed by the Office of Hearings and Appeals under the following circumstances:

(A) A person will not have the right to appeal from the following:

(I) A decision by the Department to initiate prosecution proceedings under § 255.4 (relating to procedures).

(II) When the decision does not involve food stamps and the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients, unless there is an error in the mathematical computation of the grant. There is always a right to appeal a food stamp decision.

(III) Where a decision has been rendered after a WIN hearing before the manpower agency that a participant has, without good cause, refused to accept employment or participate in the WIN Program, or has failed to request such a hearing after notice of intended action for the refusal.

(IV) When a reimbursement claim has been collected by the Bureau of Claims Settlement, a client who desires to have money returned to him which has been reimbursed to the Department must petition the Department of Treasury, Board of Finance and Revenue.

(B) A client will be notified in writing of his right to request a hearing when a decision is made on eligibility and when a change in eligibility occurs. The written notices of this right appear on the Form PA 5-M, Form PA 162, Form PA 162-A, and Form PA 162-C.

(b) *Objectives of appeals and fair hearings.* The objectives of appeals and fair hearing will be as follows:

(1) To afford applicants and recipients an opportunity for an impartial, objective review of decisions, actions and delays, or in actions made by County Assistance Offices and the Department.

(2) To settle the issue or issues raised by the client in requesting a hearing and to produce a clear and definitive decision setting forth the findings of the Department.

- (3) To contribute to uniformity in the application of Departmental regulations.
- (4) To reveal aspects of Departmental regulations that are deficient, inequitable, or constitute a misconstruction of law.

Authority

The provisions of this § 275.1 issued under sections 403(b) and 423 of the act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. §§ 403(b) and 423).

Source

The provisions of this § 275.1 amended through June 19, 1981, effective August 19, 1981, 11 Pa.B. 2134. Immediately preceding text appears at serial page (60725).

Notes of Decisions

A letter from the Department of Public Welfare denying attorney's fees was not a final appealable adjudication for purposes of appellate jurisdiction under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies). *Simmons v. Cohen*, 534 A.2d 140 (Pa. Cmwlth. 1987); affirmed 574 A.2d 600 (Pa. 1990).

The continuing right of appeal provided to recipients by 55 Pa. Code § 275.1 adequately satisfies due process. *Philadelphia Welfare Rights Organization v. O'Bannon*, 517 F. Supp. 501, 512 (E.D.Pa. 1981); affirmed 681 F.2d 808 (3rd. Cir. (Pa.) 1982).

A DPW adjudication in which a petitioner who represents himself requests a modification of a liability assessment on the grounds that the petitioner's income has decreased is not in accord with law if the hearing examiner fails to ask the petitioner to state the issues at the commencement of the hearing and fails to settle the issue of whether petitioner had a loss of income and, if so, the effect of such loss on his liability. *Brandt v. Department of Public Welfare*, 427 A.2d 758 (Pa. Cmwlth. 1981).

AFDC recipients are not entitled to notice of their right to receive a hearing to contest the computation of the claim by the DPW for reimbursement of interim assistance, and GA recipients are not entitled to a hearing prior to collection of such reimbursement. *Moore v. Colautti*, 483 F. Supp. 357 (E.D. Pa. 1979); affirmed 633 F.2d 211 (3rd. Cir. (Pa.) 1980).

Cross References

This section cited in 55 Pa. Code § 105.5 (relating to access by an individual to his case file); 55 Pa. Code § 165.51 (relating to compliance review); 55 Pa. Code § 275.4 (relating to procedures); and 55 Pa. Code § 291.23 (relating to requirements).

§ 275.2. Definitions.

The following words and forms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Appellant—The applicant or recipient who has requested the hearing and signed the appeal.

Hearing request—An expression, oral or written, by the client or the person acting for him, such as his legal representative, relative or friend, to the effect that he wants an opportunity to present his case to higher authority.

§ 275.3. Requirements.

(a) *Rights of the appellant.* An appellant has the right to appear in person at the hearing and he may represent himself, or he may be represented. For food stamps, the appellant may also bring friends or relatives to the hearing; however the hearing examiner may limit the number of persons in attendance at the hearing if space limitations exist. The appellant or his representative, if any, have the following rights:

(1) To present evidence on his own behalf, to bring witnesses or documents he deems necessary, and to confront and cross-examine witnesses the county office, administering agency or social service provider will produce to support its decision or action.

(2) To request a subpoena from the hearing officer for the production of evidence or witnesses that he feels will be essential in obtaining necessary facts.

(3) To examine prior to the hearing, as well as during the hearing, documents which the county office, administering agency or social service provider will introduce as evidence in the hearing as well as the contents of the case files as provided for in § 105.5 (relating to access by an individual to his case file) or appropriate confidentiality regulations for the service program.

(i) If the appellant requests material from the case file, other than narrative material dated prior to January 1, 1980 which the County Assistance Office, administering agency, or service provider believes is within one of the exceptions of § 105.5(b) or appropriate confidentiality regulations for the service program, a hearing officer will determine prior to the date of the hearing, whether the material is relevant and whether it tends to support the position of the appellant. However, under no circumstances may the same hearing officer conduct the hearing.

(ii) The hearing officer will refuse access to irrelevant material, but will allow access with appropriate safeguards to relevant, confidential information which supports the position of the appellant. If the office, agency, or provider wishes to protect the confidentiality of such relevant information, in spite of the decision of the hearing officer, it must provide the relief requested. The case record material will be made available on as early a date as possible prior to the hearing so that the appellant and his representative shall have ample opportunity to review the evidence of the county or that of the administering agency or social service provider and prepare their case.

(iii) To obtain a hearing officer's determination of whether the appellant may examine the material in question, the County Assistance Office, administering agency or social service provider will promptly provide the Office of Hearings and Appeals a summary of the situation which will include the following:

(A) The decision or action which precipitated the appeal and the reasons for it.

(B) The specific document or subject matter the appellant wants to examine.

(C) The reasons for withholding the material.

(iv) A copy of the summary will also be promptly provided to the appellant, who shall have the right, on a timely basis, to submit to the hearing officer the reasons for requesting the specific matter which the appellant wishes to examine. The Hearing Officer will notify the County Assistance Office, administering agency or social service provider of his determination as to what materials are required to be disclosed with a copy sent to the appellant and his representative, if any. The determination will be made on a timely basis in advance of the date of the hearing. No administrative appeal will be permitted from the determination of the hearing officer.

(4) To be provided with the names of the County Assistance Office, administering agency or social service provider staff members and witnesses who will be present at the hearing.

(5) To request reconsideration of the reversal of a hearing decision by the Secretary within 15 days from the date of reversal.

(6) To appeal the final administrative action of the Department within 30 days from the date of its order.

(b) *Time limitations on right to appeal.* An applicant or recipient must exercise his right of appeal within the following time limits. Appeals which do not meet the following time limitations will be dismissed without a hearing:

(1) Thirty days from the date of written notice of a decision or action by a County Assistance Office, administering agency or service provider except for food stamps which time limits are indicated in paragraph (4).

(2) Sixty days from the date of a decision or action by a County Assistance Office, administering agency or service provider when they did not send written notice because the notice was not required or 60 days from their failure to act except for food stamps which time limits are indicated in paragraph (4).

(3) When the county office, administering agency or service provider fails to send written notice which was required of the action and of the right of appeal or because of administrative error, ongoing delay or failure to take corrective action that should have been taken, the time limit in paragraphs (2) or (4) will not apply. For a period of 6 months from the date of the action or failure to act, the client shall have the right of appeal and shall exercise that right in writing. After 6 months from the date of the county office, administering agency or service provider action or failure to act, a written appeal may be filed with the agency provided that the client signs an affidavit stating the following:

(i) The client did not know of his right of appeal or believed the problem was being resolved administratively.

- (ii) The client actually believes the county office erred in its actions.
 - (iii) The appeal is being made in good faith. Appeals which do not meet the time limitations and requirements set forth in this paragraph and in paragraphs (1) and (2) will be dismissed without a hearing.
 - (iv) An appeal request received by the agency prior to March 1, 1979 will be controlled by the regulation in effect at the time the request was received by the agency.
- (4) For food stamps, the time limits in paragraphs (1) and (2) will not apply. A household may request a hearing within 90 days from the date of an action by the County Assistance Office or loss of benefits. Action by the County Assistance Office shall include a denial of a request for restoration of benefits lost more than 90 days but less than 1 year prior to the request. Additionally, a household may request a hearing to dispute its current level of benefits at any time within a certification period.

Source

The provisions of this § 275.3 amended through December 5, 1980, effective December 6, 1980, 10 Pa.B. 4594. Immediately preceding text appears at serial pages (54068) and (54069).

Notes of Decisions

Failure to appeal the CAO's proposed action within 30 days made the decision final and may not be collaterally attacked under § 227.24(d)(ii)(B)(II). *Otero v. Department of Public Welfare*, 517 A.2d 213 (Pa. Cmwlth. 1986).

Public assistance recipients must appeal within 30 days from date of county assistance officers written denial notice or the decision becomes final and immune to collateral attack. *Otero v. Department of Public Welfare*, 517 A.2d 213 (Pa. Cmwlth. 1986).

A remand was required to determine if any grounds existed to grant an appeal *nunc pro tunc*, hearing officer should have made findings on the factual arguments advanced by Medical Assistance applicant to support acceptance of appeal *nunc pro tunc* on equitable grounds. *Martin v. Department of Public Welfare*, 514 A.2d 204 (Pa. Cmwlth. 1986).

Where notice of denial of benefits stated only: "client failed to supply essential information . . .", cited irrelevant regulation, failed to indicate the essential information and failed to state the basis for denying after only 2 weeks from date of request, the notice was invalid on due process grounds and the 30 day appeal period set forth in § 275.3(b) was inapplicable. *Martin v. Department of Public Welfare*, 514 A.2d 204 (Pa. Cmwlth. 1986).

The good faith requirement for filing an appeal, as stated in 55 Pa. Code § 275.3(b)(3)(iii) modifies all elements of 55 Pa. Code § 275.3(b). *Trant v. Department of Public Welfare*, 452 A.2d 590 (Pa. Cmwlth. 1982).

Even where notice of action has been given, an extension of the time limit for appeal from 30 days to 6 months is allowed under 55 Pa. Code § 275.3(b)(3) because of an administrative error in supplying misinformation which causes a claimant to forego an appeal. *Trant v. Department of Public Welfare*, 452 A.2d 590 (Pa. Cmwlth. 1982).

The six month appeal period provided for in 55 Pa. Code § 275.3(b)(3) is inapplicable when written notice, though sent to an address other than that on the application for benefits, is actually received by the applicant. *Clark v. Department of Public Welfare*, 427 A.2d 712 (Pa. Cmwlth. 1981).

Even though a rejection notice may be deficient because sent to an address other than that on the application for benefits, the inadequacy is cured when the applicant actually receives the notice, and from the time of receipt the applicant has at best 30 days in which to appeal. *Clark v. Department of Public Welfare*, 427 A.2d 712 (Pa. Cmwlth. 1981).

A CBA error indicating the incorrect year in the deadline for an application for medical assistance is not a substantial enough error to deprive the applicant of notice of his right to appeal. *Crail v. Department of Public Welfare*, 416 A.2d 633 (Pa. Cmwlth. 1980).

The denial notices to applicants need not state the appeal period, since the appeal period was stated in published regulations. *Zani v. Department of Public Welfare*, 400 A.2d 247 (Pa. Cmwlth. 1979).

Cross References

This section cited in 55 Pa. Code § 105.5 (relating to access by an individual to his case file); 55 Pa. Code § 275.4 (relating to procedures); 55 Pa. Code § 1181.564 (relating to when an appeal is required to be filed); and 55 Pa. Code § 3041.176 (relating to hearing procedures).

§ 275.4. Procedures.

(a) *Requesting a hearing.* The following procedures will be employed in requesting a hearing:

(1) *Aid to clients making appeals.* The County Assistance Office or administering or provider agency will provide whatever help the applicant/recipient needs in requesting a hearing. This may include the following:

- (i) Clearly explaining the basis for questioned decisions or actions.
- (ii) Explaining the rights and fair hearing proceedings of the applicant/recipient.
- (iii) Providing the necessary forms and explaining to the applicant/recipient how to file his appeal and, if necessary, how to fill out the forms.
- (iv) Advising the applicant/recipient that he may be represented by an attorney, relative, friend or other spokesman and explaining that he may contact his local bar association to locate the legal services available in the county.

(v) For food stamps, upon request, making available without charge case record materials relevant to the decision or action of the agency which are necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and requires an interpreter pursuant to 7 CFR 272.4(c)(3), the agency shall provide bilingual staff or interpreters to explain the hearing procedures in that language.

(2) *Method of appeal.* Procedures relating to the method of appeal will be as follows:

- (i) A hearing request must be made to the agency which notified the client of its decision or action. When an appeal is taken, the appeal letter and proposed action must be forwarded to the Office of Hearings and Appeals.

(ii) A request for a hearing will usually be made in writing. Appeals must specify the action appealed from and must be signed by the applicant/recipient.

(iii) If an oral request for a hearing is made, the agency which receives the request will either give the applicant/recipient the appropriate form to complete or record the request for a hearing with a statement of the action appealed from and the reasons given by the applicant/recipient on the proper form or memorandum, and obtain the signature of the applicant/recipient.

(iv) An oral appeal shall be reduced to a written appeal by the client within 3 working days after the oral appeal was made. The County Assistance Office, Title XX administering or service provider agency will aid the appellant in reducing that oral request to writing. If the oral appeal is not reduced to writing and signed by the client within this time period, the appeal will not be considered as perfected. The County Assistance Office, Title XX administering or service provider agency will send to the Office of Hearings and Appeals a notation of the oral appeal; the written confirmation of that appeal signed by the client, if appropriate; and a copy of the proposed action or decision taken by the County Assistance Office, Title XX administering or service provider agency within 3 working days after receipt of the written appeal.

(v) Every appeal must bear the signature of the applicant/recipient.

(vi) For food stamps, the provision for reducing an oral appeal to writing in paragraphs (2)(ii), (iii), (iv) and (v) will not apply. A food stamp appeal may be made orally or in writing by the household or its representative. If an oral appeal is made, the County Assistance Office will send to the Office of Hearings and Appeals a notation of the oral appeal and a copy of the proposed action or decision taken by the County Assistance Office, if any, within three working days after receipt of the oral appeal.

(vii) All appeals must be made to the County Assistance Office, administering agency or provider agency which notified the applicant/recipient of its decision or action. The agency which receives the request will stamp the appeal upon receipt and forward it to the Office of Hearings and Appeals within 3 working days.

(3) *Agency staff responsibility upon receipt of a hearing request.* Agency staff responsibility upon receipt of a hearing request will be as follows:

(i) When the County Assistance Office, administering agency, or provider agency receives a request for a hearing in whatever form as provided in subsection (a)(2), it will date stamp it upon receipt and review the complaint of the appellant to assure itself that the decision in question is in accordance with Departmental regulations and policies and to determine what additional step, if any, should be taken to resolve the issue without a hearing.

(ii) The County Assistance Office, administering agency, or provider agency shall offer the appellant the opportunity for an agency conference to resolve, if possible, the appeal. In food stamp appeals, the agency conferences shall be attended by an eligibility supervisor or his representative, or both. An agency conference for households contesting a denial of expedited services for food stamps shall be scheduled within 2 working days, unless the household requests a later conference date. The appellant shall be advised that the agency conference is optional and that it shall in no way delay or replace the fair hearing process. An agency conference may result in resolution of the dispute. If this occurs, the hearing examiner must be notified in writing. If not, a fair hearing must still be held.

(iii) When the County Assistance Office, administering agency, or provider agency receives an oral request for a hearing, it will immediately make a written notation with the date of the oral request and obtain the signature of the appellant on the proper form as described in paragraph (2)(iii).

(iv) For food stamps, the provision for reducing an oral appeal to writing in paragraph (3)(iii) will not apply. A food stamp appeal may be made orally or in writing by the household or its representative. If an oral appeal is made, the County Assistance Office will send to the Office of Hearings and Appeals a notation of the oral appeal and a copy of the proposed action or decision taken by the County Assistance Office, if any, within 3 working days after receipt of the oral appeal as described in paragraph (2)(vi).

(v) Appeals to be scheduled for a hearing must be forwarded to the Office of Hearings and Appeals within 3 working days from the date the appeal was received and date stamped, as described in clauses (B) and (E).

(A) *Agency decision correct.* If the agency which received the hearing request determines that the decision in question is in accordance with departmental regulations, it will forward the appeal to the Office of Hearings and Appeals within 3 working days from the time the appeal is received for scheduling of a fair hearing.

(B) *Agency decision not correct.* If the agency decision is incorrect, the following procedure will apply:

(I) If the agency which receives the hearing request determines that the decision in question does not accord with Departmental regulations or policies or if new or additional information is introduced which alters the decision, it will take corrective action. If a payment is involved, the corrected payment will be made retroactive to the date the incorrect action was taken as described in § 227.24 (relating to procedures).

(II) If the appellant is awarded a corrective payment from the County Assistance Office, the County Assistance Office will present the client with a written statement with an explanation for the payment. However, a corrective action or payment will not interfere with, cancel

or otherwise affect the right of the appellant to proceed with the hearing. If the appellant is satisfied with the corrective action or adjustment and wants to withdraw his request for a hearing, his withdrawal must be in writing as described in subsection (e)(2). The agency which receives the written withdrawal will forward it to the Office of Hearings and Appeals and notify the representative of the appellant, if known.

(C) *An appeal received from a proposed action.* Procedures for an appeal received from a proposed action will conform with the following:

(I) When an applicant/recipient responds to a written notice by requesting a hearing within the specified time period as described in § 133.4 (relating to procedures), the agency receiving the hearing request will date stamp the form upon receipt, review the complaint as required in this paragraph, and forward the appeal to the Office of Hearings and Appeals within 3 working days from the time the appeal is received from scheduling a fair hearing. In cases in which a hearing is requested within the specified time period, assistance will be continued pending the hearing decision unless the client waives continuation of benefits.

(II) For food stamps, a household may waive continuation of benefits by indicating on the appeal form that the household does not desire benefits be continued pending the hearing decision. If the form does not positively indicate that the household has waived continuation of benefits and the certification period has not expired, the County Assistance Office shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. The County Assistance Office must promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(III) When a change affecting the grant or food stamps of the recipient occurs while the hearing decision is pending and the recipient fails to appeal after notice of the change, the county office, administering agency or provider agency will take its proposed action required by this latest change.

(IV) If an appeal from a proposed action is received in the County Assistance Office, administering agency or provider agency after the specified time period and the action has been taken as described in § 133.4, the agency receiving the appeal will review the action taken and proceed in accordance with this paragraph or clause (E), whichever is appropriate. When a food stamp household establishes that its failure to appeal within the advance notice period was for good cause, the County Assistance Office shall reinstate benefits to the prior basis of issuance pending the hearing decision.

(V) When an appeal is received within the time specified in § 275.3(b) (relating to requirements), after an action to reduce, suspend

or discontinue a grant, food stamps, medical assistance or social services has been taken and a written notice should have been sent but was not, assistance will be reinstated effective the date the action was taken. The agency receiving the appeal will promptly provide the client with a written statement detailing the reasons for the action and immediately obtain the reasons of the client for his disagreement with the proposed action as described in paragraph (2). The documentation thus obtained will be forwarded within 3 working days to the Office of Hearings and Appeals with a memorandum explaining the circumstances involved for scheduling a fair hearing. Assistance will be continued pending the hearing decision.

(D) *An appeal received from a food stamp written notice.* When a Food Stamp client responds to a written notice as a result of disagreement with the proposed participation rate, or being declared ineligible on initial or subsequent applications, or as a result of changes occurring at the end of the normal certification period, food stamp benefits will be authorized or continued only in the amounts determined at such initial application or subsequent certification or recertification.

(E) *Agency staff responsibility after review.* If the issue is not resolved to the satisfaction of the appellant after the agency review, or if the appellant wants to proceed with the hearing, the agency receiving the appeal will do the following:

(I) Consider that an appeal of a denial, reduction or discontinuance made within the time limitations as described in § 275.3(b) obviates the requirement of a reapplication by the appellant.

(II) Make available without charge to the appellant or his representative on as early a date as possible prior to the hearing the following:

(-a-) Information contained in the case record upon which the decision or action is based and which the county office or administering agency or provider agency will introduce as evidence at the hearing as well as other case record materials which are relevant to the issues raised by the appeal as described in § 275.3(a)(3).

(-b-) The names of the County Assistance Office staff members and, if appropriate, the names of staff members of administering or provider agencies who will be present at the hearing. Staff members who are directly involved with making the decision or initiating the action must be present.

(-c-) Forward the request for a hearing to the Office of Hearings and Appeals within 3 working days from the time it is received and date stamped.

(F) *Communication with the hearing officer.* Procedures relating to communication with the hearing officer will be as follows:

(I) Until the time of the fair hearing, only the written notice of the Department to the applicant or recipient or any other written statement used by the appellant to request a hearing will be available to the hearing officer. Where there is no notice of the action of the county, the administering or provider agency, the agency, upon request of the hearing officer, will prepare a written explanation of its decision for the hearing officer with a copy sent to the appellant and his representative.

(II) After the written notice or other statement is submitted to the Office of Hearings and Appeals, no further communication with the hearing officer prior to the hearing by the appellant or the county office, administering agency or provider agency regarding the appeal or the basis for the action of the agency will be permitted except as provided in § 275.3(a)(3), or to request continuances, or to withdraw the action or the appeal, or to request a subpoena of evidence or witnesses.

(b) *Time limits.* Time limits will be in accordance with the following:

(1) Final administrative action must be taken in hearings within the following time limits: 60 days from the date of an appeal from an agency decision affecting food stamps, and 90 days from the date of an appeal from an agency decision affecting cash assistance, medical assistance, or social service.

(2) Final administrative action will include a hearing and subsequent decision by the hearing officer, optional review by the Secretary or his designee as provided in subsection (h)(4), and, where the appeal of the appellant is sustained, immediate implementation of the hearing decision by the appropriate agency.

(3) For food stamps, when the hearing decision results in an increase in household benefits, the County Assistance Office must adjust the coupon allotment within 10 days of the receipt of the decision. If necessary, the County Assistance Office will provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle; however, the County Assistance Office may take longer than 10 days if it elects to increase the allotment in the household's normal issuance cycle provided that the issuance will occur within 60 days from the date the appeal is filed.

(4) If the appellant has not received final administrative action within the specified time limits, the appropriate agency will proceed in accordance with subsection (d).

(c) *Central office control.* Central office control will be in accordance with the following:

(1) When a request for a hearing is received, the Office of Hearings and Appeals will establish a control for 60 or 90 days from the date of appeal, whichever is applicable, excluding appeals which involve only a claim for a

one-time grant as described in § 175.23 (relating to requirements), § 227.24 (relating to procedures) and § 229.24 (relating to procedures); or when assistance is continued pending a hearing decision because an appeal from a proposed adverse action was filed within the advance notice period. If food stamps together with another type of assistance are involved in an appeal, both a 60-day and 90-day control will be set.

(2) In cases where the appellant is responsible for delaying the hearing process, as described in subsection (e), the time limit for final administrative action will be extended by the length of the delay. For example, if the appellant requests a continuance of a hearing for 10 days, final administrative action will then be required within 70 days for food stamps or within 100 days for other assistance. In those cases that have been delayed for this reason, the hearing officer will send written notification to the Office of Hearings and Appeals.

(d) *Interim assistance.* When final administrative action has not been rendered within the applicable time limit as described in subsection (c), the office of the appropriate Deputy Secretary will notify the county office, administering, or provider agency to authorize the assistance which the appellant has requested in his appeal until final administrative action is rendered. Interim assistance will be authorized effective with the first day after the applicable time limit expires. When the appeal involves more than one type of assistance, the appropriate agency will authorize an assistance benefit.

(1) *PA and MA.* Cash assistance and medical assistance will be authorized in the appropriate category, that is, AFDC, AFDC-CU and GA, in the usual manner, as described in § 225.24(c) (relating to procedures). The CAO will issue the appropriate MA Identification Card and submit the Form PA 743 Documents in the usual manner. The assistance will be continued until final administrative action is rendered.

(2) *Food stamps.* Interim food stamp assistance will be authorized in the usual manner with the appropriate coding. Food stamps will be continued until final administrative action is rendered.

(3) *Reporting.* The CAO will prepare monthly reports on cases in which interim assistance is authorized. Reports will be prepared on the last day of the month and sent within 5 days from the previous reporting period to the Office of Hearings and Appeals which will forward them to the Office of the Deputy Secretary of Income Maintenance. The information required must be reported on an individual case basis. The county office must ensure that the amount of interim assistance listed is accurate. In all cases, the amount will be the difference between what the appellant claims he is entitled to and what the CAO determines the appellant is eligible to receive. In no case may the amount of cash assistance be greater than the amounts specified in the allowance schedule as described in § 175.23(a), nor the allotment be greater than the amounts specified in the Basis of Issuance Table except when the client is entitled to a

special item allowance as described in § 175.23(b) and (c). The following are examples of report preparation:

(i) An applicant who appeals the decision of the county to adjust \$50 monthly against his family size allowance of \$159 will be granted the \$50 monthly as interim assistance after the expiration of the 90-day period. On the monthly report, the CAO will list \$50 as the amount of interim assistance as follows:

(A)	Monthly amount of assistance to which appellant is entitled:	\$159
(B)	Monthly amount of assistance to which appellant is entitled by Departmental standards:	\$109
(C)	Monthly amount of interim assistance, (A) minus (B):	\$50

(ii) A four-person food stamp household with net monthly income of \$560 will take exception to the computation. Applicant claims deductions for utilities will exceed the amount allowed and net income should be \$510. Interim food stamps will be authorized after the expiration of the 60-day period using the basis of issuance table and the net income claimed by the client. The monthly report will be prepared as follows:

(A)	Amount of coupons to which appellant claims he is entitled:	
	Coupons	\$24
(B)	Amount of coupons to which appellant is entitled by Departmental standards:	
	Coupons	0
(C)	Monthly amount of interim assistance, (A) minus (B):	
	Total	\$24

(4) *Restitution.* Interim assistance will not be subject to restitution except in the case of deliberate misrepresentation of facts by the appellant.

(5) *Appellant request for interim assistance.* When the appellant or his representative requests interim assistance by telephone or in writing, the Executive Director or his delegate of the agency against which the appeal was made will investigate the complaint and authorize interim assistance within 48 hours effective with the first day after the applicable time limit expires if the investigation confirms that interim assistance is due. The representative of the appellant will, if requested, confirm in writing the information given to the Executive Director by telephone. If the agency director determines that interim assistance is not due, notice of denial of interim assistance will be provided in writing to the appellant and representative.

(e) *Scheduling the hearing.* Hearings will be scheduled in accordance with the following:

(1) Hearings will be scheduled to be held as soon as possible, allowing at least 10 days notice to be given to the appellant and his representative or a lesser time if requested by the household.

(2) For food stamps, hearing requests from households, such as migrant farmworkers, that plan to move from the area before the hearing decision would normally be reached, shall be expedited to enable them to receive a decision and a restoration of benefits if the decision so indicates as described in subsection (h)(3)(iii) before they leave the area.

(3) The appellant who wishes to postpone the hearing shall contact the hearing officer and provide a reason for the request. The hearing officer may approve the request for postponement or continuation of the hearing. The hearing will be rescheduled as soon as possible.

(4) For food stamps, an appellant may request and is entitled to receive a postponement of the hearing for up to 30 days. The hearing officer shall grant the postponement which may not exceed 30 days.

(5) In cases where the appellant is responsible for delaying the hearing process, the time limit for final administrative action is extended by the length of the delay as described in subsection (c).

(6) When the hearing issue involves an overpayment or reimbursement claim as described in § 275.1 (relating to policy), the County Board of Assistance will notify the Bureau of Claim Settlement in Harrisburg of the issue. Reference should be made to the exception as described in § 275.1.

(i) *Group hearings.* Group hearings will be held under the following circumstances:

(A) Whenever two or more requests for a hearing are received from appellants residing in the same county, and the issues are the same in that the sole issue involved is one of a Departmental regulation, and the facts are not in dispute, the hearings may be consolidated into a single group hearing. The scheduling and conducting of a group hearing will be discretionary with the hearing officer.

(B) In group hearings, the regulations pertaining to fair hearings will apply. Thus, an appellant will be entitled, if he so desires, to present his own case and be represented.

(C) A client may request that his hearing be conducted as part of a group hearing. A client may demand that his hearing not be part of a group hearing.

(ii) *Hearing withdrawn.* Hearing requests will be withdrawn only in accordance with the following:

(A) A request for a hearing which meets the conditions as described in § 275.1 can only be dismissed without a hearing when it has been withdrawn by the appellant or his authorized representative in writing. Under

no circumstances may the County Assistance Office, administering agency or provider agency attempt to convince the appellant to withdraw his appeal.

(B) If the appellant decides to withdraw his request for a hearing after the appeal has been forwarded to the Office of Hearings and Appeals, the appropriate agency will immediately notify the Office of Hearings and Appeals and send a copy of the withdrawal date stamped.

(iii) *Hearing abandoned.* Appeals will be considered abandoned in accordance with the following:

(A) If the appellant or his representative fails to appear at the scheduled hearing without good cause as determined by the hearing officer, the appeal will be considered to be abandoned and will be dismissed.

(B) If the agency against which the appeal was made fails to appear at the hearing, the appeal of the appellant will be sustained by the hearing officer who will notify the agency of this decision in writing.

(C) If neither the appellant nor the appropriate agency or their representatives appear at the hearing, the hearing officer will reschedule the hearing.

(f) *Conducting the hearing.* The hearing will be held before a hearing officer. The hearing officer will be a qualified agency official who has not been involved in any way with the decision or action in question or with the person or officer who is responsible for the decision or action up to the time of the hearing. The responsibilities of the hearing officer in conducting the hearing are as follows:

(1) To conduct the hearing in an orderly but informal manner.

(2) To obtain from the appellant and agency staff members relevant testimony pertaining to the issues in question and to limit the testimony to that which has bearing on the issues involved.

(3) To provide the appellant and the agency representatives with the opportunity to present their case in an orderly manner, to present witnesses, to cross-examine witnesses and to advance pertinent facts or arguments.

(4) To assure that documents and records presented or referred to at the hearing are made part of the hearing transcript. Persons at the hearing have the right to examine documents and records used as evidence.

(5) To obtain at agency expense and make part of the record a medical assessment other than that of the persons involved in making the original decision when the hearing involves medical issues such as those concerning a diagnosis, the report of an examining physician or the decision of a medical review team, and the hearing officer considers it necessary.

(6) To render a decision based upon the facts and evidence as applied to Departmental regulations.

(g) *Hearing proceedings.* Hearing proceedings will conform with the following:

(1) The proceedings will follow this order:

(i) The hearing officer will open with a statement of the purpose of the hearing, the procedure it will follow, who the deciding authority is and the way the decision will be transmitted to the appellant.

(ii) The hearing officer will ask the appellant to state the issue or issues so that they are identified at the commencement of the hearing.

(iii) The county or other appropriate agency will present its case, the facts and events leading to the decision which will be the basis for the decision or action, and the pertinent regulations involved.

(iv) After a witness testifies, the appellant or his representative may cross-examine the witness.

(v) The appellant will present his case.

(vi) After a witness testifies, the agency or its representative may cross-examine that witness.

(vii) The hearing officer may question any witness or party at any time.

(viii) Before terminating the hearing, the hearing officer will ask the appellant and his representative whether he wishes any further opportunity to speak or whether he has presented his case fully.

(ix) The hearing officer may continue the hearing or adjourn it to another date. If the appellant has requested a continuance or is in some other manner responsible for a delay, the time for final administrative action will be extended by the length of the delay as provided in subsection (c).

(2) *Agency staff responsibility at the hearings.* The County Assistance Office and other agencies as appropriate will prepare for the hearing so that evidence considered in making the decision or taking the action which is at issue and evidence that supports that decision or action will be introduced at the hearing in an orderly and concise manner. Relevant information which is presented at a hearing will include the following:

(i) Names, relationships and ages of the persons affected, and the type of assistance involved.

(ii) The decision or action which prompted the request for the hearing.

(iii) Description of the relevant facts and events leading to the decision or action plus evidence to support the decision or action, including identification of the pertinent regulations applied in making the decision.

(iv) Detailed computation of the grant, allowances and income, before and after implementation of the agency decision or action.

(3) The County Assistance Office or other appropriate agency may be assigned legal representation at a hearing. When an attorney is assigned, the agency will make available to him the evidence it possesses regarding the decision and situation of the appellant plus additional information the attorney may request to prepare his case. The attorney will then be responsible for seeing that relevant testimony, evidence and the like is introduced at the hearing.

(4) If legal representation has not been assigned and the agency believes it would benefit from the services of a lawyer, it may request legal representation from the Office of Legal Counsel of the Department.

(5) At hearings when the agency has not been assigned legal counsel, the presentation of the relevant information will be made by agency staff.

(6) Since the hearing decision will be based solely on the information presented at the hearing as described in subsection (h)(2), failure to introduce relevant evidence may result in an adverse decision if the evidence presented is inadequate to support the decision.

(7) At the time of the hearing, the agency against which the appeal is made will be responsible for seeing that their case record contains current information on the issue or issues at question.

(h) *Hearing decisions.* Hearing decisions will conform with the following:

(1) *Hearing authority.* Hearing authority will conform with the following:

(i) The hearing authority will be the Secretary of the Department.

(ii) The designated hearing officer will have the delegated authority from the Secretary to make the decision on the appeal. Decisions will, therefore, be rendered in the name of the Department and will be binding on the County Board of Assistance. Administering or provider agencies involved shall be similarly bound by the decision of the designated hearing officer, subject to their right to appeal from that decision to Commonwealth Court. Provisions of the decision will be promptly carried out.

(iii) The Office of Hearings and Appeals is under the direct supervision of the Secretary or his designee. The function of the hearing officer in rendering a hearing decision will be as follows:

(A) To determine the facts.

(B) To determine the appropriate regulations that apply.

(C) To determine the action that should be taken in relation to the established facts and correct application of Departmental regulations.

(iv) Hearing officers may not render a decision on the validity of a Departmental regulation nor may they invalidate or modify a Departmental regulation. Hearing officers must, when necessary, interpret regulations when regulations are ambiguous. Hearing decisions receiving final administrative action are restricted to the case at issue and do not create a precedent or apply to an entire class unless the hearing involves an entire class as defined in subsection (e)(6)(i).

(2) *Basis for hearing decision.* Hearing decisions will be based on the following:

(i) The hearing officer will restrict his decision to the hearing record, which will consist of testimony and exhibits introduced into the hearing and the notice of action taken by the agency and the appeal of the client. The hearing officer will make his adjudication in accordance with regulations

established by the Department which have been promulgated in accordance with the Commonwealth Documents Law.

(ii) Medical report or reports obtained at the direction of the hearing officer as described in subsection (f) will become part of the hearing record.

(iii) Briefs and exhibits will be due at the time of the hearing. If either the agency or the appellant wishes to present additional exhibits after the conclusion of the hearing, the hearing officer may allow the record to be kept open for 5 working days for the exhibits which include briefs. Copies of exhibits introduced into the record, after the conclusion of the hearing, will be given to the hearing officer, the appellee, the appellant and his representative. Briefs may be accepted later than 5 working days, but not beyond 30 days after the hearing, if the appellant provides the hearing officer with an affidavit that the appellant has requested information from a third party which cannot be provided within 5 working days. If the appellant or his representative is waiting for information from a third party, a delay beyond 5 days will extend the time for final administrative action by the length of the delay as described in subsection (c).

(3) *Notice of decision.* Notices of hearing decisions will conform with the following:

(i) The notice of decision will specify the reasons for the decision and identify the supporting evidence. The notice of decision will also specify the eligibility of the appellant and, if relevant, the amount of grant, food stamps, medical assistance or social services for which the appellant is eligible. In addition, it will inform the appellant or provider that he has the right to appeal the decision to the Commonwealth Court if he is dissatisfied with it.

(ii) If an underpayment in the cash grant is involved, a corrective payment will be authorized retroactively to the date the incorrect action or inaction was taken or was not taken. When the hearing decision sustains a proposed adverse action of the County Assistance Office and assistance has been continued pending the hearing, overpayment will occur for assistance received immediately following the expiration of the advance notice period. Referral will be made to the Bureau of Claim Settlement in accordance with § 255.4(f) (relating to procedures).

(iii) If food stamps are involved, lost benefits will be restored retroactively as described in § 541.3(i) (reserved). For households, such as migrant farmworkers, that plan to move from the area, the County Assistance Office will restore benefits to the household before their departure whenever possible. If benefits are not restored prior to the departure of the household, the County Assistance Office will prepare the Form FNS-286 as described in § 541.3(i)(10) and will forward the Form FNS-286 together with the hearing decision to the household or to the new County Assistance Office if this information is known. The new County Assistance Office will issue the appropriate benefits. Where food stamp benefits are continued during the

pendency of the appeal and the hearing officer finds against the appellant, a claim, Form PA 189-SP, will be filed for the bonus coupons overissued prior to and during the pendency of the appeal.

(iv) When the proposed action of the County Assistance Office to reduce, suspend or terminate a grant, food stamps, medical assistance, or social services is sustained, the action will be taken effective the first payment date, issuance date and the like whose deadline can be met following the decision.

(v) At the same time the written notice of decision is sent to the appellant, copies will be sent to the agency Executive Director and the representative of the appellant, if any. The hearing officer must sign the copies of the hearing decision letter.

(4) *Review by the Secretary.* Review by the Secretary may be made under the following circumstances:

(i) The Director of the Office of Hearings and Appeals will affirm, amend, reverse or remand a hearing examiner's decisions. Reversal by the Director will be confined to matters of law and established Departmental policy; no findings of fact made by the hearing examiner will be subject to reversal. The Director may, however, remand the case to the hearing examiner for further findings of fact. If the decision of the hearing examiner is reversed, the reasons for the reversal will be provided to the appellant in writing by the Director of the Office of Hearings and Appeals.

(ii) Either party to a proceeding has 15 days from the date of the decision of the Director of the Office of Hearings and Appeals within which to request reconsideration of that decision by the Secretary of the Department. The request must be in writing and must set forth in detail the basis upon which the request is made. The request should be addressed to the Secretary, but delivered to the Director, Office of Hearings and Appeals, who, upon receipt of a request for reconsideration, will forward the entire file and the request to the Secretary within 1 working day of the receipt of the request. The Secretary will, within 15 working days from the date the request is received, respond in writing to the request. The Secretary may affirm, amend, or reverse the decision of the Director, or remand the case to the hearing officer for further findings of fact. Actions taken by the Secretary will be confined to matters of law and established departmental policy; no findings of fact made by the hearing examiner will be subject to reversal. The Secretary may, however, remand the case to the Director for further findings of fact.

(iii) Requests for reconsideration will stay action proposed in the decision of the Director.

(iv) In cases where there is a request for reconsideration, the time limit, 30 days, for appealing the decision of the Department to the Commonwealth Court will begin on the date the Secretary responds to the request.

- (v) The request of the appellant for reconsideration and the response by the Secretary will not be subject to the time limits specified in subsection (b).
- (5) *Digest of hearing decisions.* The Office of Hearings and Appeals will prepare a digest of hearing adjudications which will contain the following:
- (i) The month and year of the decision, with a code for Office of Hearings and Appeals identification of the case.
 - (ii) The pertinent PA Manual reference.
 - (iii) A statement of the issue.
 - (iv) Excerpts of the decision setting forth the facts established at the hearing.
- (6) *Stenographic record.* In all appeal proceedings, a stenographic record of the proceedings will be kept. The record need not be transcribed unless the purchase of a transcribed copy is desired by a party or an appeal to Commonwealth Court is filed and in such case, only if the transcription is ordered by the Court.

Authority

The provisions of this § 275.4 issued under sections 201(2) and 423 of the Public Welfare Code (62 P. S. §§ 201(2) and 423); amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 275.4 amended through July 2, 1982, effective July 3, 1982, 12 Pa.B. 2066; amended December 16, 1994, effective December 17, 1994, 24 Pa.B. 6300. Immediately preceding text appears at serial pages (133578), (117277) to (117278), (130801) to (130802), (117281) to (117284), (181747) to (181748), (117287) to (117290), (168691) to (168692) and (175305) to (175306).

Notes of Decisions

Application

Where provider hearing is conducted by hearing attorney, finder of fact is Director of Office of Hearing and Appeals, not hearing attorney. This chapter addresses hearing rights of welfare recipients and public assistance applicants, not hearing rights of providers. *Northwestern Institute of Psychiatry v. Department of Public Welfare*, 513 A.2d 495 (Pa. Cmwlth. 1986).

The provisions of this subsection (f)(5) apply to hearings involving recipients of state assistance funds, and have no application to proceedings under the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4101 *et seq.*). *Tartaglia v. Department of Public Welfare*, 416 A.2d 608 (Pa. Cmwlth. 1980).

Collection Attempts

The contract embodying the agreement between the hospital and the individual doing business as a medical assistance counseling service required the individual to process medical assistance eligibility applications for the hospital's patients and, on its face, falls far short of constituting substantial evidence to support the Department of Public Welfare's determination that the individual was acting as a collection agency. The fact that an individual receives remuneration from the hospital for services

has no relevance to the question of whether the individual is entitled to represent a patient before the Office of Hearing and Appeals. *Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995).

Discretion

It was not an abuse of discretion for the hearing examiner to not order a medical assessment of a claimant if the claimant testified that he was not under the care of a doctor for the back injury and claimant was not taking any medication for his alleged disability other than aspirin. *Morris v. Department of Public Welfare*, 414 A.2d 176 (Pa. Cmwlth. 1980).

General Comments

The Commonwealth Court affirmed its previous holding in *Ormes v. Department of Public Welfare*, 98 Pa. Cmwlth. 588, 512 A.2d 87 (1986), that this regulation is inconsistent with Pa. R.A.P. 1701(b)(3). *Modzelewski v. Department of Public Welfare*, 531 A.2d 585 (Pa. Cmwlth. 1987).

Hearing Proceedings

Where the assistance office did not give the appellant an opportunity to examine materials upon which the assistance office decision was based, the computation sheets were not part of the record and the staff member directly involved in initiating the action against the recipient was not present at the hearing, the Department of Public Welfare deviated from appeal and fair hearing procedures and denied the appellant an opportunity to challenge the eligibility determination. *Knox v. Secretary of Public Welfare*, 573 A.2d 261 (Pa. Cmwlth. 1990).

A Department of Public Welfare adjudication in which a petitioner who represented pro se requests modification of a liability assessment on the grounds that the petitioner's income has decreased is not in accord with law if the hearing examiner failed to ask the petitioner to state the issues at the commencement of the hearing and failed to settle the issue of whether the petitioner had a loss of income and, if so, the effect of such loss on petitioner's liability. *Brandt v. Department of Public Welfare*, 427 A.2d 758 (Pa. Cmwlth. 1981).

Reconsideration

There is no provision limiting this regulation to only non-lawyer spokespersons who do not charge for their services and there was no evidence that plaintiff, doing business as a medical assistance counseling service, was actually portraying to the public that plaintiff had the authority to practice law as prohibited by 42 Pa.C.S. §§ 2524 and 7311(c). Consequently, the Department of Public Welfare's interpretation of its regulations to add the condition that a spokesperson cannot receive remuneration for services in processing medical assistance applications is plainly inconsistent with this regulation and, further, constitutes impermissible rulemaking. *Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa. Cmwlth. 1995); appeal denied 683 A.2d 887 (Pa. 1996).

An untimely request for reconsideration, filed in reliance on this section one day before the Court's decision to invalidate this section (*Ormes v. DPW*, 98 Pa. Commw. 588, 591 note, 512 A.2d 87, Note 5 (1986)), was deemed to be proper for purposes of allowing the petitioner to appeal the case on the merits. *Mozier v. Department of Public Welfare*, 538 A.2d 125 (Pa. Cmwlth. 1988).

Subsection (h)(4)(ii) is inapplicable to a case involving public facility reimbursements. *Westmoreland Manor v. Department of Public Welfare*, 496 A.2d 1282 (Pa. Cmwlth. 1985).

Director of Hearings and Appeals acted within the director's authority when he unilaterally, without taking additional testimony, issued a decision reversing the hearing officer. *E.C.C. Retirement Village v. Department of Public Welfare*, 492 A.2d 466 (Pa. Cmwlth. 1985).

A finding of fact by the Hearing Examiner is not subject to reversal, in conformance with subsection (h)(4)(ii), if it is supported by substantial evidence. *Augelli v. Department of Public Welfare*, 468 A.2d 524 (Pa. Cmwlth. 1983).

Findings of fact made by the Hearing Examiner will not be subject to reversal by the Director whose role is confined to matters of law. *Klingerman Nursing Center, Inc. v. Department of Public Welfare*, 458 A.2d 653 (Pa. Cmwlth. 1983).

If an appellant merely indicates in a form requesting an appeal that the matter was wrongly decided, the appeal will not be dismissed. *Casey v. O'Bannon*, 536 F. Supp. 350 (E.D. Pa. 1982).

It is well within the province of the Director to reverse the hearing examiner for the purpose of upholding (1) the legal principle that approval of training programs is within the administrative discretion of the Department of Public Welfare (DPW), and (2) the established departmental policy that participation in a DPW-approved program is a prerequisite to a training allowance grant. *Holloway v. Department of Public Welfare*, 445 A.2d 1329 (Pa. Cmwlth. 1982).

The failure of the Secretary to specify reasons, evidence and regulations in support of her decision to deny a request for reconsideration violated 45 CFR 205.10(a)(15) and 2 Pa.C.S. § 507, even though subsection (h)(4)(ii) is silent on the issue of what shall be included in the Secretary's response to a request for reconsideration. *Heinsohn v. Department of Public Welfare*, 445 A.2d 271 (Pa. Cmwlth. 1982).

Under 55 Pa. Code § 275.4(f) and (h)(1) and (h)(2), the hearing examiner is required to consider all the facts in evidence at the hearing, not just the evidence before the county office. *Matthews v. Department of Public Welfare*, 443 A.2d 1362, 1365 (Pa. Cmwlth. 1982).

Because the optional review of the decision of the hearing examiner by the Hearing and Appeals Unit does not precede the pre-termination hearing which itself provides the necessary effective opportunity to defend by confronting any adverse witnesses and by presenting arguments and evidence orally, the optional review is consistent with principles of due process. *Morris v. Department of Public Welfare*, 414 A.2d 176 (Pa. Cmwlth. 1980).

Reversal of the decision of a hearing examiner was proper, since such decision was based solely on hearsay evidence which had been properly objected to. *Beard v. Department of Public Welfare*, 400 A.2d 1342 (Pa. Cmwlth. 1979).

Representation

If a recipient chooses to be unrepresented by counsel and fails to present any witness on his behalf and to cross-examine other witnesses effectively, the recipient cannot lay any blame for that situation on the Department of Public Welfare. *Morris v. Department of Public Welfare*, 414 A.2d 176 (Pa. Cmwlth. 1980).

State Regulations

A hearing officer is bound to make an adjudication in accordance with regulations promulgated by the Department of Public Welfare. Policy clarifications and HCFA Transmittals are not duly promulgated regulations and do not supersede regulations. *Heffelfinger v. Department of Public Welfare*, 789 A.2d 349 (Pa. Cmwlth. 2001).

State regulations providing a county assistance office with the right to seek reconsideration by the Secretary of Department of Public Welfare do not conflict with, and therefore, are not preempted by Federal regulations under which the State welfare agency must notify a Medical Assistance recipient of a decision and their right of reconsideration, if such is available. *Mosely v. Department of Public Welfare*, 598 A.2d 317 (Pa. Cmwlth. 1991).

Time Limits

Appeal of parent from order denying expungement of report of indicated child abuse is an appeal from agency decision requiring administrative action within 90 days. Report of indicated child abuse was supported by evidence. *J. L. v. Department of Public Welfare*, 575 A.2d 643, 645 (Pa. Cmwlth. 1990).

This section is invalidated, and the general provisions of 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration) should apply to the time frame for response from the agency head. *Strobhar v. Department of Public Welfare*, 557 A.2d 440 (Pa. Cmwlth. 1989).

This section is invalidated with regard to the “15 working day” period in which the Secretary is to act on reconsideration because the language of the section makes computation of timeliness nearly impossible, is inherently inconsistent and was designed to complement a previously invalidated corollary section. *Strobhar v. Department of Public Welfare*, 557 A.2d 440 (Pa. Cmwlth. 1989).

Failure of the Department of Public Welfare to act within the time period specified in subsection (b)(1) (relating to procedures) does not render its subsequent actions illegal. *Houtz v. Department of Public Welfare*, 401 A.2d 388 (Pa. Cmwlth. 1979).

Cross References

This section cited in 55 Pa. Code § 133.4 (relating to procedures); 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.56 (relating to deferred referral); 55 Pa. Code § 165.81 (relating to fair hearing); 55 Pa. Code § 227.24 (relating to procedures); 55 Pa. Code § 1181.54 (relating to payment conditions related to the recipient’s continued need for care); 55 Pa. Code § 3490.106 (relating to hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995); 55 Pa. Code § 3490.106a (relating to hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995); and 55 Pa. Code § 3490.192 (relating to request for a hearing from a school employe for indicated reports of student abuse).

STATEMENTS OF POLICY

§ 275.5. Settling appeals and paying retroactive benefits—statement of policy.

(a) This statement of policy provides a means for CAOs, and other administering agencies, to settle appeals in cases where verification provided to the CAO subsequent to its adverse action on the case shows that the appellant, in fact, met the substantive conditions of eligibility during the period of time at issue in the appeal. The question on appeal, therefore, is not whether the CAO or administering agency acted properly based upon the information then available, but whether the appellant was eligible for the period of time at issue based upon evidence of eligibility the client is able to provide at or before the hearing.

(b) When a client files a timely appeal from an adverse Departmental action, the CAO shall determine whether the appellant subsequently provided acceptable verification of eligibility relating back to the effective date of the adverse action. If this requirement is met, the CAO shall restore benefits retroactive to the effective date of termination, denial, reduction or suspension of benefits. In the case of a denial of assistance, benefits will be restored retroactive to the date by which an eligibility determination should have been made if the actual date of the decision to deny benefits was delayed more than 15 days from the date of application, as specified in § 125.21(b) (relating to policy).

(c) If the verification subsequently provided by the appellant does not relate all the way back to the effective date of adverse action, but does establish eligibility as of a later date, the CAO shall restore assistance to the date on which the eligibility factor at issue in the appeal was met.

(d) The following examples are provided to illustrate how this statement of policy is to be applied:

Example No. 1

Mary Jones was sent a PA/FS 162-A Notice dated January 5, 1989, advising her that her assistance would be terminated effective January 20, 1989,

based upon her failure to attend a scheduled reapplication interview and to provide verification of her household's continued eligibility for AFDC, food stamps and MA. On January 25, 1989, Ms. Jones filed a timely appeal.

On February 1, 1989, prior to the hearing, Ms. Jones provided the CAO with acceptable verification establishing her household's continued eligibility for Public Assistance.

Since the verification established that Ms. Jones was eligible for AFDC, food stamps and Medical Assistance as of the date the assistance was terminated, the CAO would rescind its January 5, 1989, termination action and restore benefits to Ms. Jones retroactive to January 20, 1989. In this case, the verification provided by Ms. Jones subsequent to the closing action proved her eligibility for the period of time at issue in the appeal.

Example No. 2

Sam Smith applied for assistance on February 2, 1989, but was unable to obtain documentary proof that the market value of his car was actually less than the book value, which exceeded the \$1,500 equity limit. (None of the excess value could be applied to the general resource limit, because Mr. Smith has other resources which equal the resource limit.) On February 10, 1989, the CAO issued a notice denying Mr. Smith's application.

On February 28, 1989, Mr. Smith filed a timely appeal. Prior to the hearing, Mr. Smith provided the CAO with a statement from a mechanic showing that his car was worth only \$1,000 when the mechanic last saw it on February 1, 1989. Upon receipt of this verification, and assuming Mr. Smith met the other conditions of eligibility, the CAO would promptly authorize assistance retroactive to February 10, 1989.

If the statement submitted by Mr. Smith had indicated that the mechanic first saw the car on February 27, 1989, and estimated its value at \$1,000, the CAO would authorize assistance retroactive to February 27, 1989, the date when Mr. Smith first met the eligibility condition at issue in the appeal.

Example No. 3

Maria Mendez moved from Puerto Rico to Pennsylvania in February 1989 and on March 3, 1989, applied for assistance for herself and her three children. By notice dated March 10, 1989, the CAO denied Ms. Mendez's application based upon information that her Public Assistance case in Puerto Rico was still open.

Ms. Mendez filed a timely appeal on March 25, 1989, and subsequently provided the CAO with acceptable verification that she had not received any assistance benefits from Puerto Rico since she moved to Pennsylvania. Upon receipt of this verification, and assuming Ms. Mendez and her children met the other conditions of eligibility, the CAO would immediately authorize assistance retroactive to March 10, 1989.

Example No. 4

Bill Brown applied for GA benefits on January 5, 1989, after his unemployment compensation benefits ran out. At his prescreen interview, a CAO worker

explained to Mr. Brown that if he could prove a work history of 48 months out of the last 8 years, he would qualify for Chronically Needy GA benefits based upon exhaustion of his unemployment compensation. The worker further explained what verification Mr. Brown would need to prove his work history and informed him that the CAO would help him obtain this information should he require help.

Mr. Brown did not submit verification of his work history. On January 20, 1989, his application for assistance was denied. Mr. Brown received 90 days of Transitionally Needy GA benefits within the year preceding his application.

Mr. Brown filed a timely appeal on January 22, 1989, and on January 25, 1989, he provided the CAO with acceptable verification of his work history. Upon receipt of this information, and assuming that Mr. Brown met the other conditions of eligibility, the CAO would authorize CN benefits effective January 20, 1989.

Source

The provisions of this § 275.5 adopted July 7, 1989, effective July 8, 1989, 19 Pa.B. 2959.

Subchapter B. ADMINISTRATIVE DISQUALIFICATION HEARINGS

GENERAL PROVISIONS

- Sec.
275.11. General policy.
275.12. Definitions.

HEARING REQUIREMENTS

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**WAIVER OF AN ADMINISTRATIVE
DISQUALIFICATION HEARING**

275.41. Waiver of an administrative disqualification hearing.

DISQUALIFICATION

275.51. Imposing the disqualification.

**RECONSIDERATION OR APPEAL
OF HEARING DECISION**

275.61. Right to request reconsideration or right to appeal, or both.

Authority

The provisions of this Subchapter B issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)), unless otherwise noted.

Source

The provisions of this Subchapter B adopted December 16, 1994, effective December 17, 1994, 24 Pa.B. 6300, unless otherwise noted.

Cross References

This subchapter cited in 55 Pa. Code § 255.1 (relating to restitution and disqualification hearings).

GENERAL PROVISIONS**§ 275.11. General policy.**

(a) The Office of Hearings and Appeals is responsible for conducting administrative disqualification hearings for individuals alleged to have committed an intentional program violation as defined under §§ 255.2 and 501.1 (relating to definitions; and general provisions), which incorporates 7 CFR 273.16(c) (relating to disqualification for intentional program violation), when one of the following exists:

- (1) The Office of Inspector General did not refer the case to the criminal court system.
- (2) The Office of Inspector General referred the case to the criminal court system and the district attorney declined to prosecute.
- (3) The Office of Inspector General referred the case to the criminal court system and the court took no action within a reasonable period, resulting in case withdrawal by the Office of Inspector General.

(b) The Office of Inspector General may initiate administrative disqualification hearing procedures despite the current eligibility of the individual alleged to have committed an intentional program violation.

(c) The Office of Inspector General will not initiate an administrative disqualification hearing against an individual whose case is currently being referred for prosecution or after any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances.

(d) An administrative disqualification hearing will not preclude future prosecution if the Office of Inspector General later determines that prosecution is advisable.

§ 275.12. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Director—The head of the Office of Hearings and Appeals who will affirm, amend, reverse or remand the hearing officer's decision in an administrative disqualification hearing.

Good cause—The term includes serious illness, accident, death or physical or mental handicap making it unreasonable for the individual to be present at the hearing.

Hearing officer—A person designated by the Department to conduct administrative disqualification hearings and render decisions.

Hearing record—An official record containing the testimony recorded at the proceeding, and the exhibits, papers and requests filed in the proceeding.

Individual—A person alleged to have committed an intentional program violation.

Intentional program violation—An action by an individual as defined under §§ 255.2 and 501.1 (relating to definitions; and general provisions) which incorporates 7 CFR 273.16(c) (relating to disqualification for intentional program violation).

Office of Inspector General—The agency within the Executive Office of the Governor designated to pursue cases of intentional program violations.

HEARING REQUIREMENTS

§ 275.21. Scheduling of the hearing.

(a) The Department will schedule all hearings. If a telephone hearing is scheduled, the individual will be given the opportunity to request a face-to-face hearing, which the Department will grant.

(b) The Department will send a hearing notice to each individual at least 30 days before the hearing date. The Department will send the notice by certified mail—return receipt requested—or by another method as long as the Department or the Office of Inspector General obtains proof of receipt. The notice will contain:

- (1) The date and time of the hearing. If scheduled as a face-to-face hearing, the location shall be specified.
- (2) The charges against the individual.
- (3) A summary of the evidence, and how and where it can be examined.
- (4) A statement that, if the individual fails to be present for the telephone or face-to-face hearing without good cause, the hearing decision will be based solely on the testimony and exhibits provided by the Office of Inspector General.
- (5) A statement that, to receive a new hearing, the individual or individual's representative has 10 days from the hearing date to present sufficient reasons to show good cause for failing to be present for the telephone or face-to-face hearing.
- (6) A statement that the Office of Inspector General and the individual are each entitled to one postponement of the hearing as described under § 275.23 (relating to postponement). The individual's representative may request the postponement on behalf of the individual. Subject to § 275.23(b), the request shall be made at least 10 days before the scheduled hearing date.
- (7) A description of the disqualification penalties and a statement of which penalty applies.
- (8) A listing of the individual's rights as contained under § 275.25 (relating to rights of the individual at the hearing).
- (9) A statement that the hearing does not preclude the State or Federal government from prosecuting the individual for an intentional program violation or from collecting the overpaid benefits.
- (10) A listing of persons or organizations that provide free legal representation to an individual alleged to have committed an intentional program violation.
- (11) A copy of the hearing procedures.
- (12) An explanation that the individual may waive an administrative disqualification hearing as described under § 275.41 (relating to waiver of administrative disqualification hearing).
- (13) A statement of the individual's right to remain silent concerning the charges and that anything said or signed by the individual concerning the charges may be used against the individual in a court of law.

Cross References

This section cited in 55 Pa. Code § 275.41 (relating to waiver of administrative disqualification hearing).

§ 275.22. Combining a fair hearing and an administrative disqualification hearing.

- (a) The Department may combine a fair hearing, as described under Subchapter A (relating to appeal and fair hearing), and an administrative disqualification

hearing into one hearing if the issues originate from the same or related circumstances. The budget group/household will receive at least 30 days notice that the Department will combine the hearings.

(b) The Department will apply the regulations under this subchapter when the hearings are combined.

(c) If the Department combines the hearings to adjudicate the claim amount and to adjudicate whether an intentional program violation occurred, the budget group/household will not be entitled to a subsequent fair hearing on the claim amount.

(d) One hearing officer, as designated by the Office of Hearings and Appeals, may preside over the combined fair and administrative disqualification hearing.

§ 275.23. Postponement.

(a) The Office of Inspector General and the individual are each entitled to one postponement of the scheduled hearing. The individual's representative may request the postponement on behalf of the individual. The request may be oral or written. An oral request for postponement shall be made at least 10 days before the hearing date. A written request for postponement shall be postmarked at least 10 days before the hearing date. Except as otherwise provided in subsection (b), a request for postponement that does not meet these time frames will be denied.

(b) Within 10 days prior to the scheduled hearing, the individual or the individual's representative may present, either orally or in writing, good cause for failing to meet the postponement requirements under subsection (a). Based on this information, the hearing officer may postpone the hearing.

(c) The hearing will not be postponed for more than 30 days from the date the Department scheduled the original hearing.

(d) The time limit for rendering a decision as specified under § 275.31(b) (relating to hearing decision) will be extended for as many days as the hearing is postponed up to a maximum of 30 days.

Cross References

This section cited in 55 Pa. Code § 275.21 (relating to scheduling of the hearing); and 55 Pa. Code § 275.31 (relating to hearing decision).

§ 275.24. Participation while awaiting hearing.

A pending administrative disqualification hearing will not affect the right of the individual or budget group/household to be determined eligible and to receive benefits. The Department will determine the eligibility in the same manner it would be determined for another budget group/household.

§ 275.25. Rights of the individual at the hearing.

At the hearing, the individual has the following rights:

- (1) To present a defense or have a defense presented by legal counsel, another authorized representative, relative, friend or other spokesperson.
- (2) To call witnesses to testify.
- (3) To present arguments without undue influence.
- (4) To question or refute testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
- (5) To present evidence to establish pertinent facts and circumstances in the case.
- (6) To refuse to answer questions during the hearing.
- (7) To remain silent concerning the charges because anything said or signed concerning the charges can be used against the individual in a court of law.
- (8) To examine, upon request, the Office of Inspector General's evidence before the hearing as well as during the hearing.
 - (i) The Department will make available, upon request by the individual, the contents of the case record that the Office of Inspector General will use at the hearing.
 - (ii) The Department will provide, upon request, and without charge, copies of case record material that the Office of Inspector General will use at the hearing.

Cross References

This section cited in 55 Pa. Code § 275.21 (relating to scheduling of the hearing).

§ 275.26. Conducting the hearing.

An impartial hearing officer will conduct the hearing. The hearing officer will do the following:

- (1) Administer oaths and affirmations.
- (2) Advise the parties that this is an administrative hearing.
- (3) Advise the individual of the right to remain silent when asked a question during the hearing.
- (4) Ensure that relevant issues are considered.
- (5) Mark and admit relevant exhibits into evidence.
- (6) Conduct an orderly hearing and ensure that the parties' due process rights are protected.
- (7) Obtain, at the Department's expense, medical assessments when determined necessary by the hearing officer and admit the assessments into the record.
- (8) Provide a hearing record and recommend the final hearing decision to the Director.
- (9) Ensure that the individual or the individual's representative is given adequate time to be present for the telephone or face-to-face hearing.

(i) For a telephone hearing, the hearing officer will make, at minimum, three attempts to contact the individual or the individual's representative in the 20-minute period following the scheduled time of the hearing before conducting the hearing without the individual or the individual's representative being present.

(ii) For a face-to-face hearing, the hearing officer will delay the hearing 20 minutes from the scheduled time of the hearing before conducting the hearing without the individual or the individual's representative being present for the hearing.

§ 275.27. Presence at the hearing.

(a) The Office of Inspector General and the individual or the individual's representative will be present for the telephone or face-to-face hearing.

(b) Friends or relatives of the individual may be present for a telephone or face-to-face hearing. The hearing officer may limit the number of persons present at a face-to-face hearing if space limitations exist.

(c) If the individual or the individual's representative fails to be present for the telephone or face-to-face hearing without good cause, the hearing officer will conduct the hearing without the individual or individual's representative being present. Even though the individual is not present or represented, the hearing officer will consider carefully the evidence and make a determination. If the hearing officer finds that the individual committed an intentional program violation but later determines that there was good cause for not being present, the Director will nullify the decision. The hearing officer who originally ruled on the case may conduct the new hearing.

(d) The individual or the individual's representative has 10 days from the hearing date to show good cause for failing to be present in order to receive a new hearing. The hearing officer will enter the good cause decision into the hearing record.

HEARING RESULTS

§ 275.31. Hearing decision.

(a) The hearing officer will have the delegated authority from the Secretary to make a decision on the administrative disqualification hearing.

(b) The Department's Office of Hearings and Appeals will issue a hearing decision within 90 days from the date it sent the hearing notice except as described under § 275.23(d) (relating to postponement).

(c) The hearing officer will base the hearing decision on clear and convincing evidence.

(d) The hearing officer's decision will:

- (1) Summarize the facts.
- (2) Specify the reasons for the decision.
- (3) Identify the regulations supporting the decision.
- (4) Identify the supporting evidence.

- (5) Respond to reasoned arguments made by the parties.
 - (6) Specify the period of disqualification if the individual is found to have committed an intentional program violation.
 - (7) Specify the claim amount, if appropriate.
- (e) The Department's Office of Hearings and Appeals will send the hearing decision to the individual and parties present for the telephone or face-to-face hearing. The decision will include notification of the individual's right to request a reconsideration or to appeal the decision as described under § 275.61 (relating to right to request reconsideration or right to appeal, or both).
- (f) The transcript or recording of testimony, exhibits or official reports introduced at the hearing, together with the papers and requests filed in the proceeding will be available upon request to the individual or the individual's representative at a reasonable time and place for copying and inspection.

Cross References

This section cited in 55 Pa. Code § 275.23 (relating to postponement).

§ 275.32. Finding of an intentional program violation.

- (a) If the hearing officer finds that the individual committed an intentional program violation, the Department will notify the individual before disqualification. The notice will include:
- (1) The period of disqualification.
 - (2) The date disqualification will take effect.
 - (3) The benefit amount the budget group/household will receive during the disqualification period.
 - (4) The statement that, if the individual is not eligible for benefits in the program in which the intentional program violation occurred, the Department will impose the disqualification effective on the date of the administrative disqualification hearing final order.
- (b) The Department will notify the remaining budget group/ household, if any, of the benefit/allotment they will receive during the disqualification period.
- (c) The Office of Inspector General will send a demand letter for payment of the claim. The letter will include:
- (1) The amount owed.
 - (2) The reason for the claim.
 - (3) The offset that reduces the claim.
 - (4) The payment options.
- (d) The Office of Inspector General will recover the claim pursuant to the procedures in §§ 255.4 and 501.1 (relating to procedures; and general provisions).

Source

The provisions of this § 275.32 amended July 6, 2001, effective July 7, 2001, and apply retroactively to February 1, 1996, for the Food Stamp Program and retroactively to March 4, 1996, for the TANF and GA Cash Assistance Programs, 31 Pa.B. 3538. Immediately preceding text appears at serial pages (220460) to (220461).

Cross References

This section cited in 55 Pa. Code § 275.33 (relating to finding that no intentional program violation occurred).

§ 275.33. Finding that no intentional program violation occurred.

(a) If the hearing officer determines that the individual owes the claim amount but that the individual did not commit an intentional program violation, the hearing officer will order the individual to repay the claim amount as described under §§ 255.4 and 501.1 (relating to procedures; and general provisions), which incorporates 7 CFR 273.18(d) (relating to claims against households).

(b) The Office of Inspector General will send a demand letter for payment of the claim as described under § 275.32(c) (relating to finding of an intentional program violation).

WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING**§ 275.41. Waiver of administrative disqualification hearing.**

(a) The individual may waive the administrative disqualification hearing. The notice—see § 275.21 (relating to scheduling of the hearing)—giving the option to waive the administrative disqualification hearing will include:

(1) A waiver for the individual to sign and the date the Department must receive the signed waiver to avoid conducting the hearing. The payment name/head of household also shall sign the waiver if the individual is not the payment name/head of the household.

(2) A statement that the individual has the right to remain silent concerning the charges and that anything said or signed concerning the charges can be used in a court of law.

(3) A statement that the waiver will result in disqualification and a reduction in benefits for the period of disqualification, even if the individual does not admit to the facts as presented by the Office of Inspector General.

(4) A statement giving the individual the opportunity to clarify whether the individual admits to the facts as presented by the Office of Inspector General.

(5) A Department telephone number to contact for more information.

(6) A statement that the remaining budget group/household members, if any, are responsible for payment of the resulting claim.

(b) If the individual signs the waiver and the Department receives the waiver within the specified time frame, the Department will impose the disqualification as described under § 275.51 (relating to imposing the disqualification).

Cross References

This section cited in 55 Pa. Code § 275.21 (relating to scheduling of the hearing).

DISQUALIFICATION**§ 275.51. Imposing the disqualification.**

(a) An individual found to have committed an intentional program violation or who waived an administrative disqualification hearing is ineligible for program benefits as described under §§ 255.1 and 501.13 (relating to restitution and disqualification policy; and intentional program violation disqualification).

(b) The Department will disqualify only the individual found to have committed an intentional program violation or who signed the waiver of an administrative disqualification hearing, and not the entire household.

(c) The Department will impose the disqualification within the time frame described under §§ 255.1 and 501.13.

Cross References

This section cited in 55 Pa. Code § 275.41 (relating to waiver of administrative disqualification hearing).

**RECONSIDERATION OR APPEAL OF
HEARING DECISION****§ 275.61. Right to request reconsideration or right to appeal, or both.**

(a) One of the following actions may be taken regarding the hearing decision:

(1) Either party to the hearing may request a reconsideration of the decision by the Secretary as described under 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration). The request shall be in writing, state the reason for the reconsideration request, and be postmarked no later than 15 days from the date of hearing decision.

(2) Either the individual or the individual's representative may file a petition for review of the hearing decision with Commonwealth Court.

(b) No further administrative review procedure exists after an adverse decision by the Secretary.

Cross References

This section cited in 55 Pa. Code § 275.31 (relating to hearing decision).

APPENDIX A. [Reserved]**Source**

The provisions of this Appendix A reserved July 11, 1986, effective July 12, 1986, 16 Pa.B. 2524. Immediately preceding text appears at serial pages (42423) to (42428).

[Next page is 281-1.]