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PW-CY 40.65

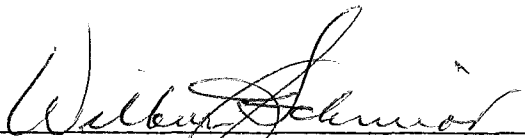
STATE OF WISCONSIN)
) ss.
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Wilbur J. Schmidt, Secretary of the State Department of Health and Social Services, and custodian of the official records of said Department, do hereby certify that the annexed Rule PW-CY 40.65 was duly created by the State Health and Social Services Board on July 18, 1973.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF I have hereunto set my hand at the State Office Building in the City of Madison, this 27th day of July, A.D. 1973



Wilbur J. Schmidt, Secretary
DEPARTMENT OF HEALTH AND SOCIAL SERVICES

PW-CY 40.65 Fair Hearings. (1) LEGAL BASIS. This rule is adopted pursuant to section 48.64(4), Wis. Stats.

(2) DEFINITIONS. (a) A claimant means a person licensed as a foster parent under sec. 48.62, Wis. Stats. affected by a decision or order issued by a division of the Department of Health and Social Services, a county welfare department or a child welfare agency.

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employee of the state agency*, in which a dissatisfied claimant or his representative may present his case with the help of witnesses to show why action or inaction in his case should be corrected by the state agency; it is not an adversary proceeding, but rather a continuation of the administrative process in which the claimant invokes the responsibility of the state agency through a quasi-judicial hearing in the particular case.

(c) A request for a hearing is defined as any clear expression on the part of the claimant to the effect that he wishes to go beyond the usual procedure for adjusting complaints with a division of the Department of Health and Social Services, a county welfare department or a child welfare agency, and that he wants an opportunity to present his case to the Department of Health and Social Services. The specific wording of such a request is immaterial.

(d) The date of the request for hearing is defined as the date on which the request is received.

(3) PURPOSES. The major purposes of hearings are:

(a) To provide an opportunity for a dissatisfied claimant to appeal a decision or order issued by a division of the Department of Health and Social Services, county welfare agency, or a child welfare agency affecting foster parents or the children involved.

(b) To enable the county and claimants, jointly, to ascertain the factual basis on which, through proper application of the law and agency policy, a just decision may be reached.

(c) To contribute to uniformity in the application of the law and policy by assuring that every claimant is fully informed of his rights, that hearings on any grievance are readily available, and that instances of inequitable treatment are speedily remedied by prompt execution of hearing decisions.

(d) To safeguard claimants from mistaken, negligent, unreasonable or arbitrary action. The hearing process is not a substitute for proper and efficient administration and is not designed to produce any result that could not have been produced through regular administrative processes.

(e) To reveal aspects of a Division of the Department of Health and Social Services, a county welfare department or a child welfare agency policy that constitute a misconstruction of law, state rules or policy.

(f) To provide a method whereby evidence may be obtained for referral to proper state policy-making authority, which evidence may show the need for modification of a state policy or policies.

*Impartial employee of the state agency is currently defined as a hearing officer of the Legal Section of DFS. January 1973

(4) REQUIREMENTS. (a) Every claimant at the time of his application, and when other administrative decisions are made shall be informed in writing of his right to a fair hearing if his application is not acted upon with reasonable promptness, or if he is not satisfied with the action taken, and the method by which he may obtain a hearing.

(b) Every claimant may obtain a hearing before the Department of Health and Social Services in relation to a decision or order if he is dissatisfied with the action taken.

(c) The request for a hearing must be timely. No review will be provided in any case where the decision or inaction to be reviewed involves a question which arose more than 60 days prior to the request for a hearing.

(5) REQUEST FOR HEARING. A complaint may be initiated orally in person, by letter or by form and if not adjusted by a division of the Department of Health and Social Services, a county welfare department or a child welfare agency to the satisfaction of the claimant a request for hearing will be completed and a hearing will be scheduled. Requests for hearing shall usually be on the simple form supplied by the state agency, but no written request shall be rejected for lack of formality. An oral request for a hearing made in person will be accepted, but shall be reduced to writing and signed by the claimant before the hearing will be scheduled. No request shall be dismissed without hearing unless the claimant shall remove from the jurisdiction, die, withdraw his request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor his representative appears at the time and place set for hearing, and if, within a reasonable time after the mailing of an inquiry as to whether he wishes any further action taken on his request for a hearing, no reply is received by the state agency.

(6) FAIR HEARING. (a) Hearings shall be held at a time convenient to the claimant and agency staff easily accessible to the claimant and, whenever possible, on the premises of a division of the Department of Health and Social Services, a county welfare department or a child welfare agency, subject to the judgment of the hearing officer. Adequate preliminary notice shall be given to the claimant and his representative, if any, including information about the procedure at the hearing.

(b) The hearing shall be conducted by a hearing officer, duly appointed and qualified under the state civil service laws, who has not taken any part in the particular action under consideration.

(c) The claimant shall have the opportunity to examine all documents and records used at the hearing; have the option to present his case, or be represented; have the opportunity to bring witnesses, examine witnesses adversely, to establish all pertinent facts and circumstances, to advance any arguments without undue interference, and to question or refute any testimony or evidence.

(d) The claimant may question interpretation of the law, and the reasonableness and equity of policies practiced under the law, if he is aggrieved by their application to his situation.

(e) The hearing is an informal administrative procedure subject to the requirements of due process.

(7) DECISIONS. (a) The transcript of testimony and the exhibits, papers and request filed in the proceeding constitute the exclusive record for decision and are available to the claimant at any reasonable time after the decision upon request.

(b) The decision on the hearing shall be in writing by the Secretary of the Department or his designee.

(c) The decision shall set forth the issue or issues, citation of law or precedents, the reasoning that led to the decision, the principal and relevant facts elicited at the hearing, and the action taken. These factors shall be grouped under appropriate headings such as preliminary recitals, finding of fact, conclusions of law and order. A certified copy of the decision shall be mailed to the claimant (and his attorney if any) and the division of the Department of Health and Social Services, a county welfare department or a child welfare agency charged with the administration of the services.

(8) ALLOCATION OF RESPONSIBILITY. The functions relating to fair hearings are allocated to the Division of Family Services. All final decisions, except cases wherein the request for review has been abandoned, shall be based upon hearings conducted by the hearing officer duly appointed pursuant to state civil service laws and responsible to the division, provided that if emergency needs so require the Division Administrator or any other employee duly designated by him may serve as a hearing officer. Such decisions shall be binding upon the state, county agencies, and child welfare agencies involved.

TO: Mr. Fred Hinickle, Deputy Secretary
Department of Health and Social Services

FROM: James R. Pleyte, Chief Counsel
Department of Health and Social Services

RE: Proposed Administrative Rule on Fair Hearing Process
(Your Memorandum 6/7/73)

DATE: June 12, 1973

The format to be submitted to the Board of Health and Social Services indicates that "the procedural rather than substantive nature of the proposed rule eliminates the need for public hearings" and cites sec. 227.02 (1), Stats.

These rules are being adopted under the authority of sec. 48.64 (4), Stats., which provides that decisions affecting foster parents or the children involved may be appealed to the Department under "fair hearing procedures established under Department rules." Section 227.02 (1), Stats., provides as follows:

"An agency shall precede all its rule making with notice and public hearing unless:

"(a) The proposed rule is procedural rather than substantive;

..."

Under the cited provision of sec. 227.02, Stats., the only question is whether or not the proposed rule is procedural rather than substantive. Black's Law Dictionary, Third Edition, at page 1430, defines procedure as: "The mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right," This term is commonly opposed to the sum of legal principles constituting the substance of the law and denotes the body of rules, whether of practice or of pleading, whereby rights are effectuated through the successful application of the proper remedies."

The same authority defines substantive law at page 1672, as follows: "That part of the law which creates, defines, and regulates rights, as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtaining redress for their invasion."

An examination of the proposed rules shows that they provide the means by which the right of appeal is to be effectuated but do not themselves grant any rights. Therefore, the rules are procedural rather than substantive and may be adopted without being preceded by notice and public hearing.

JRP
eck

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JUN 12 1973

D. H. S. S.
Office of Secretary