

Chapter HSS 225

FAIR HEARINGS

HSS 225.01 Fair hearings

HSS 225.01 Fair hearings. (1) LEGAL BASIS. This section is adopted pursuant to ss. 46.03 (8) and 49.50 (8) (9), Stats., and to conform with the requirements of Titles IV, XIX and XX of the U.S. Social Security Act, the U.S. Food Stamp Act and s. 49.046 (3), relating to complaints, hearings, and reviews of public assistance, medical assistance, social service and food stamp claims.

(2) DEFINITIONS. (a) A claimant is defined as a person seeking an opportunity to file an application, a person who has filed an application and is awaiting the agency's decision, a person whose application has been approved, a person receiving assistance or whose assistance payment has been reduced or a person who still considers entitlement to assistance to exist although such assistance has been denied or payment has been discontinued or a person who has been denied or excluded from a service program.

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employe of the state agency, in which a dissatisfied claimant or the claimant's representative may present with the help of witnesses why action or inaction in the claimant's 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 of desire on the part of the claimant to go beyond the usual procedure for adjusting complaints with the county agency and an opportunity to present the case to the state 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 assert personal claim to public assistance, medical assistance, food stamps or services related to any of such programs and secure, in an administrative proceeding, equity of treatment in relation to the assistance law and program.

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

(c) To contribute to uniformity in the application of the assistance law and policy by assuring that all claimants are fully informed of their rights, that hearings on any grievance are readily available, and that instances of ineq-

uitable 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 county 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.

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

(b) Every claimant may obtain a hearing before the state department of health and social services in relation to an application not acted upon with reasonable promptness, or if not satisfied 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 case question which arose more than 90 days prior to the request for a hearing. In cases involving discontinuance or reduction of the amount of the grant aid shall not be discontinued or reduced prior to receipt of the written fair hearing decision when a petition for a hearing is received within 10 days of the date on the advance notice that the discontinuance or change in grant is effective.

(5) REQUEST FOR A HEARING. A complaint may be initiated orally in person, by letter or by form and if not adjusted by the county 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 the request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor the claimant's representative appears at the

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time and place set for hearing, and if, within a reasonable time after the mailing of an inquiry as to whether the claimant wishes any further action taken on the 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 the county department of social services, subject to the judgment of the hearing officer. Adequate preliminary notice shall be given to the claimant and 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 self representation, or to be represented; have the opportunity to bring witnesses, to establish all pertinent facts and circumstances, to advance any arguments without undue interferences, 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 aggrieved by their application.

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

(7) **DECISIONS.** (a) The transcript of testimony and the exhibits, papers and requests 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 in the name of the state department of health and social services by the secretary or designee of the department.

(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, findings of fact, conclusions of law and order. A certified copy of the decision shall be mailed to the claimant (and attorney if any) and the county agency charged with the administration of the services, aid or assistance involved.

(d) If the decision is mandatory upon the county treasurer, a certified copy of the decision shall be mailed to the county treasurer and to the county clerk. It shall be the duty of the state agency to ascertain from subsequent payrolls and otherwise that there has been compliance with the order.

(8) **ALLOCATION OF RESPONSIBILITY.** The functions relating to fair hearings are allocated to the office of administrative hearings. 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 office of administrative hearings provided that if emergency needs so require any other employe duly designated by the secretary of the state department of health and social services may serve as a hearing officer. Such decisions shall be binding upon the state and county agencies involved and shall be enforced by appropriate legal and fiscal sanctions.

History: 1-2-56; am. (1), Register, April 1967, No. 136, eff. 5-1-67; r. and recr., Register, July, 1969, No. 163, eff. 8-1-69; am. (4) (c), Register, September, 1971, No. 189, eff. 10-1-71; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, August, 1978, No. 272, eff. 9-1-78; renumber from PW-PA 20.18 under s. 13.93 (2m) (b) 1, Stats., corrections in (1) and (8) made under s. 13.93 (2m) (b) 7. and 6., Stats., Register, February, 1995, No. 470.