

TITLE 465

REGULATIONS OF GENERAL APPLICATION

CHAPTER 2

GRIEVANCES AND FAIR HEARINGS

001. SCOPE AND AUTHORITY. The former Department of Social Services merged into, and became part of, the Nebraska Department of Health and Human Services (Department). This chapter contains regulations relating to benefit and services programs administered by the Department. These regulations have general application. To the extent other applicable titles of Department regulations are in conflict with this title, those other titles shall control. To the extent this chapter conflicts with Title 465 Nebraska Administrative Code (NAC) 6, this chapter shall control.

002. APPEAL. Each applicant for, or recipient of assistance administered by the Department may request a fair hearing to appeal a Department action, or failure to act with reasonable promptness, with regard to assistance or services. The individual may appeal because:

- (A) An application for financial or medical assistance or services is denied;
- (B) An application for financial or medical assistance or services is not acted upon with reasonable promptness;
- (C) Assistance is suspended;
- (D) Assistance or services are reduced;
- (E) Assistance or services are terminated;
- (F) A form of payment or services is changed to be more restrictive; or
- (G) The individual asserts that a Department action was erroneous.

002.01 AUTOMATIC ADJUSTMENTS. A fair hearing is not required when either state or federal law requires automatic case adjustments for classes of applicants or recipients unless the request for a fair hearing is based on a belief that a benefit level was computed incorrectly under the change in law or that the change in law was misapplied or misinterpreted.

002.02 GRIEVANCES. The fair hearing provisions of this title do not apply to ordinary grievance procedures such as: grievances relating to alternative and traditional response to allegations of abuse or neglect; grievances for youth in the care of the Office of Juvenile Services; grievances relating to procurement; grievances for foster parents; patient grievances at Department facilities; employment grievances; grievances to local entities under the Community Services Block Grant; and child welfare grievances.

002.03 APPEAL TIME LIMITS. A request for hearing is allowed on any adverse action by the Department or loss of benefits which occurred in the prior 90 days. Action by the Department includes a denial of a request for restoration of any Supplemental Nutrition Assistance Program (SNAP) benefits lost more than 90 days but less than a year prior to the request. The applicant or

recipient must request a fair hearing within 90 days following the date the notice of adverse action is mailed. If an applicant or recipient wishes to appeal due to inaction, the request for fair hearing must be made within 90 days of the date the application was submitted.

002.03(A) TIMELY APPEAL, STAY. If the appellant submits a request for a hearing within ten days following the date the notice is mailed, or such other period set forth in the notice of action, the adverse action will be stayed until a fair hearing decision is rendered to the extent allowed under the applicable program. The appellant may decline receipt of continued assistance pending the appeal decision.

002.04 REQUESTING A FAIR HEARING. If applicable laws and regulations relating to specific assistance and services do not provide the manner for requesting a fair hearing, the provisions for requesting a fair hearing contained in Chapter 6 of this title will apply.

002.05 NOTICE TO THE APPELLANT. Notice will be provided to the appellant of the time, date, and place the hearing will be held. Telephonic hearings are deemed held in Lincoln, Nebraska where the hearing officer presides. A party may make a request for reasonable accommodation in advance of the hearing and the Department will provide reasonable accommodation so that the hearing is accessible to the requestor.

002.06 FEDERAL REQUIREMENTS. To the extent applicable, Medicaid hearings will be conducted in a manner consistent with 42 CFR § 431, Subpart E. To the extent applicable, Supplemental Nutrition Assistance Program (SNAP) hearings will be conducted in a manner consistent with 7 CFR § 273.15 and 7 CFR § 273.16. To the extent applicable, hearings relating to Aid to Families with Dependent Children and federally funded programs for the aged, blind, and disabled will be conducted in a manner consistent with 45 CFR § 205.10.

002.07 HEARINGS, ADDITIONAL REQUIREMENTS. In addition to the practices and procedures for fair hearings and disqualification hearings set forth in other provisions of this Title, the following shall apply:

002.07(A) PLEADINGS IN A CONTESTED CASE. At the discretion of the hearing officer, pleadings filed by a pro se party or non-attorney representative may be received even if they do not meet the formal requirements set forth in this title. At the discretion of the hearing officer, pleadings may be received electronically.

002.07(B) HEARINGS NOT PUBLIC. The hearing is not open to the public, persons who are not parties or witnesses may attend if the appellant or person accused of an intentional program violation so chooses. The hearing official has the authority to limit the number of persons in attendance at the hearing if space is limited or if persons in attendance must be limited to ensure an orderly hearing.

002.07(C) RECORDING THE HEARING. Hearings are recorded by either equipment or a stenographer.

002.07(D) RECESSING THE HEARING. If the hearing official orders a recess to request, receive, or obtain additional testimony or evidence, the parties and any representatives will be advised of the reason for the recess and the nature of the additional information that is required. The hearing will be reconvened when the witness, document, or other evidence is available so that the parties will have an opportunity to question or refute any testimony or other evidence received. When reconvened, the hearing will be conducted as any other hearing.

002.07(E) ADMISSION OF EVIDENCE AFTER HEARING IS CLOSED. At the hearing officer's discretion, evidence may be received by the hearing official after a hearing is closed for good cause shown. Copies of any new evidence will be sent to interested parties together with an explanation of the right to explain or refute new evidence.

002.07(F) GROUP HEARINGS. The Department may respond to a series of individual requests for hearings on an issue of policy by holding a single group hearing. In such instances, individuals have the right to withdraw from the group hearing in favor of an individual hearing. The Department may also grant a group hearing on an issue of policy when requested by recipients.

002.07(G) SUMMARY DISPOSITION. The Department may on its own motion summarily dismiss an appeal for any of the following reasons:

- (i) The appeal is not timely filed as shown by Department records; or
- (ii) The appeal raises no appealable issue as provided by law.

003. CONFIDENTIALITY. Information, regardless of form, concerning applicants, recipients, or other persons, under any program providing assistance, benefits, or services is confidential. The use of such information by any other person, agency, or department of government to which information is furnished shall be limited to the purposes for which it is furnished.

004. FRAUD, ABUSE, AND INTENTIONAL PROGRAM VIOLATIONS. Department employees must report cases of suspected fraud, abuse, and intentional program violations to the individuals designated by the Department to receive such reports or to conduct investigations. The following definitions apply:

004.01 FRAUD. Fraud includes, but is not limited to, obtaining, or attempting to obtain, or aiding or abetting any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device:

- (A) Any commodity, food stuff, food coupons, or payment to which the individual is not entitled;
- (B) A larger amount of payment than that to which the individual is entitled;

- (C) Any other benefit administered by the Department to which the individual is not entitled; or
- (D) Public assistance in violation of any lawful provision relating to programs administered by the Department of Health.

004.02 INTENTIONAL PROGRAM VIOLATION. Intentional program violation consists of any action by an individual to purposely:

- (A) Make a false statement, either verbally or in writing, or conceal information to obtain, or attempt to obtain, benefits to which the household is not entitled;
- (B) Use or receive supplemental nutrition benefits in a transaction involving the sale of a controlled substance;
- (C) Use or receive supplemental nutrition benefits in a transaction involving the sale of firearms, ammunition, or explosives;
- (D) Traffic supplemental nutrition benefits for an aggregate amount of \$500 or more; or
- (E) Make a fraudulent statement or representation with respect to the individual's identity or place of residence to receive multiple supplemental nutrition benefits simultaneously.

004.03 PROGRAM ABUSE. Provider practices that do not meet the definition of civil or criminal fraud under applicable state law, but nonetheless are inconsistent with sound fiscal, business, or medical practices.

005. DISQUALIFICATION HEARING OFFICIAL. Hearings will be conducted by an impartial official who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the person who took the action that is the subject of the hearing. The hearing official will be either an employee of the Department or an individual under contract with the Department.

005.01 DISQUALIFICATION GUIDELINES. The following apply to disqualification proceedings:

- (A) A disqualification hearing may be initiated regardless of the current eligibility status of the individual;
- (B) The burden of proving intentional program violations is on the Department; and
- (C) A disqualification hearing will not be initiated against an accused individual whose case is currently being referred for prosecution or after any action taken against the accused individual by a court, if the factual issues of the case arise out of the same, or related,

circumstances.

005.02 TIMELINESS STANDARDS. The following timeliness standards apply in the disqualification hearing process:

- (A) The individual suspected of intentional program violations will be given at least 30 days' written advance notice of the hearing unless the individual requests a waiver of the advance notice in situations when the disqualification and fair hearings are combined.
- (B) Within 90 days from the date the accused individual is notified of the hearing the Department will:
 - (i) Conduct the hearing;
 - (ii) Arrive at a decision;
 - (iii) Notify the individual of the decision; and
 - (iv) Take administrative action to implement the decision.

005.03 SCHEDULING OF HEARINGS. The following apply to disqualification hearings:

- (A) The individual or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The hearing shall not be postponed for more than a total of 30 days and the Department may limit the number of postponements to one. If the hearing is postponed, the time limits for conducting a hearing, reaching a decision, and notifying the individual of the decision shall be extended for as many days as the hearing is postponed.
- (B) If the individual or individual's representative cannot be located or fails to appear at a hearing without good cause, the hearing will be conducted without representation for the individual. Even though the individual is not represented, the hearing official will carefully consider the evidence and determine if an intentional program violation was committed based on clear and convincing evidence.
- (C) If the individual is found to have committed an intentional program violation but it is later determined that the individual had good cause for not appearing, the previous decision will no longer remain valid and the Department will conduct a new hearing.
- (D) In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the individual has 10 days from the date of the scheduled hearing to present reasons showing good cause for failure to appear. The good

cause decision will be entered into the record.

005.04 CONSOLIDATED HEARINGS. A disqualification hearing may be combined with a fair hearing when the factual issues of both hearings arise out of the same or related circumstances and the individual is notified in advance that the hearings will be combined in a single hearing.

005.04(A) TIMELINESS STANDARDS. If a disqualification hearing and a fair hearing are combined, the timeliness standards for disqualification hearings apply.

005.04(B) OVERPAYMENTS. If the hearings are combined for the purpose of settling an overpayment amount and determining if an intentional program violation has occurred, the individual loses the right to a later fair hearing on the overpayment amount. The individual may waive the 30-day advance notice period when the disqualification hearing and fair hearing are combined.

005.05 NOTICE OF THE OPTION TO WAIVE HEARING. The Department will provide written notification to the individual suspected of an intentional program violation that the individual can waive the right to an administrative disqualification hearing. Prior to providing this written notification, the Department will review the evidence against the individual by someone other than the eligibility worker assigned to the accused individual's household to verify that such evidence warrants scheduling a disqualification hearing. The notification will be provided in a manner consistent with 7 CFR § 273.16.

005.06 WAIVED HEARINGS. If the individual wishes to waive a hearing, the Department will send a waiver of hearing consent form. If the waiver form is returned by the deadline specified on the waiver form, the individual will be disqualified in accordance with the disqualification periods specified in the regulations for the assistance program for which the intentional program violation is alleged.

005.07 PARTICIPATION WHILE AWAITING A HEARING. A pending disqualification hearing does not affect the right of the individual or the household to continue to receive assistance. Eligibility will be determined in the same manner it would be determined for any other household until there is a determination that the individual has committed an intentional program violation.

005.07(A) CONTINUATION OF ASSISTANCE. If the misstatement or action that is the basis of the alleged violation does not affect the individual's current circumstances, the individual would continue to receive assistance based on the latest program eligibility determination or be redetermined based on a new application and the current circumstances. Benefits will be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply.

005.07(B) TERMINATION OF ASSISTANCE. The individual's or household's benefits will be reduced or terminated if there is documentation which

substantiates ineligibility or eligibility for reduced benefits and the household fails to request a fair hearing and continuation of benefits pending the hearing. These actions occur even if the documented facts led to the suspicion of an intentional program violation and the resulting disqualification hearing.

005.08 HEARING OFFICIAL POWERS AND DUTIES. In fair hearings and disqualification hearings the hearing official will:

- (A) Consider all relevant issues;
- (B) Administer oaths;
- (C) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;
- (D) Regulate the conduct and course of the hearing in accordance with due process and keep the hearing orderly;
- (E) Provide a hearing record and recommendation for final decision by the Chief Executive Officer or delegated final decision maker; and
- (F) At the hearing officer's discretion:
 - (i) Ask for additional witnesses and question witnesses;
 - (ii) Ask that additional evidence be presented;
 - (iii) Dismiss witnesses from the room for good and sufficient reason;
 - (iv) Recess, continue, or close the hearing at any time there is good and sufficient reason for so doing; and
 - (v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department.

005.09 HEARING DECISION AUTHORITY. Unless delegated according to state statute or regulation, the power to make the final disqualification hearing decision is vested in the Chief Executive Officer.

005.10 CONDUCT OF THE HEARING. Disqualification hearings are conducted by the hearing official as informal hearings, but witnesses will be placed under oath.

005.10(A) ATTENDANCE AT THE HEARING. The hearing will be attended by a representative of the Department. If the suspected individual fails to appear, the decision of the Department regarding the intentional program violation will be based solely on information provided by the Department.

005.10(B) ORDER OF THE HEARING. The hearing will begin with introductions by the hearing official. The hearing official will advise the suspected individual or representative that the suspected individual may

refuse to answer questions during the hearing. The Department's representative will present the state's case first. The suspected individual or the representative will then present the individual's case.

005.11 HEARING DECISION. The following apply to hearing decisions:

005.11(A) CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION. The determination of an intentional program violation must be based on clear and convincing evidence which demonstrates that the individual knowingly, willfully and with deceitful intent committed an intentional program violation.

005.11(B) DECISION FORMAT. On the basis of the evidence presented, a final decision will be entered which:

- (i) Specifies the reasons for the decision;
- (ii) Identifies the supporting evidence;
- (iii) Identifies the pertinent program regulation; and
- (iv) Responds to reasoned arguments made by the individual or representative.

005.12 APPEAL RIGHTS. No further administrative appeal procedure exists after a hearing decision is made which is adverse to the individual. A determination of intentional program violation cannot be reversed by a subsequent fair hearing decision on the same level.

