
P-2127 Fair Hearing Procedures (Continued)

F. Human Services Board Rules

These are the rules that govern the conduct of fair hearings by the Vermont Human Services Board. They were promulgated by the board pursuant to 3 V.S.A. §3091.

1. Request for fair hearing. A hearing may be requested by an applicant or recipient of assistance, benefits, or social services; or by a licensee or an applicant for a license, as provided at 3 V.S.A. §3091; or by any other individual as specifically provided by statute.

Appeals shall be commenced by mailing a request for fair hearing to the clerk of the Human Services Board. Requests shall include the name, address, and phone number of the appellant and a statement of the basis for the appeal, if known.

The agency shall respond to any clear indication (oral or written) that a person wishes to present his or her case to a higher authority by helping that person to submit a request for hearing in the form provided by this rule or by advising that person to obtain legal representation. The agency shall promptly forward all such requests to the board.

The board shall mail a copy of all requests to the attorney representing the agency.

Appeals from decisions by the Department of Social Welfare shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose. In food stamp cases, a household may also request a fair hearing at any time within a certification period to dispute its current level of benefits.

2. Right to representation. The appellant may present his or her case own case or obtain representation by a friend, relative, or legal counsel.
3. Hearing officer. The hearing shall be conducted by an impartial hearing officer appointed by the board who is not involved in any way with the action in question. The hearing officer shall rule upon all motions and questions relating to the presentation of the appeal.

4. Setting the hearing. Upon receiving a request for fair hearing, the hearing officer or the clerk shall set the date, time, and place of the hearing.

When possible, the hearing will be scheduled for a date not sooner than seven days nor later than 30 days from the receipt of the request. When practicable, it will be scheduled at a time, date, and, in cases involving decisions by the Department of Social Welfare, within a district convenient to the appellant. Upon setting the hearing, the hearing officer or the clerk

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shall mail an appropriate notice to the parties and to their attorneys. The notification to the appellant shall include a copy of these rules.

The hearing officer shall rule on requests for changing the timing, manner, or location of the hearing. Such requests shall be made to the hearing officer within a reasonable time. The opposing party shall have the right to oppose such a request. In ruling on such a request, the hearing officer shall consider, inter alia, the sufficiency of the grounds for the request and the degree of prejudice, if any, to the party opposing such a request.

5. Agency review. Prior to the hearing, the commissioner or director of the department or agency involved in the appeal, or his or her designee, shall review the appellant's complaint and determine whether or not the appellant is entitled to relief.

If the commissioner or director does not grant that relief, prior to the hearing the agency shall provide the appellant and the hearing officer with a rationale for its decision and, unless prohibited by statute or the compelling confidentiality rights of others, shall make available to them all documents and records relied upon by the agency in reaching its decision.

Upon good cause shown, the hearing officer may grant an extension of time for completing this review.

6. Travel expenses. In cases involving decisions by the Department of Social Welfare, if the hearing is held outside the town of residence of the appellant, the agency shall pay the appellant's reasonable travel expenses, in accordance with existing state policies and guidelines.
7. Subpoenas. Requests for subpoenas shall be submitted to the hearing officer, except for licensed attorneys as provided in 3 V.S.A. § 809(h).
8. Medical evidence. In the appeal of an agency decision involving an appellant's medical condition, the hearing officer may obtain a medical assessment other than that of the person or persons involved in making the original decision. This assessment will be at agency expense from a source satisfactory to the claimant. The parties may agree to obtain and submit updated medical reports to the assessing authority (e.g. DDS). When such agreement is reached, the new assessment shall be completed as rapidly as

practicable, and the hearing officer may, upon being advised of the agreement by the parties, continue the matter until the new assessment is completed and reviewed by the department.

9. Motions to dismiss and other preliminary motions. Motions to dismiss and other preliminary motions, including claims for relief due to non-compliance with these rules, may be submitted for the board's consideration prior to the time the case in chief is submitted. The board shall dispose of outstanding motions before proceeding to rule on the merits.

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10. Closed Session. The proceedings shall be conducted in closed session unless the appellant requests otherwise or unless the appellant is a licensee of the agency or an applicant for a license. When the appellant is a licensee of the agency or an applicant for a license, the proceedings shall be public to the extent that public access does not violate confidentiality rights of people receiving agency services. Where public access threatens confidentiality rights, the hearing officer is empowered to take necessary steps to protect client confidentiality.
11. Conduct of the hearing. Upon request, a party shall promptly furnish an adverse party with copies of all documents and records that are relevant to the issues raised by the appeal. Disputes on the question of relevancy shall be resolved by the hearing officer in the first instance, subject to the board's review on the motion of either party. Any party or his representative shall have the opportunity to produce witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written; to advance any arguments without undue interference; and to question or refute any testimony or evidence. The burden of proving facts alleged as the basis for agency decisions to terminate or reduce an assistance grant, or to revoke or fail to renew a license, shall be on the agency unless otherwise provided by statute.

If deemed appropriate in the discretion of the hearing officer, hearings may be held by telephone. In cases in which there is no need for oral testimony, the hearing officer shall direct the parties to submit any documents, stipulations of fact, and legal arguments.

12. Rules of evidence. The rules of evidence applied in civil cases by the courts of the state of Vermont shall be followed, except that the hearing officer may allow evidence not admissible thereunder where, in his or her judgement, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.
13. Records. The hearing shall be recorded. The evidence presented, both oral and written, and any oral or written arguments submitted in a timely manner shall constitute the exclusive record for decision. Under the supervision of the hearing officer, either party shall be given the opportunity to listen to or copy the tape recording of the hearing. When an appeal from a decision of the board has been perfected, the clerk, at the request of either party, shall furnish the parties with a printed transcript of the

hearing, in accordance with rule 10, Vermont Rules of Appellate Procedure.

14. Failure to appear. If neither the appellant nor his or her representative appears at the time and place noticed for the hearing, the clerk shall inquire by mail as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within seven working days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

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15. Recommendation. After the record is complete, the hearing officer shall mail his or her findings, a recommended order, and a statement of reasons in support of that order to the board, to the appellant, and to the agency. This recommendation shall include specific rulings upon any proposed findings of fact or conclusions of law submitted by a party to the proceeding.
16. Oral argument before the board. The hearing officer shall inform the parties to the appeal of the date, time, and place of the board meeting at which the case will be decided. At that meeting the board shall hear oral arguments in the case upon the request of either party.
17. Questions before the board. In reaching its decision in a fair hearing, if raised by the appellant or the agency, or presented by the evidence, the board will consider 1) an act, decision, omission or delay which adversely affects the appellant; and 2) the agency's interpretation of the law and the reasonableness and equitableness of the policies promulgated under the law if the appellant is aggrieved by their application to his or her situation.

The board will reverse a decision that conforms with agency policy only if it is determined that the policy is in conflict with state or federal law. The board will not reverse or modify a decision which is found to be in compliance with the applicable law and policy even though the board might disagree with the results effected by that decision.

18. Decision by the board. The members of the Human Services Board constitute the hearing authority and a majority of the board shall constitute a quorum. Three members shall constitute a quorum at any meeting, however, upon the written authorization of the chairman. Upon considering all of the facts and arguments in the case, the board may adopt the recommendation of the hearing officer, reject it and reach different conclusions on the basis of the evidence at hand, or refer the matter back to the hearing officer for a continuation of the hearing or for the receipt of additional evidence. The board shall approve the findings of the hearing officer and adopt them as the findings of the board unless good cause is shown for disapproving them.
19. Orders Upon deciding the case, the board shall enter an appropriate order. The order shall include a statement of the facts that the board relied on, a statement of the reasons for its decision, and a statement of the parties' right to appeal to the Vermont Supreme Court.

A copy of the order will be mailed to the appellant and to the agency within 75 days of the receipt of the request for fair hearing, unless a continuance in the case is granted with the consent of the appellant. In the event that a continuance is granted, the delay time may be added to the 75-day time limit. In food stamp cases, the board shall issue its order within 60 days, and any continuance may not exceed an additional 30 days. An order of the board issued after the expiration of any of the above time periods shall be valid notwithstanding the other provisions of this rule.

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20. Retroactive Benefits. If the board reverses or modifies a decision, the agency shall make corrected payments retroactively to the date the incorrect action was taken.

21. Consolidated Appeals. Consolidated appeals on policy issues may be conducted with the consent of affected appellants and shall be conducted at their request. The hearing officer, at his or her discretion, may consolidate appeals of a single appellant.