

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 11-02

FROM: Pam Dalley, Interim Deputy Commissioner
Economic Services Division

DATE: February 4, 2011

SUBJECT: Changes to Fair Hearing Procedures

CHANGES ADOPTED EFFECTIVE 1/1/11

INSTRUCTIONS

- Maintain Manual - See instructions below.**
 Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin: _____
 Information or Instructions - Retain until _____

MANUAL REFERENCE(S):

P-2127

This bulletin made changes to Fair Hearing Procedures. All sections have been updated to reflect current practice.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, or correct references, without changing the content of the procedure.

Manual Maintenance

All Programs Procedures

<u>Remove</u>		<u>Insert</u>	
P-2127 A-B1	(94-55)	P-2127 A-B1	(11-02)
P-2127 B2	(94-55)	P-2127 B2	(11-02)
P-2127 B3	(97-7)	P-2127 B3	(11-02)
P-2127 B4	(93-8)	P-2127 B4	(11-02)
Nothing		P-2127 B5	(11-02)
Nothing		P-2127 B6	(11-02)
Nothing		P-2127 B7	(11-02)
Nothing		P-2127 B8	(11-02)

P-2127 Fair Hearing ProceduresA. Overview

Fair hearings are heard before the Human Services Board pursuant to their rules (see P-2127 F). A fair hearing request may be either oral or written. The date of the client's request for a hearing via the mail will be governed by the postmark date. In all programs, a person is allowed 90 days from the date the Notice of Decision was mailed to request a fair hearing.

In addition: in the Fuel program, the client may request a Director's Hearing within 5 working days after the date of the adverse action notice; in the 3SquaresVT program, a request can be made at any time during a certification period to dispute the current level of benefits.

For General Assistance and Emergency Assistance, there is an expedited fair hearing process as outlined at P-2610 E and P-2800 G, respectively.

If the fair hearing request is received more than 90 days after the adverse action notification, note this when forwarding the request. Timeliness is a matter which must be proved by the Department. Process these as you would a timely request.

B. Economic Services Division (ESD) Responsibilities

When a person requests a fair hearing:

1. ESD staff review the case to ensure:

- rules/procedures were followed
- an 11-day (for health care), 10-day (for Reach Up and 3SquaresVT) adverse action notice was given
- the Notice of Decision(s) lists the correct reason for the action

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

If there are issues with any of the above, or a mistake in the eligibility calculation, a reversal may need to happen at this point. Correct the case and issue a new Notice of Decision.

- a. Contact the individual to let them know we are reversing our decision.
- b. Include in the Additional Text section of the Notice of Decision a request that the individual contact us if they wish to withdraw the appeal.
- c. Send a copy of the notice to the AAG and the individual's representative, if applicable.
- d. Notify the AAG that we have corrected the case and whether or not the individual withdrew their appeal.

2. ESD staff reviews with the individual:

- a. the eligibility factors (i.e. income, resources, insurance, etc.) to ensure ESD has correct information.
- b. why the action was taken
- c. right to legal representation
- d. program rules regarding continuation of benefits pending an appeal including such things as they must continue to pay any premiums and complete any reviews that are received.
- e. document the conversation in CATN.

1/1/11

Bulletin No. 11-02

P-2127 B3

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

If the problem is resolved through a conference, there is no need to proceed further. If, however, the individual still wishes to request a fair hearing, proceed with step 3.

3. If pursuing the fair hearing, within 3 working days of the request, send the Request for Fair Hearing form (113H) to the Human Services Board, 14 – 16 Baldwin Street, Second Floor, Montpelier, Vermont, 05633-4302. Send a copy of the request to the AAG's at 103 South Main Street, Ladd Hall, Waterbury, Vermont, 05671-0701. There is also an electronic memo that may be emailed to AHS-ESD-Fair Hearing Requests (in Outlook address book, under ESD Groups). State the client's name, address and a brief statement of the reason the person is requesting a hearing.

Enter a WARN on the case noting that a fair hearing is in process and the case needs to remain with the current worker.

Once the appeal process is underway, workers cannot discuss the issue under appeal with the individual or their attorney. Refer all appeal-related questions to the AAG's office (241-2841). Workers can discuss other topics with the individual that are not related to the issue that is being appealed. Indicate in the WARN the reason for the appeal.

Example: Case is under appeal – leave in worker number _____. Jane has appealed her 2/1/10-7/31/10 spenddown. Do not discuss the spenddown with her while under appeal. Refer her and her attorney to the AAG's office. You may discuss other topics unrelated to the appeal with her.

4. If the fair hearing request is received before the effective date of benefit reduction or termination, continue benefits at the previous level, unless the client waives this right.

1/1/11

Bulletin No. 11-02

P-2127 B4

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

In the 3SquaresVT Program, benefit reductions are continued at the previous level only if the fair hearing request was received during the certification period (rule 273.15 k).

In the Fuel Program, benefits will continue at the previous level only as outlined at rule 2970. If the adverse action was a denial, there are no benefits to be continued.

In the Reach Up program (rule 2215), except where indicated below, benefits continue without change if the participant requests a hearing before the adverse action date (i.e., no later than the 15th day of the month for midmonth adverse actions or the last day of the month for end-of-the-month adverse actions) and wishes to have benefits continue during the appeal process. However, the participant may request that the adverse action be implemented pending the outcome of the fair hearing.

If the 15th day of the month is on a weekend or holiday, the participant has until the end of the first working day after the 15th of the month to appeal the decision and receive continuing benefits.

If the last day of the month is on a weekend or holiday, the participant has until the end of the first working day in the new month to appeal the decision and receive continuing benefits.

5. If the fair hearing request is received in time to continue benefits, send the client a 222 notice (Fair Hearing Request Response Letter), which explains that continuation of benefits at the previous level may be waived. Include a 222W (Waiver of Notice/Benefits) for the individual to sign and return if he or she wants to waive the continuation of benefits. (Be sure to enter a CATN if client chooses to waive continuation of benefits).
6. Complete a Fair Hearing Information form (113 or 113B) within 5 business days of the request. Send, or email, completed 113 or 113B to the AAG's office. Do NOT send the 113/113B forms to the HSB.

Use an electronic version of the 113B only in the following scenarios:

- Individuals appealing a decision by DDS
- Individuals appealing a **mass** premium change (i.e. COLA desk review or premium increases).

1/1/11

Bulletin No. 11-02

P-2127 B5

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

All other scenarios require the ESD 113 form (electronic or paper).

a. Include:

- your direct telephone number
- list all relevant events chronologically – be concise, but complete.
- copies of all documents *related to the issue*:
 - most recent application form, if applicable
 - verification request form(s)
 - CATN entries
 - Paystubs, etc.
 - Notices of Decisions
 - If a premium assistance appeal, see below f. “Note” section.

b. Give a detailed computation of how the income and/or resources were calculated and include the household size and income/resource limit.

c. Enter all relevant rule cites (online cites) –be as specific as possible.

d. ESD reviews the 113(B) before signing to ensure:

- the 113/113B is complete,
- copies of pertinent documents are attached,
- the correct rule cite(s) is quoted.

e. If an individual has a change in their circumstances while pending an appeal, process the change as usual. If they disagree with the latest action, they can appeal that decision as well.

f. Do not keep a copy of the completed 113 or 113B in the case file. A copy should be maintained in a classified file that should remain unavailable to the individual or the individual's representative. This is attorney – client privilege between ESD and our attorneys (AAGs). Documents that are a part of the individual's case file, can be provided to them, but 113 or 113(b) cannot. If an individual requests this information, please refer them to the AAG's for this information.

1/1/11

Bulletin No. 11-02

P-2127 B6

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

NOTE:

- For fair hearings based on a denial of covered and non-covered services, including Medicaid transportation, send the fair hearing request to Member Services, for DVHA, who will complete the 113 and send it to the AAG.
 - Premium Assistance Fair Hearings should be processed the same as other fair hearing requests but with one additional step. Staff will need to email the Senior Coordination of Benefits Specialist of the Premium Assistance team at DVHA to obtain completed copies of the premium assistance documents (i.e. the completed PIRL or EPS). They will provide all of the pertinent documents COB has. Staff will need to print them and include them with the other fair hearing documents.
7. Be available to discuss the case with the AAG if he/she has questions while preparing the case.
 8. Be prepared to testify at the hearing when requested. Prior to the hearing, review the case file to familiarize yourself with the decisions made, the reasons for the decisions, and any issues relevant to the fair hearing. The AAG's office will work with you in preparation for the fair hearing.
 9. Upon request, provide the individual with copies of all documents and records relevant to the issues raised by the request that are in the case file. Do not provide the individual with a copy of the 113 or 113B.
 10. If the fair hearing is not held in the individual's town of residence, or if the individual has special transportation needs as defined at P-2127 C, help the individual get reimbursement for transportation costs or get transportation through the transportation broker.
 11. If the individual or his or her representative withdraws the appeal prior to the fair hearing, establish a claim or initiate recoupment as needed and as outlined by policy for the specific program. If the fair hearing is related to 3SquaresVT, and the withdrawal is oral, send an 113W (3SquaresVT Fair Hearing Withdrawal). A written response is not required for any other withdrawal, but is preferred.

1/1/11

Bulletin No. 11-02

P-2127 B7

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

12. Prior to the fair hearing, if the individual or his/her representative and the assistant attorney general (AAG) resolve the issue, or ESD reverses the decision, the AAG notifies the district office and the Human Services Board (HSB). The HSB also wants confirmation from the individual that the fair hearing request is being withdrawn, preferably in writing. Whenever the individual is first notified of the reversal, ask him/her (or his/her legal representative) to send you a written statement requesting withdrawal or call the HSB to request withdrawal. If you receive a written withdrawal, send the original to the HSB and a copy to the AAG. If you do not, no action is necessary because HSB will send a follow-up letter to the individual when no withdrawal has been received.

If Operations reverses the district's decision, the AAG sends a memo to the worker explaining the reversal and stating what ESD actions are needed. Send the individual a notice informing him or her of the decision and the ongoing benefit amount. Restore any lost benefits (P-2540 C). Send a copy of the notice to the AAG and the individual's representative, if applicable.

13. If the fair hearing is held, the AAG's will email a copy of the decision to the district office. Following instructions in #14 and #15, send an 220FH or 220FH-S (Notice of Decision) to inform the individual of the action being taken as a result of the hearing. Do not use the manual or ACCESS-generated 220 (Notice of Decision) because this notice advises individuals they have the right to appeal with continued benefits. The 220FH and 202FH-S correctly indicate that further appeals must be made to the Vermont Supreme Court.

Enter a CATN that the ACCESS-generated 220 notice was not mailed.

1/1/11

Bulletin No. 11-02

P-2127 B8

P-2127 Fair Hearing ProceduresB. ESD Responsibilities

14. If the individual prevails at the hearing, the AAG's will email you. Send an 220FH as soon as you receive a copy of the 113C (Notice to Comply) from AOPS, giving a date by which we need to comply with the fair hearing decision. Do not send this notice until you receive the 113C. After you have complied with the HSB order, complete the 113C.

The Notice to Comply will indicate the date the case needs to be adjusted in order for ESD to be in compliance with the fair hearing decision. If the individual was receiving continuing benefits, no action will be needed. After you have complied with the HSB order, complete the 113C and enter a CATN note indicating the 220FH was sent.

If the individual prevails at the hearing and had waived benefits, make retroactive payments of benefits.

NOTE:

After an HSB decision in which the client prevails, ESD can choose to pursue a Secretary's reversal on the HSB decision. Once the reversal is filed with the Secretary, the fair hearing process is complete. The Petitioners have 30 days to appeal the matter to the Supreme Court. Once the Secretary Reversal is filed, benefits do not continue and the "burden" of appeal turns to the petitioners.

If you are informed that the Secretary has overridden the Human Services Board's decision, send a 220FH-S and follow instructions in #15.

15. If the Department prevails at the hearing, **DO NOT SEND THE ACCESS GENERATED NOTICE**. Send the appropriate 220FH, CATN this was sent and:
- a. enter appropriate information into ACCESS to make the reduction or termination in benefits. If the individual continued benefits pending the fair hearing, terminate benefits by closing their eligibility with closure code 27 (result of a fair hearing) so the PERS D MED will show the correct result.
 - b. compute the amount of the overpayment, if any, while the fair hearing was pending.
 - c. apply recoupment procedures or establish a claim as needed and as outlined by the program policy.