

### CHAPTER 3. FAIR HEARINGS AND APPEALS

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#### Authority

The provisions of this Chapter 3 issued under section 2203-A(19) of The Administrative Code of 1929 (71 P. S. § 581-3(19)), unless otherwise noted.

#### Source

The provisions of this Chapter 3 adopted February 3, 1984, effective February 4, 1984, 14 Pa.B. 375, unless otherwise noted.

#### Cross References

This chapter cited in 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.82 (relating to rights of alleged abusers); 6 Pa. Code § 15.145 (relating to applicant or employee rights of review); 6 Pa. Code § 20.24 (relating to appeals); 6 Pa. Code § 20.45 (relating to Program violations and penalties); 6 Pa. Code § 21.28 (relating to provider application and home certification process); 6 Pa. Code § 21.33 (relating to decertification of domiciliary care homes and removal of provider eligibility); 6 Pa. Code § 21.41 (relating to departmental responsibilities); 6 Pa. Code § 21.83 (relating to provider rights); and 6 Pa. Code § 21.101 (relating to fair hearings and appeals).

#### § 3.1. Purpose, scope and authority.

- (a) This chapter sets forth a system of appeals and fair hearings which apply to grievances or complaints about services and activities funded by the Department.
- (b) Provisions in this chapter include the following subjects:
  - (1) Parties who may request a fair hearing.
  - (2) Types of decisions or actions which are appealable.
  - (3) Procedures for filing complaints, appeals or requests for hearings.
  - (4) Procedures that area agencies on aging and the Department will follow for appeals and fair hearings.
- (c) This chapter is adopted under the act of June 20, 1978 (P. L. 477, No. 70) (71 P. S. §§ 581-1—581-12) and in conformity with the Older Americans Act of 1965 (42 U.S.C.A. §§ 3001—3057g) and 45 CFR Part 1321 (relating to grants

for state and community programs on aging) to assure the continued eligibility of the Commonwealth and its political subdivisions for Federal grants-in-aid.

(d) Except where inconsistent with the procedures set forth in this chapter, appeals and hearings shall be governed by the rules set forth in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

### § 3.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Adverse action*—An action or a decision not to act which directly affects an individual or organization who may disagree with the action and may wish to appeal it. Examples of adverse actions include all of the following:

- (i) A decision by the Department to disapprove an area plan.
- (ii) A decision by the Department to deny an eligible applicant's request for designation as a planning and service area.
- (iii) A decision by an area agency on aging not to award a contract to a service provider who has applied to provide a service under an area plan.
- (iv) A decision by an area agency on aging to deny, reduce or terminate services under an area plan to an individual applicant.

*Applicant*—In proceedings involving applications for permission or authorization which the Department, an area agency on aging, or a service provider may give under statutory or other authority delegated to it, the parties who make the applications or on whose behalf the applications are made. The term includes any recipient of, or applicant for, services available under an area plan.

*Area agency on aging*—The single local agency designated within each planning and service area by the Department to develop and administer the delivery of a comprehensive and coordinated plan of social and other services and activities for older persons.

*Area plan*—The plan submitted to the Department by an area agency on aging describing the methods by which it will ensure a coordinated and comprehensive system of social and other services and activities for older persons in the planning and service area.

*Department*—The Department of Aging.

*Hearing*—A proceeding as defined under 1 Pa. Code § 31.3 (relating to definitions).

*Planning and service area*—The geographic unit within this Commonwealth, as designated by the Secretary, for the allocation of funds for the delivery of social services to older persons residing in that unit.

*Secretary*—The Secretary of the Department.

*Service provider*—An entity which provides, or intends to provide, services under an agreement with an area agency on aging.

**§ 3.3. Opportunities for appeals and fair hearings.**

The Department provides the opportunity for a fair hearing to all of the following:

- (1) Any Area Agency on Aging when the Department proposes to:
  - (i) Disapprove the area plan or plan amendment submitted by the Area Agency on Aging; or
  - (ii) Withdraw the agency's designation as an Area Agency on Aging.
- (2) Any applicant eligible for designation as a planning and service area whose application is denied.
- (3) Any service provider whose application to provide services under an area plan is denied or whose subgrant or contract agreement is terminated or not renewed.
- (4) Any applicant for, or recipient of, services provided under an area plan who has been denied a service, excluded from a service or terminated from a service.

**Cross References**

This section cited in 6 Pa. Code § 3.5 (relating to informal complaints); and 6 Pa. Code § 3.6 (relating to request for a formal hearing).

**§ 3.4. Notice of adverse action.**

- (a) The Department, Area Agencies on Aging, and service providers under area plans will provide written notice of any adverse action they have decided to take to the agency or person who will be directly affected by the decision.
- (b) The notice of adverse action will be given in a timely manner and in no event will the notice be given more than 30 days after the decision has been made.
- (c) The notice will include the reasons for the agency action and the evidence upon which the action is based.
- (d) The notice will advise the party affected by the decision of all the following:
  - (1) The decision may be appealed in accordance with the procedures set forth in this chapter.
  - (2) If an appeal is to be made it must be filed within 30 days following the receipt of the notice of adverse action.
  - (3) In the case of an appeal by an applicant for, or recipient of, services under an area plan, the Area Agency on Aging will, if requested, provide assistance in filing the appeal.
- (e) Copies of all notices of adverse action shall be retained by the issuing agency and shall, where applicable, be made a part of the evidence taken in informal complaint proceedings and formal hearings.

**§ 3.5. Informal complaints.**

(a) *General requirement.* Prior to arranging for any formal hearings on complaints or appeals, the Department will require all parties appealing under § 3.3 (relating to opportunities for appeals and fair hearings) to proceed through the informal complaint process provided for in this section.

(b) *Submission, form and content of informal complaints.*

(1) All informal complaints shall be filed in writing within 30 days following the receipt of the notice of adverse action.

(2) Parties appealing under § 3.3(3) and (4) shall send their informal complaints to the director of the local Area Agency on Aging.

(3) Parties appealing under § 3.3(1) and (2) shall send their informal complaints to the Department's Bureau of Program and Field Operations.

(4) The complaint shall contain all of the following information:

(i) Name and address of the complainant.

(ii) Party against whom the complaint is made.

(iii) A copy of the notice of adverse action.

(iv) A statement of all relevant facts and the grounds upon which the complaint is based.

(v) A statement of all issues presented.

(vi) The relief or solution requested by the complainant.

(vii) While not required, the complaint may be accompanied by supporting papers.

(c) *An informal complaint as an official request for a hearing.* The filing of an informal complaint in accordance with subsection (b) shall constitute an official request for a hearing under 45 CFR 1321.51(b) (relating to confidentiality and disclosure of information).

(d) *Local efforts to resolve informal complaints filed with Area Agencies on Aging.*

(1) Each Area Agency on Aging shall establish a system for seeking local resolutions to informal complaints filed under subsection (b)(2).

(2) The Area Agency on Aging system required under subsection (d)(1) shall, as a minimum, provide for all of the following:

(i) The Area Agency on Aging shall confer with all parties directly involved in the adverse action to determine all pertinent facts, clarify all applicable statutes and regulations and develop an appropriate recommended resolution.

(ii) The Area Agency on Aging shall notify in writing the parties to the complaint of its recommended resolution within a period of not more than 10 working days from the date of its receipt of an informal complaint.

(iii) Written notification of a recommended local resolution shall include instructions for the response of the parties within an additional 10 days.

(iv) The Area Agency on Aging shall utilize the Domiciliary Care Review Team to handle all complaints or appeals from domiciliary care providers and applicants for or recipients of domiciliary care services.

(v) The Area Agency on Aging shall place on file written documentation of all steps taken to resolve a complaint at the local level, the recommended resolution and the response to the recommended resolution made by the parties to the complaint.

(vi) If either party to an informal complaint handled under subsection (d) does not accept the resolution recommended by the Area Agency on Aging and so notifies the area agency within the required 10 days, the Area Agency on Aging shall forward a copy of the originally filed complaint to the Department's Bureau of Program and Field Operations within 3 working days of the receipt of the notification of lack of acceptance. The copy of the complaint submitted to the Department shall be accompanied by a description of the Area Agency on Aging's efforts to resolve the complaint locally, including the recommended resolution and the response of the parties.

(e) *Handling informal complaints filed with the Department.*

(1) *Investigation by the Department.* The Department's Bureau of Program and Field Operations will investigate each informal complaint with a view toward informal resolution. The investigation will include, but not be limited to, discussions and negotiations with all parties involved. The investigation will be completed within 30 days of the Department's receipt of the informal complaint.

(2) *Notification of recommended resolution.* Following the completion of the investigation, the Department will notify all parties concerned of its recommended resolution of the complaint.

(3) *Appellate rights.*

(i) The parties to the adverse action shall notify the Department of acceptance or rejection of the recommended resolution within 30 days following the receipt of the recommended resolution.

(ii) If either party rejects the recommended resolution, that party may request a formal hearing. All requests for a formal hearing must be made within 30 days following the receipt of the recommended resolution.

(iii) If the Department does not receive any response to the recommended resolution from a complainant within the specified time, the complaint will be declared abandoned and the case closed.

(4) *Final report.* A final report on each informal complaint transmitted to the Department through an Area Agency on Aging shall be sent by the Department to the Area Agency on Aging at the close of the response period. The report shall include a summary of the investigation, whether the complaint was resolved or not and its resolution.

(f) *Cross reference.* This section supplements 1 Pa. Code §§ 35.5—35.7 (relating to informal complaints).

**§ 3.6. Request for a formal hearing.**

(a) *Eligibility.* A request for a formal hearing may be made by any of the parties indicated in § 3.3 (relating to opportunities for appeals and fair hearings).

(b) *Time of filing.* If either party to an adverse action wishes to have a formal hearing after completing the informal complaints process, that party shall file with the Secretary within 30 days following the receipt of the recommended resolution a request for a formal hearing.

(c) *Form and content.* A request for a formal hearing shall be in writing and contain all of the following information:

- (1) Name, address, and telephone number of the complainant.
- (2) Name, address, and telephone number of the respondent.
- (3) A copy of the notice of adverse action.
- (4) A concise statement of the complaint.
- (5) A statement of all relevant facts and the grounds upon which the complaint is based.
- (6) The relief being sought.

(d) *Cross reference.* This section supplements 1 Pa. Code § 35.10 (relating to form and content of formal complaints).

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.7. Appointment of a hearing examiner.**

(a) Upon receipt of a request for a formal hearing, the Secretary will appoint a hearing examiner to preside over the hearing.

(b) It shall be the responsibility of the appointed hearing examiner to schedule the hearing and conduct it in accordance with this chapter and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(c) This section supplements 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.8. Scheduling formal hearings.**

(a) *General provisions.*

(1) The hearing examiner shall notify the complainant and respondent of the date, time and location of the hearing at least 10 days prior to the selected date.

(2) The prehearing conference may be held at the discretion of the hearing examiner.

(3) The hearing examiner shall complete the hearing within 45 days of his receipt of the assignment at the time of his appointment by the Secretary.

(b) *Continuances.*

(1) Hearings shall commence on the first day scheduled and continuances may not be granted by the hearing examiner except for good cause shown. A hearing examiner may only grant a second continuance in extraordinary circumstances.

(2) Requests for a continuance shall be in writing and delivered to the hearing examiner and all parties or their representatives.

(3) The party requesting the continuance shall first consult the opposing party to seek agreement to the request. The written request should then state whether the request is unopposed.

(4) Objections to requests for a continuance shall be in writing and delivered to the hearing examiner and parties or their representatives. Objections shall be made immediately upon receipt of notification of a request for a continuance.

(c) *Failure to appear at hearing.*

(1) If the complainant or complainant's representative fails to appear at the scheduled hearing without good cause, as determined by the hearing examiner, the complaint shall be deemed abandoned and shall be dismissed with prejudice.

(2) If the respondent fails to appear at the hearing without good cause as determined by the hearing examiner, the hearing shall proceed in absentia.

(3) If another party or the party's representative fails to appear at the hearing without good cause as determined by the hearing examiner, the hearing examiner shall dismiss the matter with prejudice as to that party.

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.9. Purpose of formal hearings.**

The purpose of a hearing is to:

(1) Give both complainant and respondent an opportunity to appear in person and present testimony, witnesses and documentary evidence relevant to the issue in question.

(2) Give both complainant and respondent an opportunity to cross examine the opposing party's witnesses.

(3) Assure that documents and records presented or referred to during the course of the hearing are made part of the hearing transcript.

(4) Give the complainant an opportunity to review a pertinent evidence on which the adverse action was based. This may be done at the pre-hearing conference, if one is held.

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.10. Hearing authority.**

- (a) The hearing authority is the Secretary.
- (b) The Secretary will delegate to the hearing examiner the authority necessary to conduct the hearing proceedings and to:
  - (1) Determine the facts.
  - (2) Determine the appropriate regulations that apply.
  - (3) Interpret a regulation when the regulation is ambiguous.
  - (4) Interpret a directive of the Department when the directive is ambiguous.
  - (5) Apply the facts to the law to determine the correct result.
  - (6) Recommend that the Secretary adopt the result.
- (c) The hearing examiner's recommendation shall be submitted to the Secretary or his designee within 30 days of the conclusion of the hearing.
- (d) Hearing examiners may not invalidate or modify a Departmental regulation.
- (e) Subsection (b) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.11. Decision of the Secretary.**

- (a) The recommendation of the hearing examiner shall be reviewed by the Secretary or his designee.
- (b) After a recommendation has been proposed by the hearing examiner, the parties will not be afforded an opportunity to submit oral or written statements of their position to the Secretary or his designees.
- (c) Findings of fact made by the hearing examiner are subject to review and reversal by the Secretary. The Secretary or his designee may return the case to the hearing examiner for further findings of fact.
- (d) The Secretary or his designee will issue an opinion and order following the conclusion of the hearing.

**Notes of Decisions**

Where Department has promulgated specific regulations providing that the hearing officer shall issue only a recommendation as to the correct result and all recommendations must be reviewed by the Secretary or a designee, general provision for formal administrative proceedings is inapplicable. *Reynolds v. Department of Aging*, 570 A.2d 1373 (Pa. Cmwlth. 1990).

**Cross References**

This section cited in 6 Pa. Code § 11.292 (relating to written request for appeal).

**§ 3.12. Appellate rights.**

An eligible applicant for designation as a planning and service area whose application is denied by the Secretary may appeal the denial to the United States Commissioner on Aging as provided for under section 305(b)(4) of the Older Americans Act of 1965 (42 U.S.C.A. § 3025(b)(4)) and 45 CFR 1321 (relating to grants to state and community programs on aging).

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(249600) No. 290 Jan. 99

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