

HANDBOOK ON PUBLIC ASSISTANCE APPEALS
FOR
COUNTY DEPARTMENTS OF SOCIAL SERVICES

North Carolina Department of Justice
Raleigh, North Carolina
Revised June 2004

Division of Social Services Hearing Office

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I. INTRODUCTION

G.S. 108A-79, as rewritten by the 1979 Session of the General Assembly, has converted the public assistance appeals process into a more formal and structured procedure.

Several provisions of G.S. 108A-79 are of significance to county departments of social services and should be noted:

- A. As of October 1, 1979, the “local conference” became the “local appeal hearing.”

- B. The local appeal hearing is to be conducted by the county director of social services or a designated representative of the county director, but, in any event, whoever hears the local appeal must not have been involved directly in the initial decision giving rise to the appeal. This means, for example, that the supervisor of an eligibility specialist who made the initial decision may not conduct the local appeal hearing. Included among those who may conduct the hearing are a member of the county board of social services, a director of another county department of social services or his designee, or any other person in or out of the agency who is both impartial and knowledgeable about public assistance programs.

- C. In cases involving the termination or modification of assistance, the effective date of the action to be taken by the department of social services is 10 working days from the date the notice of the action and right to appeal is mailed or delivered by hand to the recipient. Care must be taken to properly compute the 10 workday time period.

- D. In cases involving approval or denial of assistance, the effective date of the action is the date the approval or denial notices is mailed or delivered by hand to the applicant.

- E. In cases involving termination or modification of assistance, the recipient is entitled to continue to receive assistance at his current level until the local appeal hearing decision has been rendered if the recipient did not waive his right to continued assistance and if, and only if, the recipient requested a hearing on or before the effective date of the proposed change. [The effective date is defined in

paragraph C above.] If the recipient does not request a hearing on or before the effective date, the recipient still has the appeal rights described in paragraph F below.

- F. In cases not involving the continuation of assistance pending the local appeal hearing decision [approvals, denials, waivers of right to receive continued assistance, or failures to exercise right to receive continued assistance] the applicant or recipient must give of appeal within 60 calendar days from the effective date of the action, or 90 days from the date of notification in the case of the food stamp program, as defined in paragraphs C and D above, in order to receive a local appeal hearing. The time limit may be extended for good cause shown within the limits of program regulation.
- G. The local appeal hearing must be held not more than 5 calendar days after the request for it is received or when good cause is shown by the applicant or recipient, as defined by the Social Services Commission or Department of Health and Human Services, the hearing may be delayed, but in no event shall it be held more than 15 calendar days after the recipient's request for a hearing.
- H. At the local hearing the appellant and the county department of social services may be represented by personal representatives, including attorneys obtained at their expense.
- I. At the local appeal hearing, the appellant or his personal representative and the county department shall present such sworn evidence and law or regulations as bear upon the case. The hearing need not be recorded or transcribed, but the director or his representative shall summarize in writing the substance of the hearing. A summary form appears in the Work First Manual. See Section 264, Notice and Hearings Process, IX. Local Hearing, G. Conducting the Hearing, Figure 5.
- J. Since the law requires sworn evidence at the local appeal hearing, it is absolutely essential to administer oaths or affirmations to all persons who are going to testify at the hearing. This means that no information should be taken from anyone at the hearing who has not been administered an oath or affirmation. A notary public or a clerk of superior court is authorized by law to administer oaths and affirmations.
- K. At the local appeal hearing, the appellant or his personal representative and the county department of social services may cross-examine witnesses and present closing arguments summarizing their views of the case and the law.
- L. Prior to and during the hearing, the appellant has the right to examine the contents of his case file for the matter pending except items required to be confidential and all documents and records which the county department of social services intends to use at the hearing. This provision of the law comes from the federal regulations, and it has been construed by the Office of the Attorney General to mean that in eligibility cases access to the case file is limited to eligibility information, and in social services cases access to the case file is limited to social services information.

M. After the local appeal hearing, the director or his designated representative must make a decision based upon the evidence presented at the hearing and all applicable regulations, and he must prepare a written statement of this decision citing the regulations and evidence to support it. The written statement of the decision must be served by certified mail on the appellant within 5 calendar days of the local appeal hearing. Either in the body of the decision or in a cover letter, the appellant must be advised that if he is dissatisfied with the decision of the local appeal hearing, he may within 15 calendar days of the mailing of the decision take a further appeal to the Department of Health and Human Services and that failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department of Health and Human Services. For good cause, however this date may be extended within the limits of program regulations. The determination of good cause for state appeals is the responsibility of the state Hearings Office. A detailed explanation of the applicant/recipients appeal rights is set forth in the Medical Manual, MA-2420 and Section 264 of the Work First Manual.

The foregoing time frame, required by law, should be strictly adhered to since any deviation therefrom may result in rulings by the Department of Health and Human Services, which are adverse to the county or the applicant/recipient.

XIV. PRELIMINARY CONSIDERATIONS

Before any questions are asked or testimony elicited, the local appeal hearing officer should administer the oath and/or affirmations of the people expected to testify. After the administration of the oath and /or affirmation, the hearing officer should establish and advise:

- (15) That the applicant or recipient was notified in writing of his right to appeal the denial of his application for assistance or the termination or modification of his assistance. [“Assistance “ encompasses social services].
- (16) That, in cases involving termination or modification of a recipient’s assistance, the notice reflected that no action would become effective until 10 working days after the notice was mailed to the recipient and that, moreover, no action was indeed taken prior to that date.
- (17) That, in cases involving termination or modification of the recipient’s assistance, the recipient has in fact continued to receive assistance at his present level if he did not waive his right to continued assistance at that level and if, and only if, he has requested a hearing on or before the effective date of the proposed change in assistance. That, if the appellant waived his right to continued assistance, he did so knowingly and voluntarily.
- (18) That, in cases not involving the continuation of assistance, the applicant or recipient gave notice of appeal within 60 days from the effective date of the

action or 90 days from the date of notification, in the case of the food stamp program.

- (19) By means of a statement made for the record, that the local appeal hearing is being conducted not more than 5 days after the request for it was received or, in a case involving good cause, not more than 15 days after the receipt of the request for the hearing. In cases involving good cause, the hearing officer should specify what that cause is.
- (20) By means of a statement made for the record, that a written decision will be served by certified mail on the appellant within 5 days of the local appeal hearing.
- (21) By means of a statement made for the record, that if the appellant is dissatisfied with the decision of the local appeal hearing, he may take further appeal to the Department of Health and Human Services but he must do so within 15 days of the mailing of the local appeal hearing decision. Failure to give this timely notice of a further appeal constitutes a waiver of the right to a hearing before a State hearing officer.

III. CONDUCT OF THE HEARING

Prior to the administration of the oaths and/or affirmations, the local appeal hearing officer should ascertain (1) who shall be presenting the case for the appellant and the county department of social services and (2) which witnesses will be called for both parties. At that point, the oaths and /or affirmations should be administered, and the hearing officer should proceed to advise the parties:

- (1) Of the purpose of the hearing;
- (2) That the representative of the county department of social services will be expected to present the county's case first by such sworn evidence, law and regulations as bear upon the case;
- (3) The hearing officer should inform the representative of the county department of social services that he will expect him to cite and read into the record the relevant provisions of the appropriate public assistance manual and to explain by way of a preliminary statement how those provisions apply to the appellant's case. The hearing officer should advise the representative that any person at the hearing, including the appellant and his representatives, may be called as a witness to testify in order to establish the facts of the case. The county representative will call the witnesses one at a time. Moreover, the appellant's representative may not question a witness until the county representative has finished with that witness. However, the hearing officer may interject questions at any time. It should be emphasized that only the representative of the county department of social services, the appellant or his representative, and the hearing officer may question the witness and that his testimony will be completed in its entirety before another witness may be called;
- (4) That the appellant or his representative will also be expected to designate the person responsible for presenting the appellant's case and the general principles applicable to the calling and questioning of witnesses by the representative of the county department of social services will also apply to the appellant;
- (5) That both the representative of the county department of social services and the appellant have the right to make a closing argument summarizing their view of the facts of the case and the law.

To the best of his ability, the local appeal hearing officer should strive to conduct the hearing in accordance with the foregoing principles. However, certain cases obviously will call for much less formality, and this is perfectly acceptable. The important point to remember is that the hearing officer should never let the hearing get out of control. The presentation of evidence in an orderly and logical fashion will assist the hearing officer immeasurably in making his decision.

All evidence offered at the hearing should be accepted and considered by the hearing officer. However, both the county department of social services and the hearing officer should be aware that the admission of hearsay evidence is fraught with danger. Basically, hearsay consists of a witness testifying about something that somebody else told him, when such testimony is offered in order to establish the truth of the matter asserted. The important thing to keep in mind is that anything that someone told the witness outside of the hearing, which the witness is now repeating, is hearsay if it is offered to prove the truth of what was said. The primary reason that hearsay evidence is fraught with danger is because it is not reliable evidence.

EXAMPLE: “Mrs. Smith (who is appellant’s neighbor) told me (eligibility specialist) that the appellant was married, that she was cohabiting with her husband on the sly, and that her husband was helping her to support the children.”

The above example is a clear, if exaggerated, illustration of the sort of hearsay evidence that should never form the basis of the decision by the local appeals hearing officer. Although hearsay evidence can be allowed, in most cases it should be given little if any weight. County departments of social services need to understand that if they are going to rely on what they learned from friends, neighbors, and others, those people should be at the hearing to testify as to what they know. Notwithstanding the hearsay rule, counties may safely rely on admissions made by the recipient to anyone and repeated at the hearing by that person, business records such as hospital records and department of social services applications, and Disability Determination Section opinions and letters from the recipient’s doctor.

IV. CONCLUSION

The procedures described in this handbook are guidelines which should be followed as a means to several good ends. These procedures will help you keep your hearing under control. They will help you identify the important issues and think about the case. These procedures will show the client-appellant that he is being accorded a hearing where his rights are guarded and his needs and interests recognized. They will lend dignity and an aura of fairness to a proceeding, which, though “old hat” to the county, is probably new and certainly very important to the client. These procedures will shape a hearing which, in most cases, will leave the participants satisfied that the correct result was reached. However, even in cases where this hope is not realized, the close adherence to the handbook will protect the counties from procedural error which might invalidate an otherwise correct decision.