

**DEPARTMENT OF HEALTH
AND
HUMAN SERVICES**

**DIVISION OF WELFARE
AND
SUPPORTIVE SERVICES**

ADMINISTRATIVE MANUAL

CHAPTER 3100

HEARINGS

3100 HEARINGS

3101 ADMINISTRATION OF HEARINGS

3101.1 HEARING DEFINITION/REQUESTS

A. DEFINITION

A hearing is an orderly, readily available proceeding before a Hearing Officer which provides an impartial process to determine:

1. the correctness of an agency action being appealed, and
2. the eligibility of the applicant/recipient as it relates to the issue of the hearing.

NOTE: Hearing Officers may neither hold hearings nor render decisions on the issue of discrimination.

B. NOTIFICATION OF THE RIGHT TO A HEARING

Clients must be informed in writing of their right to a hearing at the time of application and at the time of any action affecting their benefits for TANF, Medicaid, CHIP, SNAP, Child Care Subsidy, LIHEA or eligibility determinations made by the Nevada Health Care Exchange.

C. HEARING REQUESTS

The hearing may be requested by:

1. Temporary Assistance for Needy Families (TANF)/TANF-Medicaid/CHAP/CHIP applicants/recipients who disagree with the agency's action to deny, reduce or terminate benefits, or make payments to a protective payee, or are aggrieved because an application was not acted on with reasonable promptness, or disagree with the amount of a claim action;
2. New Employees of Nevada (NEON) program participants on sanction issues such as reduction of service or length of a sanction period;
3. Medical Assistance to the Aged, Blind and Disabled (MAABD) applicants/recipients/authorized representatives who:
 - a. Disagree with the agency's action to deny, reduce or terminate benefits, or to make payments to a protective payee, or are aggrieved because an application was not acted on with reasonable promptness;
 - b. Disagree with the determination of a community spouse monthly income allowance, or the monthly income allowance, or the monthly income otherwise available to the community spouse due to exceptional circumstances resulting in significant financial duress, or the computation of the spousal share of resources, or the attribution of resources;

- c. Wish to establish the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance.
4. Supplemental Nutrition Assistance Program (SNAP) applicants/recipients aggrieved by any action or inaction by the agency in its administration of the program which affects the household's participation.
5. Division of Welfare and Supportive Services (DWSS) staff when it is believed a household member has committed an Intentional Program Violation (IPV).
6. Low Income Home Energy Assistance (LIHEA) applicants/recipients who disagree with the agency's action to deny assistance and/or who are aggrieved because action on the application was unduly delayed.
7. Child Care Subsidy applicants/recipients who disagree with the contracting agency's action to deny, reduce or terminate benefits, or disagree with the amount of a claim action.
8. Nevada Health Care Exchange individual or family applicants/recipients/authorized representatives aggrieved by any eligibility determination action taken by the Exchange.

3101.2 HEARING OFFICER APPOINTMENT/RESTRICTIONS/RESPONSIBILITIES

- A. Hearing Officers are appointed by the Division Administrator and report to the Chief of Program Review and Evaluation (PRE).
- B. The Hearing Officer is an impartial fact-finder who may be an employee of the Division of Welfare and Supportive Services but shall not have been connected with the action in question.
- C. It is the Hearing Officer's responsibility to:
 1. Receive verbal testimony and documentary evidence from the hearing parties;
 2. Make a complete record of the hearing proceedings;
 3. Control the hearing and limit extraneous information; and
 4. Make a decision based on program policy and the evidence presented.

3101.3 AGENCY/CLIENT RESPONSIBILITIES

- A. It is the responsibility of the agency to provide testimony and evidence to substantiate the agency action. If the hearing is regarding a child care subsidy, the contracting agency will provide testimony and evidence to substantiate the agency action.
- B. It is the responsibility of the client to provide testimony and evidence in support of their position.

3102 ELIGIBILITY HEARING PROCEDURES

3102.1 PRE-HEARING CONFERENCES

Rescheduling of a pre-hearing conference should be kept to a minimum, assuring completion by the required due date. Rescheduling at the client's request is allowed only if "good cause" is substantiated. Good cause is defined as a factor(s) beyond the client's control such as illness or an unavoidable absence from their area of residence.

A. NON-SNAP CASES

Within ten (10) days of a request for a hearing, the DWSS hearing representative contacts the client to schedule a pre-hearing conference/review with agency staff to discuss the action being contested. The pre-hearing conference shall be held as soon as possible, but no later than thirty (30) days of receipt of the hearing request. Every effort is made to reconcile the disagreement without the necessity of a hearing. A pre-hearing conference does not in any manner affect the right to a hearing. The Hearing Officer must be notified in writing of the conference results no later than three (3) business days following the date of the conference.

B. SNAP ONLY CASES

1. Expedited: Pre-hearing conferences for households contesting a denial of expedited service shall be held within two (2) business days, unless the household requests it be scheduled later.
2. Non-expedited: Pre-hearing conferences for non-expedited SNAP benefits shall be held within fifteen (15) days of a request for a hearing, unless the household requests it be scheduled later.

3102.2 REPRESENTATION

A. CLIENT

Clients must be informed in writing by the district office/child care contracting agency at the time of application and at the time of action affecting their participation of their right to either be represented by others or to represent themselves at the conference and hearing. Notices will include legal services available in the community.

B. AGENCY

The conference/hearing must be attended by agency staff and/or members representing the agency. An agency supervisor/staff member responsible for or involved with the action, or a legal representative of the agency, may also attend.

C. DEFINITION OF AUTHORIZED REPRESENTATIVE

An authorized representative is anyone given written permission by the client to speak in the client's behalf at the hearing/conference. The authorization must be furnished to the Hearing Officer prior to the hearing. A verbal authorization may be given on record by the client at the hearing. Subsequent hearings require a new authorization.

3102.3 REQUEST FOR A HEARING

A. WHO MAY REQUEST

A client or authorized representative may request a conference, hearing, or both.

NOTE: In MAABD, an authorized representative must be the primary authorized representative.

B. DEFINITION

A request for a hearing is a written request made to the State Division of Welfare and Supportive Services (DWSS) from an applicant/recipient (or authorized representative) asking for a hearing.

NOTE: SNAP ONLY - Oral requests are acceptable.

C. DATE OF REQUEST

Hearing requests must be received within time limits specified below unless a client can substantiate "good cause" for not doing so. Good cause may include such reasons as an illness or extended absence from the area which prevented a timely response. When the deadline falls on a weekend or holiday, the deadline is extended to the next working day.

All hearing requests, including a copy of the agency action being disputed, must be submitted to the Administrative Adjudications Unit (AAU) as soon as possible but no later than ten (10) working days after receipt. The request must contain the claimant's name, address, case number, date received in the district office or Central Office and the name and address of the authorized representative, if applicable.

NOTE: Appeals from Nevada Health Care Exchange are submitted for adjudication no later than thirty (30) days from the date of appeal after the internal resolution attempts have been exhausted.

1. TANF/MEDICAID/CHIP/NEON/MAABD/LIHEA/CHAP/CHILD CARE SUBSIDY

The date of the hearing request is the date it is received in the district office, child care contracting agency office or Central Office or the Nevada Health Care Exchange. The request must be received within ninety (90) days from the date of the Notice of Decision (the day after the notice date is the first day of the 90-day period).

Hearing requests on Employment and Training program noncompliance with NEON must be received within ten (10) days from the date of the notice of intended sanction (the day after the notice date is the 1st day of the 10-day period).

2. SNAP

Date of the hearing request is the date it is received in the state DWSS local office or Central Office. The request must be received within ninety (90) days of the date the action occurred (the day after the notice date is the first day of the 90-day period).

EXCEPTION: A hearing may be requested up to one year after a denial of a request for a restoration of lost benefits.

3102.4 DISPOSITION OF A HEARING REQUEST

A. CLIENT WITHDRAWAL OF A HEARING REQUEST

Applicants/recipients or their authorized representative may withdraw their request for a hearing at any time before a decision is rendered.

1. TANF, MEDICAID, CHIP, LIHEA, Child Care
A written withdrawal must be signed and dated by the applicants/recipients/authorized representatives, and indicate they no longer wish to have a hearing.
2. SNAP
A written or oral withdrawal may be received indicating they no longer wish to have a hearing. The written withdrawal must be signed and dated by the applicants/recipients/authorized representatives.

For verbal withdrawals, the Hearing Officer will issue a Notice of Dismissal due to the Client's Verbal Withdrawal allowing the client ten (10) days to refute the verbal withdrawal. If the client fails to reply to the Notice of Dismissal within ten (10) days, the hearing is deemed to be withdrawn.

If the client replies to the Notice of Dismissal within ten (10) days, the appeal will be reinstated to the date of the client's original request date and scheduled for a formal hearing. The disposition timeframe will be extended for the number of days the appeal was under consideration as being verbally withdrawn.

If, as a result of a pre-hearing conference, the applicant/recipient/authorized representatives withdraw their request for a hearing, a pre-hearing conference report shall be drawn up by the staff person who conducted the conference, detailing the reasons why the request for a hearing was withdrawn. This report must be forwarded to the Hearing Officer within three (3) days following the date of the pre-hearing conference even if it is pending the signature of the applicant/recipient/authorized representative.

B. DENIAL OF A HEARING REQUEST

1. TANF/MEDICAID/CHIP/Child Care Subsidy

A hearing need not be granted when:

- a. The sole issue is either a state or federal law that requires an automatic grant/subsidy adjustment for classes of recipients unless the reason for an individual request is incorrect grant/ subsidy computation.
- b. The issue is the correctness of eligibility denial or termination which was based on a determination made by Nevada Medicaid Office (NMO). These include denials or terminations for disability. The pre-hearing representative will refer these hearing requests to the Division of Health Care Financing and Policy (DHCFP).

- c. The request is not received timely (see Manual Section 3102.3.C).
- d. No negative action has been taken by the agency.

2. MAABD

A hearing need not be granted when:

- a. The Social Security Administration (SSA) or the Nevada Medicaid Office (NMO) determined an applicant is not blind or disabled, or Community Home Initiative Programs (CHIPS) staff decide the client does not meet level of care requirements.
- b. The issue is the correctness of eligibility denial or termination which was based on a determination made by NMO. These include denials or terminations for disability and level of care.

The pre-hearing representative will refer those hearing requests to the Division of Health Care Financing and Policy (DHCFP).

- c. The request is not received timely (see Manual Section 3102.3.C).
- d. No negative action has been taken by the agency.
- e. The sole issue is either a federal law or a law of this state that requires an automatic adjustment for classes of recipients unless the reason for an individual request is incorrect computation.

3. SNAP

A hearing need not be granted when:

- a. The request is not timely.
- b. The sole issue is either a federal law or a law of this state that requires an automatic benefit adjustment for classes of recipients, unless the reason for an individual request is incorrect benefit computation.

4. Low Income Home Energy Assistance (LIHEA)

A hearing need not be granted when:

- a. The request is not received timely.
- b. The sole issue is either a federal law or a law of this state that requires an automatic adjustment for classes of recipients, unless the reason for an individual request is incorrect benefit computation.
- c. No negative action has been taken by the agency.

5. New Employees of Nevada (NEON)

A hearing need not be granted when:

- a. The request is not received timely.
- b. No negative action has been taken by the agency.

6. All Programs

A hearing need not be granted when:

- a. The only issue is a claim of discrimination. Procedures for handling complaints which claim discrimination are described in detail in the Division's Administrative Manual, Section 500.

NOTE: Medicaid Provider requests for hearings are under the jurisdiction of DHCFP.

- b. The issue is the correctness of eligibility denial or termination which was based on a determination made by NMO. These include denials or terminations for disability. The pre-hearing representative will refer these hearing requests to DHCFP.
- c. The request is not received timely (see Manual Section 3102.3,C).

C. AGENCY WITHDRAWAL OF A HEARING REQUEST

The agency may reverse its noticed action at anytime during the hearing process. If an agency reversal occurs, a report shall be drawn up by the agency representative detailing the reasons for the reversal. This report must also include verification the Agency's action under dispute has been resolved and, if applicable, the application/case has been reinstated. This report must be forwarded to the Hearing Officer within three (3) days following the reversal decision date or conference/review date. The Hearing Officer notifies the client the hearing request is dismissed because the agency action which caused the hearing request will not be taken or has been reversed.

D. ABANDONMENT OF A HEARING REQUEST

A hearing is considered abandoned when neither the applicants/recipients nor their authorized representative/client hearing representative appears for a scheduled hearing after having been properly notified. The appeal is considered abandoned unless the applicant/recipient/representative submits to the Hearing Officer's substantiation for good cause for failing to appear. The Hearing Officer must receive the substantiation within ten (10) days of the date of the abandoned decision notification.

3102.5 HEARING NOTIFICATION, SCHEDULING AND LOCATION

A. NOTICE

The Hearing Officer must notify the applicant/recipient representatives and appropriate local office by mail of the time, date and place the hearing has been scheduled. Clients are given at least ten (10) days advance notice prior to the scheduled hearing unless the client specifically requests a hearing in a shorter period of time. The day after the notice date is the first day of the ten-day period. Clients are given a written explanation of the hearing procedures (Form 2076) with the scheduling letter. (See Manual Section 3103 for SNAP IPV hearings.)

At the discretion of the Hearing Officer, a hearing may be postponed if requested by the local office or the client.

NOTE: Postponements of SNAP hearings must not exceed thirty (30) days.

B. LOCATION

Generally, the location of the hearing shall be the hearing office. The Hearing Officer may designate an alternate location, such as the district office if deemed necessary. If the client is unable to appear at the designated location and cannot be represented by another party, the hearing may be conducted by telephone.

C. TELEPHONE/VIDEO HEARINGS

Hearings may be conducted via telephone or video conference upon the approval of the Hearing Officer. The Hearing Officer may schedule telephone/video hearings for the sake of economy and expediency for outlying areas or for other extenuating circumstances. If a telephone/video hearing is held, the following procedures apply:

1. Agency representatives must be at the location designated by the scheduling letter.
2. The Hearing Officer may request the agency and the client provide copies of any evidence or exhibits to be presented during the hearing to the Hearing Officer and the other party prior to a scheduled telephone hearing. This does not preclude additional information from being presented during the hearing or, if requested, after the close of the hearing.
3. All telephone/video hearings must be tape/digitally recorded by the Hearing Officer.

3102.6 PROGRAM PARTICIPATION PENDING A HEARING DECISION (Continued Benefits)

A. TANF/MEDICAID/NEON/CHAP

When a client makes a request for a hearing, continued benefits are provided if a hearing request is received no later than the 10th day after the effective date of the proposed action. TANF benefits must not be reduced or terminated when hearing requests are received concerning noncompliance with NEON program requirements. If requested timely, assistance continues unchanged until the hearing decision is rendered EXCEPT in the following circumstances:

1. Client requests in writing that benefits not be continued.
2. The Hearing Officer makes a determination the sole issue is one of federal law or a law of this state that requires an automatic adjustment for classes of recipients (not one of incorrect grant computation) and the agency promptly informs the client in writing that benefits are to be terminated/reduced pending the hearing decision.
3. A change affecting the client's grant occurs after the hearing but before a decision is rendered and the client does not request a hearing after notice of the change.

If assistance is continued until a decision is rendered, such assistance is subject to recovery by the Division if client withdraws the hearing request, abandons the hearing, or the agency's action is upheld by the Hearing Officer.

B. SNAP

1. The household's participation continues on the basis authorized immediately prior to the Notice of Decision/Notice of Adverse Action until a hearing decision is rendered if the hearing request is received in any district office or Central Office of the Division of Welfare and Supportive Services prior to the effective date of the proposed action or within thirteen (13) days from the date of the notice (the day after the date of the notice is the first day of the 13-day period), whichever is later, or the household establishes good cause for its failure to request a hearing within the foregoing time period.
2. The household's participation will NOT continue if:
 - a. The certification period has expired;
 - b. The household waives continuation of benefits;
 - c. The household withdraws its request for a hearing or for the continued benefits;
 - d. The benefits were reduced or terminated as a result of a mass change without individual notice of adverse action;
 - e. When a disqualification period is imposed as a result of an IPV waiver signed by the recipient, or an IPV hearing decision. These issues must be resolved by an appeal to district court within specified time frames.

EXCEPTION: a. When an IPV disqualification against an individual results in the loss of benefits to the entire household, then a hearing may be granted to decide if the budget process performed in the determination to terminate benefits to the household was correct. In this instance, continuation of benefits to the household is provided.

EXCEPTION: b. If the benefits are reduced or terminated as a result of a mass change, benefits are to be continued upon request of the household if the issue being appealed is that of eligibility, or benefits improperly computed, or federal law was misapplied or misinterpreted by the agency.

3. Once continued, benefits SHALL NOT be reduced or terminated prior to a hearing decision, except under the following circumstances:
 - a. At the hearing a determination is made by the Hearing Officer and a written preliminary decision is submitted that the sole issue is one of federal law or regulation and the household's claim that the state agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

- b. A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending (including mass changes); or
- c. Benefits terminate as a result of the normal expiration of the certification period. On subsequent applications, benefits shall NOT be reinstated or continued except as authorized at such initial or subsequent certification.

C. LOW INCOME HOME ENERGY ASSISTANCE (LIHEA)

The denial action notice is stayed pending the hearing decision. There are no continued benefits.

D. CHILD CARE SUBSIDY

When a client makes a request for a hearing, continued benefits are provided if a hearing request is received within 14 days from the date of the adverse notice. If requested timely, assistance continues unchanged until the hearing decision is rendered EXCEPT in the following circumstances:

- 1. Client requests in writing that benefits not be continued.
- 2. The Hearing Officer makes a determination the sole issue is one of federal law or a law of this state that requires an automatic adjustment for classes of recipients (not one of incorrect subsidy computation) and the contracting agency promptly informs the client in writing that benefits are to be terminated/reduced pending the hearing decision.
- 3. A change affecting the client's subsidy occurs after the hearing but before a decision is rendered and the client does not request a hearing after notice of the change.

If subsidy benefits are continued until a decision is rendered, such benefits are subject to recovery by the agency or contracting agency if the client withdraws the hearing request, abandons the hearing, or the contracting agency's action is upheld by the Hearing Officer.

3102.7 HEARING PARTICIPATION

A. ATTENDANCE

Attendance at a hearing is limited to those directly concerned; namely, applicants/participants and/or their authorized representative, interpreter, witnesses and representatives of the Division of Welfare and Supportive Services. Others may be allowed at the discretion of the Hearing Officer.

3102.8 PREPARATION/PRESENTATION

A. AGENCY

1. It is the responsibility of the agency/child care contracting agency representative to organize oral and written evidence and prepare a "BASIS OF ACTION" summary substantiating the decision for presentation at the hearing. The summary must quote applicable law, federal regulations or Division of Welfare and Supportive Services policy as it pertains to the action. This summary is read into the record and entered into evidence at the hearing.
2. Confidential information, such as documents or records containing the names of individuals who have disclosed information about the household without its knowledge or the nature and status of pending criminal prosecutions, is protected from release. Information so protected which the client will not otherwise have an opportunity to challenge shall not be introduced at the hearing.
3. The representative of the Division of Welfare and Supportive Services shall have the right, without undue interference, to question the claimant and/or his representative or any witnesses who present testimony.

B. CLIENT

Clients/representatives may request to examine their documents/records in their casefile to be used in the hearing, before and during the hearing.

1. Clients/representatives may request copies of case information to determine if a hearing will be requested or to prepare for a hearing. The agency will provide the copies free of charge. The client shall not have access to confidential information.
2. Clients shall have the right to present their case themselves or with the aid of others. If the hearing involves a legal issue only, the client's presence is not necessary, testimony can be provided by a representative; however, clients are otherwise expected to present their own testimony. They are allowed to bring witnesses and submit evidence to establish all pertinent facts and circumstances relative to the issue and to advance arguments without undue interference. They are also allowed to question or refute any testimony or evidence and confront and cross-examine adverse witnesses. New evidence not previously provided to the agency, but which is believed to have a bearing on the action taken, should be provided to the agency prior to the hearing when possible for evaluation and any necessary action.
3. Clients are given a copy of all records presented at the hearing by the agency. If the agency receives any additional information or evidence after the client or his/her representative has examined the casefile, the agency must provide this information to the client and his/her representative.

3102.9 CONDUCT OF HEARING

A. CONTROL

1. The hearing shall be conducted in an informal manner. Inasmuch as the client may be unfamiliar with the rules of order, it may be necessary to make particular effort to arrive at the facts of the case in a way that makes the household feel most at ease. The Hearing Officer controls the hearing and ensures all relevant issues are considered.
2. Disrespectful language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing constitutes grounds for immediate exclusion of such person from the hearing by the Hearing Officer.

B. OPENING THE HEARING

At the opening of the hearing, the Hearing Officer must:

1. Introduce himself/herself.
2. Explain the reason for the hearing and the role of the Hearing Officer. The Hearing Officer is an impartial person assigned by the Nevada State Division of Welfare and Supportive Services, having no connection with the action in question.
3. Assure all persons in attendance at the hearing are identified by name and purpose of attendance. An agency representative(s) must attend the hearing to present the case.
4. Advise all persons in attendance at the hearing the hearing is being tape-recorded.

C. TESTIMONY AND EVIDENCE

1. A Hearing Officer is not bound by technical rules of evidence, but shall give the parties a reasonable opportunity to be heard and to present relevant evidence. The Hearing Officer shall act reasonably, without partiality. The Hearing Officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.
2. The extent necessary for full disclosure of all relevant facts and issues, the Hearing Officer shall afford to all parties the opportunity to respond, present evidence and argument, ask questions and rebut evidence, except as limited by a pre-hearing order rendered by the Hearing Officer.
3. The Hearing Officer shall collect and identify relevant evidence/exhibits.

D. CLOSING THE HEARING

At the close of the hearing, the Hearing Officer advises persons in attendance:

1. When a decision is expected to be made.
2. The decision will be made based on applicable program policy/law/regulations and the testimony and evidence presented at the hearing, and any additional evidence requested by the Hearing Officer.
3. The client and the primary representative and party representing the client at the hearing will be advised of the decision in writing by certified mail. Other representatives are notified by regular mail.

E. ADMINISTERING OATHS

Testimony under oath or affirmation may be required at the discretion of the Hearing Officer.

3102.10

ACTION ON INCORRECT NOTICE - TANF, MEDICAID

- A. If, prior to the hearing, it becomes apparent the client has received an incorrect Notice of Decision (e.g., Legal and Factual is incorrect or a Legal and Factual pertinent to the issue is omitted) a corrected notice must be sent to the client if the proposed action remains unchanged. The corrected notice must include the statement "Corrected Notice - this notice supersedes the notice dated _____".
- B. If, after a hearing has begun, it becomes apparent the client has received an incorrect Notice of Decision (e.g., the notice quotes incorrect factual and legal reason(s) or omits additional factual and legal reason(s) pertinent to the issue), the Hearing Officer shall offer the client the choice of either accepting the incorrect notice, with the necessary corrections noted for the record and continuing with the hearing; or setting the hearing to a later date to allow the Nevada State Division of Welfare and Supportive Services time to prepare and serve correct notice.

3102.11

SUBMISSION OF ADDITIONAL EVIDENCE

- A. During a hearing, additional evidence related to the hearing issue may be submitted. The Hearing Officer, client or agency/contracting agency may request additional evidence be submitted which is not available at the hearing. The Hearing Officer may:
 1. Recess the hearing if additional evidence has been submitted, to allow for review by the client or agency; or
 2. Continue the hearing to a later date and order further investigation or request either party to review or produce the additional evidence; or
 3. Close the hearing, but hold the record open to permit submission of any additional evidence.

- B. After a hearing is held, the Hearing Officer may determine information submitted at the hearing was insufficient or unclear and a decision cannot be made. The Hearing Officer may hold the record open for the agency/client/authorized representative to submit additional information/evidence.

Any material submitted after the close of the hearing shall be made available to both the agency and the client and each shall have the opportunity for rebuttal. The Hearing Officer may reopen the hearing if the nature of the additional information or the refutation thereof makes a further hearing necessary.

3102.12

HEARING INVOLVING MEDICAL ISSUES

A. SOCIAL SECURITY ADMINISTRATION (SSA) DISABILITY DENIALS

When written documentation verifies the SSA determines a person does not meet their disability criteria, the Hearing Officer will deny the DWSS hearing request. These issues are under the jurisdiction of the SSA. The client may request a hearing through the SSA. The hearing representative must forward to the Hearing Officer written verification of the SSA denial.

B. NEVADA MEDICAID OFFICE (NMO) DISABILITY/BLINDNESS/ INCAPACITY DENIALS

Appeals of NMO determinations are under the jurisdiction of the Division of Health Care Financing and Policy (DHCFP). Clients who disagree with NMO determinations of blindness/disability/incapacity may request a hearing through the DHCFP. The hearing representative must forward to the Hearing Officer written evidence of the NMO denial.

C. SNAP

Hearing requests involving a medical issue (e.g., whether the claimant is physically or mentally incapable of engaging in gainful employment) are under the jurisdiction of the DWSS Hearing Officer. An independent medical assessment from a source satisfactory to the DWSS is conducted if deemed necessary by the Hearing Officer. This assessment is obtained at the client's expense.

3102.13

HEARING DECISION

The Hearing Officer will render a written decision after a hearing has been held, unless the dispute is otherwise resolved. The decision will be based on evidence and testimony presented at the hearing, as well as applicable law/policy.

A. CONTENTS OF DECISION

1. INTRODUCTION – The date and place of the hearing and identification of the persons present.
2. ISSUE/EVIDENCE/DISCUSSION – A brief statement of the issue brought to the hearing and the position of each side. The Hearing Officer may discuss evidence and testimony and will respond to reasonable arguments presented.

3. FINDINGS OF FACT – Facts of the case the Hearing Officer finds or believes to be accurate.
4. CITATIONS OF LAW/POLICY – Those portions of applicable law, procedures or policy which support the findings and decision.
5. CONCLUSION OF LAW/POLICY – Application of law/policy to the facts.
6. DECISION – The decision to uphold or reverse the agency's disputed action.
7. APPEAL RIGHTS – A statement that the decision may be appealed within ninety (90) days to the district court of the State of Nevada.

B. ACTION IS UPHELD

Upheld decisions are adverse to the client. When the decision is upheld, the client must be notified of his/her right to judicial review.

Client withdrawals and abandonments are equivalent to an upheld decision for recovery purposes.

C. ACTION IS REVERSED

Reversed decisions are favorable to the client. Withdrawals by the agency are equivalent to a reversed decision.

D. DECISION DUE DATES

The time period for a hearing decision may be extended for a period equal to the total delay if clients or their representatives request a delay or postponement of the hearing proceedings.

1. TANF/TANF-Medicaid/CHIP/NEON/MAABD/CHAP/LIHEA/CHILD CARE SUBSIDY

Within ninety (90) calendar days after the request for a hearing has been filed, claimants, their counsel and the district office must be notified of the decision. Decision letters to claimants and their counsel are sent by certified mail.

2. SNAP

Within sixty (60) calendar days after the request for a hearing has been filed, the claimant, his/her counsel and the district office must be notified of the decision. Any requested postponements shall not exceed thirty (30) days. Decision letters to claimants and their counsel are sent by certified mail.

3102.14

RIGHT TO APPEAL HEARING DECISION

A. TANF/TANF-MEDICAID/CHIP/NEON/MAABD/CHAP/LIHEA/CHILD CARE SUBSIDY/SNAP

The hearing decision may be appealed to the district court of the State of Nevada within ninety (90) days from the date of the decision letter.

B. NEVADA HEALTH CARE EXCHANGE

The hearing decision may be appealed to the Health and Human Services (HHS) within ninety (90) days from the date of the decision letter.

3102.15 RECONSIDERATION OF HEARING DECISION

The Hearing Officer may reconsider the hearing decision and reopen the record for presentation of evidence by either party if, within thirty (30) days of the date of the hearing decision, it is shown to the satisfaction of the Hearing Officer that the additional evidence is material and that there was good cause for failure to present it in the hearing.

3102.16 HEARING RECORDS

A. RECORDING THE HEARING PROCEEDING

A digital/tape recorder must be used by the Hearing Officer to record hearing proceedings. The Hearing Officer's tape/digital recording constitutes the sole official record.

B. HEARING RECORD

A hearing record is maintained by the Hearing Officer containing all correspondence received on the hearing, all exhibits presented and accepted, the decision letter, a narrative log of contacts the Hearing Officer has with the claimant, his/her representative, agency staff members and legal counsel for either the agency or the claimant and the digital/tape recording or its transcription. The case record established by the Hearing Officer constitutes the exclusive written record of the hearing.

C. RETENTION OF THE HEARING RECORD

Administrative hearing files and taped recordings must be retained no less than six (6) years from the date the hearing decision was rendered.

If a hearing decision is appealed to a court of law, the hearing record must be retained until the court action is resolved or the designated retention period, whichever is later.

D. INSPECTION OF THE HEARING RECORD

Hearing records shall be made available for public inspection, subject to provisions of confidentiality and safeguarding information. Public requests for inspection of hearing records/decisions are submitted to the Chief of Program Review and Evaluation(PRE) in the Central Office of the State Division of Welfare and Supportive Services.

E. COPYING THE HEARING RECORD

Copies of the Hearing Record are made as follows:

1. Applicants/Recipients or their authorized representative(s) may secure a copy of the tape/digital recording of the hearing for a nominal fee which covers the cost of production. A request for a copy of the recording must be submitted to the Chief of PRE in Central Office of the State Division of Welfare and Supportive Services who determines the current cost of production. Upon receipt of a check made payable to the Nevada State Division of Welfare and Supportive Services for the specified fee, the recording is copied and sent to the requestor.

2. An official typed transcription of the tape/digital recording of the hearing is prepared for the district court when a hearing decision is appealed. The Division's Administrator reviews the transcript and attests to its validity and authenticity.

3103 ADMINISTRATIVE INTENTIONAL PROGRAM VIOLATION (IPV) DISQUALIFICATION (IPV) HEARING REFERRAL PROCEDURES – SNAP, CHILD CARE, ENERGY ASSISTANCE PROGRAM (EAP), EMPLOYMENT AND SUPPORT SERVICES (E&SS) AND TANF PROGRAMS

An administrative disqualification hearing shall be initiated by the Division of Welfare and Supportive Services (Division) or Contract staff using the Administrative Disqualification/Penalty Waiver, Form 6021-AF, whenever there is a substantiated belief an accused individual has committed an Intentional Program Violation (IPV) against the TANF, Child Care, EAP, E&SS and/or SNAP programs.

All 6021-AF forms are sent to the Investigations and Recovery (I&R) unit for evaluation by the designated staff. I&R staff will complete the Request for Administrative Disqualification/Hearing Form 6029-AF and attach to the waiver before submittal to the hearings office.

The Hearing Officer will accept and process only those 6021-AF forms which have been reviewed and signed by designated staff of the Investigations and Recovery (I&R) Unit.

If an accused individual has signed a voluntary waiver or been convicted in a criminal court for the same or related issues, no administrative disqualification hearing is pursued.

3103.1 DEFINITION OF INTENTIONAL PROGRAM VIOLATION (IPV)

A. DEFINITION OF AN INTENTIONAL PROGRAM VIOLATION (IPV) AGAINST THE TANF, CHILD CARE, EAP and E&SS PROGRAM(S)

An Intentional Program Violation (IPV) is an action by an individual or household member for the purpose of establishing or maintaining program eligibility, or increasing or preventing a reduction in benefits when they knowingly, willfully and with deceitful intent:

1. Made a false or misleading statement or misrepresented, concealed or withheld facts; or
2. Committed any act that violated Nevada Revised Statute 422A.700, or intentionally violated any rule or regulation established by the Division; or
3. Made an attempt to obtain, increase or continue public assistance benefits for themselves or others to which they would not otherwise be entitled; or
4. Received benefits to which they would not otherwise be entitled; or
5. Failed to comply with reporting requirements as set forth in Division policy manuals; or

6. Made a false or misleading oral or written statement or submitted a false document to the Division; or
7. Altered any voucher or check to increase its value or duplicated any voucher
8. Failed to use or return training funds in a manner consistent with the training agreement.
9. Utilized child care when the approved purpose of care did not exist.

B. DEFINITION OF AN INTENTIONAL PROGRAM VIOLATION (IPV) AGAINST THE SNAP PROGRAM

An Intentional Program Violation (IPV) is an action by an accused individual for the purpose of establishing or maintaining program eligibility, or increasing or preventing a reduction in benefits when they knowingly, willfully and with deceitful intent:

1. Made a false or misleading statement, either orally or in writing, to obtain benefits to which the household is not entitled; or
2. Concealed, misrepresented or withheld information to obtain benefits to which the household is not entitled; or
3. Failed to report changes in household circumstances as required; or
4. Misrepresented the receipt of benefits to obtain duplicate or replacement issuances; or
5. Used SNAP coupons or electronic credits to buy non-food items; or
6. Attempted to acquire, use, sell or possess SNAP coupons or electronic credits which were not issued to the individual; or
7. Committed any act which constitutes a violation of the SNAP Act, SNAP regulations or any state statute associated with the SNAP program.

3103.2 CONSOLIDATED DISQUALIFICATION/PENALTY HEARINGS

An administrative disqualification/penalty hearing may be combined with an eligibility hearing if the factual issues arise out of the same, or related, circumstances and the household/assistance unit receives prior notice the hearings will be combined. When hearings are combined, the agency representatives must prepare and present each program violation separately. If the violation(s) involve multiple parties, a separate document must be prepared and presented for each of the accused individual. Separation of program violations and accused individuals facilitates proper independent hearing decisions. In combined hearings, the timeliness standards for conducting disqualification/penalty hearings must be followed.

3103.3 NOTIFICATION PROCEDURE

A. SCHEDULING

The Hearing Officer shall provide written notice to the accused individual suspected of an Intentional Program Violation (IPV) at least thirty (30) days in advance of the date the hearing has been scheduled. The notice must contain, at a minimum:

1. The date, time and location of the hearing;
2. A statement the accused individual or representative has ten (10) days from the date of the scheduled hearing to present good cause for failure to appear to receive a new hearing;
3. The charge(s) against the accused individual;
4. A summary of the evidence, how and where the evidence can be examined;
5. A warning the decision is based solely on evidence provided by the Division if the accused individual fails to appear at the hearing;
6. A warning that an Intentional Program Violation (IPV) results in a benefit reduction or disqualification for six months, 12-months, 24 months, 60 months (Training Violation), 120 months or permanently depending on the program involved.
7. A statement of the specific penalty the Division believes is applicable to the case being scheduled for hearing;
8. A notice of the accused individual's right to:
 - a. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing at the local office during normal business hours, as well as during the hearing. The contents of the casefile, including the application form and documents of verification used by the Division to establish the accused individual's ineligibility or eligibility and benefits shall be made available.

If requested by the accused individual or their representative, the Division shall provide a free copy of the portions of the casefile relevant to the hearing. Exception: Confidential information, such as the names of individuals who have disclosed information about the accused individual without his/her knowledge or the nature or status of pending criminal prosecutions, and other documents or records which the accused individual would not otherwise have an opportunity to contest or challenge is protected from release and shall not be introduced at the hearing or affect the Hearing Officer's decision;

- b. Present the case or have it presented by legal counsel or other person (bilingual interpreter will be provided if necessary). The accused individual must submit written authorization for someone to speak on his/her behalf to the Hearing Officer prior to the hearing;
 - c. Bring witnesses;
 - d. Advance arguments without undue interference;
 - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;
 - f. Submit evidence to establish all pertinent facts and circumstances in the case;
 - g. Have the hearing expedited if the accused individual is leaving the area;
- 9. A statement the hearing does not preclude the state or federal government from prosecuting the accused individual for an Intentional Program Violation (IPV) in a civil or criminal court action or from collecting any overpaid benefits;
 - 10. A statement of the accused individual's right to waive the Administrative Disqualification/Penalty Hearing; and
 - 11. A listing of free legal services available throughout the state which includes the agencies' names and telephone numbers.

B. WAIVER

1. Notification

The accused individual must be notified and given an opportunity to waive the Administrative Disqualification/Penalty Hearing. The notification is part of any pre-hearing conference and the hearing's scheduling notifications and must contain the following:

- a. A statement of the accused individual's opportunity to waive the hearing;
- b. A statement the signing of the waiver results in a disqualification/penalty appropriate to the violation, even though the accused individual does not admit to or agree with the charges made by the Division;
- c. A statement the remaining members of the household/assistance unit will be held responsible for repayment of the resulting claim;

- d. A statement of the accused individual's right to remain silent concerning the charge. If he/she does say and/or sign anything concerning the charges it may be used against him/her in a court of law;
- e. A statement of the accused individual's opportunity to agree or disagree with the facts and charges; and
- f. Information as described in Section 3103.3,A,3,4,6,7,8a,9 and 11.

2. Disposition

Upon receipt of an Administrative Disqualification/Penalty Waiver, form 6021-AF signed by the accused individual, Division and authorized contract staff will forward the signed waiver to the I&R unit for review and approval by designated I&R staff. Upon approval, I&R staff will prepare and mail a copy of the waiver to the accused individual and the appropriate Divisional/contract staff advising of the Division's intent to impose the penalty. Imposition of the penalty will be initiated by the Division and contract staff only after receipt of notification from I&R.

The original signed waiver form must be transmitted to the I&R unit within ten (10) calendar days from the date the waiver is signed.

3103.4 POSTPONEMENT OF THE HEARING

- A. When good cause exists, the accused individual and/or representative is entitled to postponement of the scheduled hearing if the request for postponement is made in advance of the scheduled hearing.
- B. The hearing may be postponed for no more than thirty (30) days.
- C. If a hearing is postponed, the decision deadline can be extended the amount of time equal to the postponement.

3103.5 CONDUCT OF HEARING

The hearing shall be conducted the same as all other hearings (see Manual Section 3102.9), with the following additions:

- A. At the opening of the hearing, the Hearing Officer will advise the accused individual and/or authorized representative they may refuse to answer questions during the hearing.
- B. If the accused individual or his representative cannot be located or fails to appear at a disqualification/penalty hearing, the hearing shall be conducted without the accused individual represented. The Hearing Officer will carefully consider the evidence and determine (based on clear and convincing evidence) if an Intentional Program Violation (IPV) was committed. If it is determined later by the Hearing Officer the accused individual or representative had good cause for not appearing, the previous

decision shall no longer remain valid and a new hearing shall be conducted. The accused individual has ten (10) days from the date of the scheduled hearing to present good cause for failure to appear. A good cause decision must be entered into the record.

C. In closing the hearing, the Hearing Officer must advise:

1. A decision will be made no later than ninety (90) days after the date the accused individual was advised of the hearing date.
2. The accused individual will be advised in writing of the decision and the disqualification/penalty period.
3. The Division of Welfare and Supportive Services I&R staff will advise the convicted individual of the specific details of any disqualification/penalty.
4. The convicted individual may appeal the decision to district court.

3103.6 DISQUALIFICATION/PENALTY DECISION

The decision by the Hearing Officer must be the result of a careful consideration of the testimony and evidence presented during the hearing. Intentional Program Violation (IPV) disqualifications/penalties must be based on clear and convincing evidence. Decisions shall meet criteria for all hearings. (See Manual Section 3102.13)

The Hearing Officer will notify the accused individual/authorized representative and district office of the hearing decision within ninety (90) days of the date the accused individual was notified of the scheduled hearing.

3103.7 RIGHT TO APPEAL DISQUALIFICATION/PENALTY HEARING DECISION

If a determination has been made that an accused individual has intentionally violated program rules, the decision may be appealed, within ninety (90) days from the date of the decision letter, to the district court of the State of Nevada.

Except as described in 3103.5,B above, determination of the Intentional Program Violation (IPV) cannot be reversed by a subsequent hearing decision.