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Hearings

1010 RIGHT TO APPEAL

A hearing may be requested by a household member or an authorized representative on any action to deny, reduce or terminate benefits. In addition, households may request a hearing:

- on an action to make payments to a protective payee, or
- because an application was not acted on with reasonable promptness and/or according to specified time frames.
- on any action taken which affects their benefits, including approvals and increases.

A hearing request may not be granted by the Hearing Officer when:

- the request is not received timely;
- the sole issue is either a state or federal law requiring an automatic grant adjustment;
- benefits are reduced or terminated as a result of mass change without individual notice of adverse action.
- the issue is a denial for extension of TANF benefits due to hardship. Denial of a hardship request is not an action to deny, reduce or terminate benefits. It is a denial to continue benefits which would exceed state or federal time limits. **Note:** A hearing must be granted for termination of benefits due to time limits; or
- no negative action has been taken by the agency.

1020 TIME PERIOD FOR REQUESTING A HEARING

A hearing request must be received:

- within 90 days from the date of the Notice of Decision; and
- the request must be in writing.

Note: The day after the notice date is the first day of the 90-day period.

- within 90 days of the date the action occurred; and
- the request may be made orally or in writing.

Exception: The household may request a hearing up to a year after a denial of a request for a restoration of lost benefits.

1030 HEARING PROCEDURES

Within 10 days of a hearing request, the designated hearing representative must send a copy of the request to the Hearing Officer, review the case action for accuracy/supporting evidence, prepare a summary of events for the conference and schedule a pre-hearing conference with the household within five (5) days to discuss the contested action. At this time, efforts to reconcile the disagreement without the necessity of a hearing are made. A pre-hearing conference **DOES NOT** in any manner affect the right to a hearing. The Hearing Officer is notified in writing of conferences resulting in withdrawals or dismissals. See Division of Welfare and Supportive Services Administrative Manual - Section 3100.

Exception: Pre-hearing conferences for households contesting a denial of expedited service will be scheduled within **two working days**, unless the household requests a later date.

1030.1 Dismissal/Withdrawal of a Hearing Request

If the contested action is reversed after receiving a hearing request, a report is prepared which explains the reasons for this action. The report is forwarded to the Hearing Officer prior to the date and time set for the hearing. The Hearing Officer notifies the household the hearing is dismissed because the action which precipitated the request will not be taken.

Previous determinations which were reasonable when rendered but are now unreasonable because new evidence concerning the determination has been submitted and good cause exists may be reversed. Good cause includes new evidence which was not available when the determination was made, any mechanical, computer or human mistakes in mathematical computations or any error in making an eligibility determination.

When the hearing request is withdrawn, the previously contested action must be taken (e.g., update the case, reinstate benefits, terminate, etc.).

1030.2 Scheduling and Location of Hearing

Upon receipt, a request for a hearing is forwarded to the Hearing Officer who notifies the household and appropriate staff of the time, date, and place of the hearing. The household is given at least ten days advance notice prior to the scheduled hearing unless they request the hearing be held in a shorter period of time. At the discretion of the Hearing Officer, a hearing may be postponed if requested by either party. **Note:** Postponements of Food Stamp/Medicaid Estate Recovery hearings cannot exceed thirty (30) calendar days.

Hearings may be conducted by telephone when agreed to by all parties and acknowledged in writing. The telephone hearings will be tape recorded.

A hearing is considered abandoned when neither the household or their authorized representative appear for a scheduled hearing, unless the Hearing Officer finds good cause for failing to appear. Substantiation of good cause must be received within ten (10) days of the date of the scheduled hearing.

1040 TIMELY ACTION ON HEARINGS

Once completed, the Hearing Officer notifies the household and appropriate staff of the hearing decision. Use the following procedures to implement the Hearing Officer's instructions.

<p>If the hearing decision results in restored benefits, an increase in benefits for the current month, and/or future months, and</p>	<p>Then . . .</p>	
<p>no additional information or verification is needed</p>	<p>ensure that within 10 days from the date notice is received</p> <p>! benefits for future months are increased, and</p> <p>! all benefits for the current and past months for which the household is eligible are provided or mailed.</p>	
<p>additional information or verification is needed</p>	<p>within 10 days give the household Form 2429, Insufficient Information Request, and allow 10 days for the needed information to be provided. List the specific information/verification needed in order to provide benefits.</p>	
	<p>If . . .</p> <p>all needed information requested is received</p>	<p>Then . . .</p> <p>within 10 days increase benefits for future months and/or issue benefits for the current and past months.</p>
	<p>part, but not all, of the information requested is received</p>	<p>increase benefits for future months and/or benefits for each month for which information/verification is provided within three work days from receipt of the information/verification.*</p>
	<p>*To reissue, replace or restore benefits, See manual sections B-200, B-300 and B-800.</p>	

Note:

- The household's statement is acceptable verification if no other information is available.
 - Do not deny restored benefits solely because a third party refuses to provide verification.
 - Upon request, the household is assisted in obtaining the needed verification.
- Do not restore benefits more than 12 months prior to the date a hearing was requested.

1050 BENEFITS RECEIPT DURING THE HEARING PROCESS**1051 Continued Benefits**

Households are entitled to continued benefits if the request for a fair hearing is:

- received no later than the 10th day after the effective date of the proposed action. Assistance continues unchanged until the hearing decision is made unless a written request benefits not be continued is provided; or the Hearing Officer determines there is no need for a hearing (refer to manual section B-1010).
- received prior to the effective date of proposed action or within 13 days from the date of the Notice of Decision (the day after the date on the notice is the first day of the 13-day period) whichever is later. This request may be verbal or in writing. If not received timely, good cause must be shown. The household shall be provided continued benefits until whichever occurs first:
 - The certification period ends;
 - The household voluntarily withdraws the request for a hearing or for continued benefits; or
 - The Hearing Officer upholds the contested decision.

Note: TANF is not reduced or terminated when a hearing request is due to non-compliance with **NEON** program requirements. The determination to sanction and the length of the sanction is the decision of the Hearing Officer. The sanction will be imposed after the hearing decision is received, effective the first month administratively possible.

Benefits are not continued if

- the client request benefits not be continued in writing.
- a change affecting the client's TANF grant/Medicaid occurs after the hearing, but before a decision is given and the client does not request a hearing after notice of the change.

Note: If a hearing is lost or abandoned, the household is required to repay any EXCESS benefit received for the period of time during which the hearing was processed.

- the household waives rights to continued benefits, either verbally or in writing, continued benefits will not be paid.

Note: If a hearing is lost, abandoned or withdrawn by the household, they may be required to repay excess benefits received during the period of time the hearing was being processed.

- Federal law or regulations require reduction or termination of benefits.
- benefits are reduced or terminated as a result of mass change without individual notice of adverse action. Reinstatement of benefits only if the issue being appealed is misapplication of policy or benefits were improperly computed.
- a disqualification period is imposed as a result of an Intentional Program Violation (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.

Additionally, households are not entitled to continued benefits when notice of adverse action is not required for the situations listed in manual section A-1843.1.2.

1052 Waiver of Continued Benefits

The household may appeal, but waive its right to continued benefits by providing a signed and dated statement to this effect. If the household waives this right, reduce or deny benefits when the 13-day notice period expires.

1053 Reducing or Ending Benefits Before the Hearing Decision

Benefits continued or reinstated during the hearing process cannot be reduced or ended before the hearing decision unless

- another change adversely affects the household and the later change is not appealed; or
- a mass change affects the household's eligibility. (Adjust benefits accordingly.)

■ the certification period expires.