

CHAPTER 10**FAMILY DEVELOPMENT HEARINGS****Authority**

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.1992 d.213, effective April 21, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Executive Order No. 66(1978) Expiration Date

Chapter 10, Family Development Hearings, expires on April 21, 1997.

Chapter Historical Note

Chapter 10, originally Public Welfare Hearings, was adopted as R.1985 d.79, effective March 4, 1985. See: 16 N.J.R. 3068(a), 17 N.J.R. 569(c). Chapter 10 was repealed by R.1987 d.200 and new rules were adopted, effective May 4, 1987 but operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a). Pursuant to P.L. 1989, c.88, the Division of Public Welfare was redesignated the Division of Economic Assistance. See: 21 N.J.R. 2288(a). Pursuant to Executive Order No. 66(1978), Chapter 10 was readopted as R.1992 d.213. See Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTERS 20 THROUGH 21. (RESERVED)**SUBCHAPTER 1. APPLICABILITY****1:10-1.1 Applicability**

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Family Development (DFD) where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, 7 C.F.R. 273.16; 45 C.F.R. § 205.10; 7 C.F.R. § 273.15. In any case where these rules can be construed as conflicting with Federal requirements, the Federal requirements shall apply. Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided pursuant to Federal law.

Administrative Correction.

See: 21 N.J.R. 2288(a).
Amended by R.1994 d.417, effective August 15, 1994.
See: 26 N.J.R. 1774(b), 26 N.J.R. 3441(a).

SUBCHAPTERS 2 THROUGH 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10-5.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4; 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS

1:10-9.1 Adjournments

(a) In cases involving food stamp benefits, upon timely application an applicant/recipient shall receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(b) In all other cases, upon timely application and for good cause shown, an applicant/recipient may receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(c) The total of all adjournments in a case shall not exceed 30 days, unless good cause is shown for a greater extension of time.

(d) In cases involving an alleged intentional program violation, the applicant/recipient must request the adjournment at least 10 days before the scheduled hearing date. 7 C.F.R. 273.16(e)(1)(iii).

1:10-9.2 Notice of hearing

(a) In cases involving AFDC or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. The notice may be sent less than 10 days before the hearing date if the applicant or recipient so requests in order to expedite the hearing.

(b) In cases involving an alleged intentional program violation, written notice of the scheduled hearing shall be sent to the applicant/recipient at least 30 days prior to the hearing. 7 C.F.R. 273.16(e)(3).

1:10-9.3 Scheduling of hearing

(a) The hearing shall be held at a time, date and location convenient to the applicant or recipient.

(b) Upon presentation of acceptable information regarding an applicant's or recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant/recipient's residence.

SUBCHAPTER 10. DISCOVERY

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c).)

(b) Any other discovery shall be by motion to the judge and for good cause shown. In no case shall the hearing date be adjourned to permit discovery under this subsection.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. CONTINUED ELIGIBILITY; EMERGENCY FAIR HEARINGS

1:10-12.1 Eligibility for continued benefits in AFDC and food stamp cases

(a) If the recipient is entitled to and has elected to receive continued unreduced benefits, the judge shall determine at the conclusion of the hearing whether assistance should be continued unreduced pending a final decision. Benefits shall be continued unreduced if the judge determines that the issue is one of fact rather than law or policy (N.J.A.C. 10:81-6.9(a)), unless the recipient has waived the receipt of continued benefits or continued benefits are otherwise not required by State or Federal law.

(b) An adjournment of a hearing at the request of a recipient shall not prolong continuation of benefits at an unreduced level, unless the adjournment is due to: delay caused by the DFD, the Office of Administrative Law or the CWA; unavoidable causes such as illness on the part of the recipient or the failure of the CWA to provide assistance for transportation when such assistance is required by regulations. Adjournment at the request of the CWA or by the judge shall not affect continued benefits. (N.J.A.C. 10:81-6.9(b).)

(c) The judge shall inform the recipient and the CWA in writing either at the time of the hearing or on the first day following the hearing whether or not benefits will be continued unreduced pending a final decision. (N.J.A.C. 10:81-6.9(c).)

Administrative correction to (b).
See: 21 N.J.R. 2288(a).

1:10-12.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DFD determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DEA shall notify the Office of Administrative Law of the hearing request on the same day as the request is received. The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the information provided by DFD.

2. The case shall be scheduled by the Office of Administrative Law for a hearing within three days after notification of the hearing request is received.

3. Notice of the time, date and place of the hearing shall be transmitted to DFD within one day after the Office of Administrative Law is notified of the hearing request. DFD shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing on the day that it receives notification of the hearing time and place.

4. The judge shall issue an initial decision no later than the day following the date of the hearing. A copy of the decision shall be transmitted to the Director of the DFD and the parties by an expeditious method designed to ensure receipt no later than the day following the date of the decision.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DFD no later than the first day following the issuance of the initial decision.

6. The Director of the DFD shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DFD shall notify the CWA or MWD, the Office of Administrative Law and the petitioner or the petitioner's representative of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

Amended by R.1989 d.160, effective March 20, 1989.
See: 20 N.J.R. 3049(a), 21 N.J.R. 749(c).

Language deleted regarding use of phones or mailgrams; methods of notification expanded.

Administrative correction.
See: 21 N.J.R. 2288(a).

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10-14.1 Attendance at hearing

(a) The applicant/recipient or a representative and the CWA or MWD and their representatives, if any, shall attend the hearing.

(b) The hearing may also be attended by other persons having an interest in the matter if permitted by the applicant or recipient.

(c) The judge may limit the number of persons in attendance at the hearing to comport with any hearing room space limitations.

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.4(l).

1:10-14.2 Intentional program violation hearings

At an intentional program violation hearing, the charged applicant/recipient has a right to remain silent and may refuse to answer questions. 7 C.F.R. 273.16(e)(2)(iii); 45 C.F.R. 235.113(b)(3)(ii)(K).

New Rule, R.1994 d.417, effective August 15, 1994.
See: 26 N.J.R. 1774(b), 26 N.J.R. 3441(a).

1:10-14.3 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment or professional evaluation when the hearing involves medical issues. Such medical assessment shall be obtained at CWA or MWD expense. 7 C.F.R. 273.15(m)(2)(v); 7 C.F.R. 273.16(e)(2)(ii); 45 C.F.R. 205.10(a)(iii)(10); 45 C.F.R. 235.113(b)(6).

New Rule, R.1994 d.417, effective August 15, 1994.
See: 26 N.J.R. 1774(b), 26 N.J.R. 3441(a).

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving AFDC benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b) In cases involving food stamp benefits, an initial decision shall be issued within 14 days from the date of the hearing.

(c) In cases involving food stamp intentional program violations, an initial decision shall be issued within 21 days from the date of the hearing.

(d) In cases involving General Assistance, an initial decision shall be issued within 21 days from the date of the hearing.

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Director of the DFD. Copies of the exception shall be served on all other parties and the judge. The exceptions must be received by the DFD no later than seven days after the date the initial decision was mailed to the parties. No replies or cross-exceptions shall be permitted.

Administrative correction.

See: 21 N.J.R. 2288(a).

Amended by R.1990 d.483, effective September 17, 1990.

See: 22 N.J.R. 2067(a), 22 N.J.R. 3003(b).

Change from five days to seven days after the date the initial decision was mailed to the parties in order to use regular mail.

Amended by R.1991 d.44, effective February 4, 1991.

See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

Deleted that exceptions shall be submitted to the Clerk; added text that "Copies of the exception shall be served on all other parties and the judge."

1:10-18.3 Written initial decisions

All initial decisions shall be issued in writing, pursuant to N.J.A.C. 1:1-18.3. Oral initial decisions are not permitted.

(b) Settlement prior to the scheduled hearing date shall not involve the administrative law judge. The DFD shall notify the Office of Administrative Law of any settlement and withdrawal so derived and the contested case shall be closed. The Office of Administrative Law shall immediately return the case file to DFD.

(c) If on the date of the scheduled hearing or at any time during the hearing the parties agree to settle the matter at issue, a "Stipulation of Settlement and Withdrawal" shall be executed by the parties. This document shall contain:

1. The reason for the hearing request;
2. The reason for settlement and terms of settlement; and
3. The effective date of eligibility and/or benefit entitlement resulting from settlement when appropriate.

(d) The execution of a Stipulation of Settlement and Withdrawal terminates the contested case. The Office of Administrative Law shall transmit the closed file to the Bureau of Administrative Review and Appeals (BARA), Division of Family Development within four days of the date of the scheduled hearing.

(e) A review of the settlement shall be completed and written notice shall be provided by BARA not later than three days after its receipt from the Office of Administrative Law. When approved, any terms or conditions of settlement shall be implemented within three days of the date notification of approval is received in the CWA or MWD. In the event settlement action is disapproved, the matter will be returned to the Office of Administrative Law within three days as a new case. The specific reason for returning the matter and applicable citation of law and regulations shall be clearly stated on the transmittal form.

(f) When implementation by the CWA or MWD is required in a settlement, a written report shall be sent by the CWA or MWD to the BARA within 30 days of the date the action was approved. Such report shall include the calculation of benefits in all cases involving a retroactive payment or a recalculation of benefit entitlement.

Administrative correction to (b) and (d).

See: 21 N.J.R. 2288(a).

SUBCHAPTER 19. SETTLEMENTS

1:10-19.1 Division of Family Development settlements

(a) The parties to a hearing may resolve a dispute, subsequent to transmittal of a matter to the Office of Administrative Law, by agreeing to settlement and withdrawal of the hearing request.

SUBCHAPTERS 20 THROUGH 21. (RESERVED)