

Title 25. State Government

Chapter VIII. Generally, Department of Human Services

Subchapter A. Generally

Part 34. Appeals and Hearings Procedures

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Effective Date: January 1, 2024"

Subpart 1. Generally

25 CAR § 34-101. Policy.

Department of Human Services administrative adjudications are to:

- (1) Be conducted:
 - (A) Impartially;
 - (B) Timely;
 - (C) Fairly;
 - (D) Professionally; and
 - (E) Objectively; and
- (2) Lead to decisions that are consistent with applicable state and federal laws.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-102. Definitions.

As used in this part:

- (1) "Administrative adjudication" means the process for the formulation of an order;
- (2) "APA" means Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.;

(3) "Appellant" means the party:

(A) Applying for Department of Human Services services; or

(B) Appealing Department of Human Services adverse action;

(4)(A) "Burden of proof" means the responsibility to establish a proposition by sufficient evidence.

(B) An appellant seeking to establish eligibility for Department of Human Services benefits or services has the burden of proving his or her eligibility.

(C) If the appeal challenges Department of Human Services adverse action, the Department of Human Services has the burden of proving the facts necessary to support the adverse action;

(5)(A) "Conflict of interest" means a situation where, with respect to the claim or controversy before the hearing official, the official:

(i) Has been a party or acted as an advocate for a party; or

(ii) Has a direct or indirect financial interest.

(B) A financial interest is indirect if it exists through the hearing official's spouse, child, parent, sibling, or grandparent, or through the hearing official's ownership or management interest in any entity having a financial interest;

(6) "DHS" means the Department of Human Services;

(7) "Financial interest" means more than a remote possibility of a gain or loss resulting from the outcome of the claim or controversy;

(8) "Good cause" means substantial reason that which a reasonably prudent and intelligent person would find justifiable;

(9) "Hearing official" means an administrative law judge or hearing officer employed by the Office of Appeals and Hearings;

(10)(A) "Impartiality" means the absence of bias or prejudice or the appearance of bias or prejudice in the hearing official's application of the agency's special knowledge and expertise to the issues under consideration.

(B) An appearance of bias or prejudice exists if any party has reasonable cause to question the hearing official's impartiality;

(11) "OAH" means the Office of Appeals and Hearings of the Department of

Human Services;

(12) "Order" means a final agency determination that may be appealed to a circuit court under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.;

(13) "Party" means the person asking for the administrative adjudication, and the Department of Human Services division or office, acting through its employees, which made the decision or took the action being appealed;

(14) "Process procedures" means procedures assuring that appellants have notice of the denial or other action, notice of the administrative adjudication proceedings, and an opportunity during those proceedings to:

- (A) Appear;
- (B) Be represented;
- (C) Be heard;
- (D) Offer evidence and arguments; and
- (E) Call and cross-examine witnesses;

(15) "Reasonable cause" means circumstances sufficiently strong to warrant a cautious person's belief that an allegation is true;

(16) "Recusal" means an order disqualifying the hearing official from hearing the appeal;

(17) "Relevant evidence" means evidence tending to make the existence of any fact that is of consequence to the administrative adjudication more probable or less probable than it would be without the evidence; and

(18)(A) "Representative" means a person selected by a party to present that party's statements, arguments, and evidence during the administrative adjudication process.

(B) A corporation or association cannot be a representative.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-103. Right to administrative adjudication.

Unless a different administrative remedy is provided by statute, regulation, or rule, any person denied Department of Human Services assistance, and any person entitled by state or federal law, rule, or regulation to appeal an adverse department action, may initiate an administrative adjudication by submitting a written appeal in compliance with the requirements applicable to the assistance denied or adverse action taken.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-104. Notice of representative.

(a) Appellants who intend to be represented at any stage of an adjudication must notify the Office of Appeals and Hearings of the name, address, and telephone number of the representative as soon as possible, and at least ten (10) business days before any hearing.

(b) Appellants who fail to comply with this requirement must choose to:

(1) Proceed without representation; or

(2) Request that the hearing be delayed to afford the agency at least ten (10) business days to secure representation, if the request includes a waiver of any timeframe that is inconsistent with the delay.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-105. Interpreters.

(a) If any party requires an interpreter due to hearing impairment or an inability to communicate in the English language, the party must notify the Office of Appeals and Hearings of the need for an interpreter at least ten (10) business days before a hearing.

(b) The office will immediately direct the Department of Human Services to secure the services of an interpreter.

(c) If the party requiring an interpreter does not furnish timely notice of the need for an interpreter, the hearing will be rescheduled.

(d) If the new schedule fails to comply with any applicable timeframe, the party

requiring an interpreter will be deemed to have waived that timeframe.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-106. Timeframes.

(a) Most Department of Human Services programs have time limitations for the completion of administrative adjudications.

(b) Timeframes are the basis for hearing schedules.

(c) Failure to meet a timeframe does not deprive the Office of Appeals and Hearings of jurisdiction to administratively adjudicate the appeal, but may be the basis for one (1) or more orders directing parties to take certain actions in a timely manner, and may warrant sanctions against parties that fail to follow office orders.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-107. Resolution without a hearing.

There are four (4) ways to end an administrative adjudication without a hearing:

(1) The Department of Human Services withdraws the adverse action on the record at the hearing or in writing before the hearing;

(2) The appellant withdraws the appeal request on the record at the hearing or in writing before the hearing;

(3) The parties reach a mutually agreeable resolution of the appeal and file written notice of settlement explaining the terms of the settlement; or

(4) The Office of Appeals and Hearings dismisses the appeal as defective.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-108. Hearings.

(a) **Special types of hearings.**

(1)(A) Special nutrition program.

(B) See Family Day Care Home (FDCH)-3.

(2) Medical necessity/medical disability decisions:

(A) The hearing official will notify the appellant in writing that if the appellant has evidence regarding the initial application and asserted disability, the appellant must provide the information to the hearing official or complete a Consent for Release of Information Form as soon as possible and before the hearing;

(B) The hearing will not be delayed for failure to submit additional evidence;

(C)(i) Evidence presented to the hearing official will be limited to evidence of eligibility as of the date of denial by the Department of Human Services.

(ii) The hearing official will refuse evidence about subsequent medical necessity/disability and advise the applicant to submit a new application to the department;

(D) A physician employed by the department to review denials will be available by phone for the hearing if requested or subpoenaed by any party; and

(E)(i) The hearing official will hear medical and nonmedical evidence regarding eligibility.

(ii) The hearing official will make the final decision regarding eligibility.

(b) Hearing officials — Each hearing official must act impartially.

(1) Hearing officials must not have communication with any party to an administrative adjudication if any other party is excluded from the communication, except that the following communications are acceptable:

(A) Communication necessary to schedule hearings and the submission of exhibits and arguments; or

(B) Communication necessary to identify, without comment or argument, any exhibits or documents being delivered to the Office of Appeals and Hearings.

(2) Conflict of interest.

(A) Any hearing official having a conflict of interest must notify the office managing administrative law judge immediately upon discovering a conflict of interest,

and must not take any further action regarding the claim or controversy.

(B) A hearing official must recuse if the hearing officer has personal knowledge of the facts of the case or has a conflict of interest.

(C) A hearing official should recuse if any party has reasonable cause to suspect that the hearing officer may not be impartial.

(c) **Attendance.**

(1)(A) Administrative adjudications are public proceedings and are open to the public subject to state and federal confidentiality laws, rules, and regulations.

(B) An appellant may waive his or her right to confidentiality but may not waive another's right to confidentiality.

(C) For example, an appellant may not:

(i) Waive an alleged child victim's right to confidentiality in a child maltreatment case;

(ii) Waive a nursing home resident's right to confidentiality in an adult abuse or neglect case; and

(iii) Waive a child's right to confidentiality in a special nutrition case.

(2)(A) The hearing official may determine that a party is physically or mentally unable to attend or participate, or that the party's presence will so disrupt the proceedings that the adjudication cannot continue in an orderly fashion unless the party is excluded.

(B) Party representatives may be present at all stages of the proceedings unless the hearing official determines that a representative's presence will so disrupt the proceedings that the adjudication cannot continue in an orderly fashion unless the representative is excluded.

(3)(A) Interpreters may be present when necessary to facilitate communication before and during a hearing.

(B) Interpreters shall be placed under oath before interpreting testimony.

(C) The following oath is suggested: "Do you solemnly affirm that you will truthfully and accurately interpret all questions and answers?"

(4)(A) Witnesses may be present unless:

(i) Any party has asked that the witnesses be excluded except while testifying; or

(ii) The evidence is confidential by state or federal law, rule, or regulation, and disclosing the evidence to a nontestifying witness would violate that confidentiality.

(B) If witnesses are excluded from the hearing, the witnesses shall be instructed that until a witness is released, that witness must not discuss the evidence with another witness and must not discuss any other witness's testimony with anyone.

(5) Observers will be excluded if the evidence to be presented is confidential under state or federal law, rule, or regulation, and disclosing the evidence to the observer would violate that state or federal law, rule, or regulation.

(6) **News media.** Persons representing the news media will be excluded if the evidence to be presented is confidential under state or federal law, rule, or regulation, and disclosing the evidence to the observer would violate that state or federal law, rule, or regulation.

(d) **Opening and closing statements.** Each party may be given an opportunity to make an opening and closing statement limited to ten (10) minutes unless the issues are so complex that the hearing official determines that more time is required to adequately explain the parties' contentions.

(e) **Questions allowed.**

(1) Questioners may ask only one (1) question at a time.

(2) Questions may not take the form of statements or contentions, and must not be asked in such a way as to bully or intimidate a witness.

(f) **Newly acquired evidence.**

(1)(A) Admissible evidence that was not submitted to the person or persons who made the decision under appeal may be admitted in appeals under Arkansas Code § 5-28-211 [repealed] or Arkansas Code § 12-12-512 [repealed].

(B) Newly acquired evidence may be admitted in other appeals only if the evidence:

(i) Concerns events or circumstances predating the application,

request, or decision under appeal; and

(ii) Could not have been obtained by the party offering the evidence despite that party's due diligence in acquiring evidence.

(2)(A) If the hearing official determines that newly acquired evidence is admissible, the hearing official shall return the case to the decision maker so that the newly acquired evidence may be considered, or shall determine that there is good cause not to return the case.

(B) Each good cause finding and the reasons therefore shall be stated in the findings of fact and conclusions of law.

(g) **Allowing additional evidence after the hearing.** If a request to receive additional identified and specifically described evidence is made at the hearing, the office may for good cause hold the hearing record open for a specified period of time to receive additional admissible and relevant evidence that will assist the hearing official in deciding the case.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-109. Commencement of administrative adjudication.

(a) Each appeal shall begin with the filing of a written notice of appeal in the time and manner specified for the subject matter of the appeal.

(b)(1) Upon receipt of a sufficient and timely notice of appeal, the Office of Appeals and Hearings shall:

(A) Assign a number to the appeal;

(B) Schedule the appeal for a hearing within the applicable timeframe;

and

(C) Mail written notice of the time, date, and place of the appeal to the parties by regular mail posted at least thirteen (13) days before the date of the hearing.

(2) The office may also send notice of the hearing electronically for parties that have opted to receive electronic communications.

(3) Department of Human Services parties may be notified by

interdepartmental mail or by department email.

(4) Notice is presumptively complete upon mailing or upon transmission by interdepartmental mail or department email.

(c)(1) Upon receipt of an untimely notice of appeal, the office shall notify the appellant that the appeal was not filed in time.

(2) The notice shall be sent by regular mail or electronically for parties that have opted to receive electronic communications, and shall inform the person that he or she may have a right under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., to appeal the office's determination of untimely filing.

(d)(1) Upon receipt of an appeal filed other than in the manner specified for the subject matter of the appeal, the office shall inform the appellant that the appeal was defective and explain the defect.

(2) The notice shall be sent by mail, or electronically for parties that have opted to receive electronic communications, and shall inform the appellant that he or she may have a right under the Arkansas Administrative Procedure Act to appeal the office's determination that the appeal was defective.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-110. Discovery.

(a) Discovery is the process whereby one (1) party:

- (1) Requests documents from the other party;
- (2) Submits written interrogatories to the other party; or
- (3) Takes witness depositions by phone or in person.

(b) If one (1) or more parties want to have discovery, the parties are encouraged to agree informally on discovery procedures.

(c) If the parties cannot agree, any party may ask the hearing official to enter a discovery order.

(d) All discovery orders will be guided generally by the Arkansas Rules of Civil Procedure regarding discovery, except as necessary to meet timeframes or otherwise fit

the administrative adjudication process.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-111. Securing the attendance of witnesses.

(a) Witnesses may appear voluntarily or involuntarily if properly served with a subpoena.

(b) Subpoenas direct the witness to appear and give testimony at a specified time and place, and also may direct the witness to bring documents.

(c) To obtain a witness subpoena, parties must follow the instructions on the attached subpoena request form.

(d) The Office of Appeals and Hearings must receive each subpoena request at least ten (10) business days before the hearing.

(e) Each party is responsible for serving (delivering) each subpoena in accordance with Rule 45 of the Arkansas Rules of Civil Procedure.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-112. Postponements.

(a)(1) Any party may request that the hearing be rescheduled to a later date.

(2) Requests should be made in writing and delivered to the Office of Appeals and Hearings and all other parties.

(b) Verbal requests must be followed by a written request mailed or faxed no later than one (1) business day after the verbal request.

(c) Except in cases of actual emergency, all postponement requests must be received at least ten (10) days before a hearing.

(d) The office shall deny Department of Human Services postponement requests that are incompatible with appeal timeframes.

(e) The office may for good cause grant other postponement requests.

(f) Any postponement order that is incompatible with appeal timeframes shall

notify the party requesting the continuance that his or her request is deemed a waiver of any objections, defenses, or both based on timeframes.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-113. Location of hearings.

Hearings may be held in the Office of Appeals and Hearings office at 7th and Main Streets in Little Rock, Arkansas, in the county office in the county where the appellant resides, by telephone, or by videoconference.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-114. Failure to appear.

(a) Regardless of whether the appellant is represented, the appellant must appear in person for all hearings regarding program eligibility or program services or show good cause why he or she cannot be present.

(b) If any party fails to appear (either in person or by telephone) within fifteen (15) minutes after the hearing was scheduled to begin, the Office of Appeals and Hearings will confirm that the party had proper notice of the hearing and will attempt to contact the absent party.

(c) The hearing official may allow an additional fifteen (15) minutes before beginning the hearing.

(d) When the hearing begins, the hearing official will identify for the record any party not present in person or by telephone.

(e) If the appellant does not appear, the appeal shall be deemed abandoned, subject to reopening on a showing that the appellant exercised due diligence but was unable to appear due to circumstances beyond the appellant's control.

(f) If the agency does not appear, the hearing official may proceed with the hearing and may consider any hearing statements or other documents submitted by the agency.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-115. Burden of going forward.

(a) When a hearing begins, the burden of going forward is on the party with the burden of proof.

(b) When that party has presented his or her evidence, the burden of going forward shifts to the other party.

(c) After that evidence is submitted, the party with the burden of proof may offer rebuttal evidence.

(d) For example, if a person named as a perpetrator of child maltreatment appeals the maltreatment finding, the Department of Human Services has the burden of proof so it presents evidence first.

(e) The appellant then presents his or her evidence.

(f) After that, the department may present rebuttal evidence.

(g) This process may continue until the party with the burden of proof decides to offer no more evidence.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-116. Order of witnesses.

(a) The party with the burden of proof goes first.

(b) Each party determines the order in which to call its own witnesses.

(c) The hearing official may direct, or the parties may agree, to take one (1) or more witnesses out of turn, for example, to accommodate the witness's schedule or expedite the hearing process.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-117. Maltreatment victim and child witnesses.

(a)(1) In all maltreatment appeal hearings, the testimony of alleged victims and all child witnesses under the age of eighteen (18) shall be taken outside the presence of the petitioner.

(2) Testimony from child witnesses and alleged victims shall be taken in one (1) of the following manners:

(A) The victim or child may be physically present in the hearing room while the petitioner listens in from another location by phone;

(B) The victim or child may testify by phone or live camera (FaceTime, audiovisual, etc.) from another location but the child or victim shall not face or hear from the petitioner;

(C) The victim or child may testify by other reasonable accommodations agreed upon by both parties as long as the petitioner is not in the same room with the child or the victim and the child or victim cannot see or hear the petitioner; or

(D)(i) Previously recorded video or audio interviews, also known as safety assessments, with a victim may be introduced as evidence and shall be given the same weight as if the victim testified in person.

(ii) The entire interview is subject to scrutiny at the hearing.

(b)(1) If the hearing is taking place in a county office and a child is scheduled to testify at a hearing, the hearing official shall notify the Division of Children and Family Services County Supervisor in that county office to direct that appropriate arrangements are made.

(2) At the time and date of the hearing, Department of Human Services shall provide:

(A) A separate space for children; and

(B) A room with a telephone by which the petitioner can listen to the child's testimony when the child is called into the hearing room to testify.

(c)(1) Child witnesses or victims shall not be questioned by the petitioner.

(2) If the petitioner does not have a representative to ask the victim or child witness questions, the petitioner shall write them down for the hearing official to ask.

(3)(A) The agency is not required to call any child maltreatment victims to

testify in appeal hearings if doing so would unnecessarily traumatize the child.

(B) See Ark. Dep't of Human Servs. v. A.B., 374 Ark. 193, 286 S.W. 3d 712 (2008).

(4) Upon the request of the agency or the child's parent or guardian, the hearing official may designate a comfort person to remain with the child before, during, and after testifying.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-118. Record made.

(a) The Office of Appeals and Hearings will tape record each hearing.

(b) If the office decision is appealed, the office will prepare a transcript or cause a transcript to be prepared for filing in the circuit court as provided in the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-119. Findings of fact and conclusions of law.

(a) Each Office of Appeals and Hearings decision will be in writing and will separately set out:

- (1) Findings of fact;
- (2) Conclusions of law; and
- (3) An order.

(b) The office will furnish each party a copy of the findings of fact, conclusions of law, and order by mailing a copy to the party's last known address by regular mail or electronically for parties that have opted to receive electronic communications.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-120. Reconsideration.

(a) Within ten (10) calendar days of a party's receipt of the findings of fact, conclusions of law, and the order, any party may request reconsideration.

(b) Simultaneous to a request for reconsideration, the party shall notify the opposing party of the request.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-121. Grounds for reconsideration.

(a) Reconsideration is for the limited purposes of correcting material misstatements of:

- (1) The record;
- (2) Clear errors of law; or
- (3) Both.

(b) Each request for reconsideration must state in plain terms the grounds upon which the requestor relies.

(c) The Office of Appeals and Hearings shall summarily deny any reconsideration that asks the office to receive additional evidence, exercise its discretion differently, or modify or reverse any finding, conclusion, or order for any reason other than correcting material misstatements of:

- (1) The record;
- (2) Clear errors of law; or
- (3) Both.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-122. Reconsideration process.

(a) Any party requesting reconsideration shall provide the Office of Appeals and Hearings proof of notice to the opposing party.

(b) The opposing party shall have ten (10) calendar days from the receipt of the notice to respond to the request.

(c) If necessary, the office may reconvene both parties for argument on the request for reconsideration and shall notify both parties of a reconsideration conference.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-123. Reconsideration decision.

(a) If the Office of Appeals and Hearings determines that there are good and sufficient grounds for reconsideration, it shall amend the findings of fact, conclusions of law, and decision as necessary to correct any material misstatement of:

- (1) The record;
- (2) Clear error of law; or
- (3) Both.

(b) The office shall issue any amended findings of fact, conclusions of law, and order within thirty (30) calendar days of receiving the reconsideration request, unless the period for the reconsideration decision is waived.

(c) The amended findings of fact, conclusions of law, and order shall be the final agency determination as provided in the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(d) The office shall furnish copies of the amended findings of fact, conclusions of law, and order to the parties as provided in 25 CAR § 34-119.

Authority. Arkansas Code § 20-76-201.

25 CAR § 34-124. Final agency determination.

If the Office of Appeals and Hearings does not receive a written request for reconsideration within ten (10) calendar days of a party's receipt of the initial findings of fact, conclusions of law, and order, the initial findings of fact, conclusions of law, and order shall become the final agency determination as provided in the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 20-76-201.

Appendix A. Office of Appeals and Hearings Subpoena Request Form

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/215/25CARpt.34Appendix.pdf>