

## Title 45—PUBLIC WELFARE

### Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

#### PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

##### Fair Hearings

Notice of proposed rule making for the programs administered under titles I, IV-A, X, XIV, XVI, and XIX of the Social Security Act, relating to fair hearings in public assistance programs, was published in the FEDERAL REGISTER on May 29, 1970 (35 F.R. 8448). After consideration of the views presented by interested organizations, agencies, and individuals, the following changes were made:

1. Section 205.10(a) (5) now requires that the State agency shall determine whether the issue is one of fact or judgment or of State agency policy; that assistance will continue until such determination is made, and—where the issue is one of fact or judgment—until a fair hearing decision is reached. It incorporates the substance of the proposed § 206.11 (which has been omitted) and requires a minimum advance period of 15 days rather than 7 days. It clarifies the State's option of continuing assistance regardless of the nature of the issue, and even if the request for a hearing is made after expiration of the advance notice period.

2. Section 205.10(a) (3) (v) is changed to provide that any claimant scheduled for a group hearing may withdraw and be given an individual hearing instead.

3. Clarifying changes are also made in § 205.10(a) (3), first paragraph (opportunity for a fair hearing regarding suspension of assistance), § 205.10(a) (9) (medical assessment from a source satisfactory to a claimant) and § 205.10(a) (10) (i) (opportunity to examine hearing evidence in advance).

4. The requirement for provision of legal services contained in §§ 205.10 and 220.25 was separately revoked (see 35 F.R. 10591, June 30, 1970).

Accordingly, § 205.10, Part 205, Chapter II, Title 45 of the Code of Federal Regulations is revised to read as follows:

##### § 205.10 Fair hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, XVI or XIX of the Social Security Act must provide for a system of fair hearings under which:

(1) The single State agency responsible for the program will be responsible for fulfillment of fair hearings provisions.

(2) Every claimant will be informed in writing at the time of application and at the time of any action affecting his claim:

- (i) Of his right to fair hearing;
- (ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by legal counsel, or by a relative, friend, or other spokesman, or he may represent himself; and

(iv) Of any provision for payment of legal fees by the agency.

(3) An opportunity for a fair hearing before the State agency will be granted to any individual requesting a hearing because his claim for financial or medical assistance is denied, or is not acted upon with reasonable promptness, or because he is aggrieved by any other agency action affecting receipt, suspension, reduction, or termination of such assistance or by agency policy as it affects his situation. Under this requirement:

(i) A request for a hearing is defined as any clear expression (oral or written) by the claimant (or person acting for him, such as his legal representative, relative, or friend) to the effect that he wants the opportunity to present his case to higher authority.

(ii) The freedom to make such a request must not be limited or interfered with in any way, and agency emphasis must be on helping the claimant to submit and process his request, and in preparing his case, if needed.

(iii) The claimant must be provided reasonable time in which to appeal an agency action.

(iv) The fair hearing shall include consideration of:

(a) Any agency action, or failure to act with reasonable promptness, on a claim for financial or medical assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and suspension or discontinuance of such assistance in whole or in part;

(b) The agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if the claimant is aggrieved by their application to his situation;

(c) Agency decision regarding:

(1) Eligibility for financial or medical assistance in both initial and subsequent determinations,

(2) Amount of financial or medical assistance or change in payments,

(3) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed, and

(4) Conditions of payment, including work requirements.

(v) States may respond to a series of individual requests for fair hearings by conducting a single group hearing. States may only consolidate cases in which the sole issue involved is one of an agency policy. In such a situation, each individual must be given the right to withdraw from the group hearing in favor of an individual hearing. If recipients request a group hearing on such an issue the State must grant it. In all group hearings, whether initiated by the State or by the claimants, the policies governing fair hearings must be followed. Thus, each individual claimant must be per-

mitted to present his own case and be represented by his own lawyer.

(vi) The agency shall not deny or dismiss a request for a hearing except where it has been withdrawn by claimant in writing, or abandoned.

(4) Hearing procedures will be issued and publicized by the State agency for the guidance of all concerned.

(5) In cases of any proposed action to terminate, suspend or reduce assistance:

(i) The State or local agency will give timely and adequate advance notice detailing the reasons for the proposed action. Under this requirement:

(a) "Timely" means that the notice is mailed at least 15 days before the action is to be taken.

(b) "Adequate advance notice" means a written notice that includes details of reasons for the proposed agency action, explanation of the individual's right to conference, his right to request a fair hearing and the circumstances under which assistance is continued if a fair hearing is requested.

(ii) If, within the advance notice period, the individual responds by indicating his wish for an agency conference, an opportunity is provided for the recipient (or his representative) to discuss his situation with agency staff, obtain an explanation of the reasons for the proposed action, and present information to show that the proposed action is incorrect. Under this requirement:

(a) During this conference, the recipient is given the opportunity to speak for himself or be represented by legal counsel or by a friend or other spokesman.

(b) The opportunity for a conference does not in any way diminish the recipient's right to a fair hearing.

(iii) (a) In cases in which there is a request for a fair hearing within the advance notice period:

(1) Assistance is continued until the fair hearing decision is rendered and through a period consistent with the State's established policies for issuance of payments unless a determination is made by the State agency, in accordance with criteria issued by the Social and Rehabilitation Service, that the issue is one of State agency policy and not one of fact or judgment relating to the individual case, including a question of whether the State agency rules or policies were correctly applied to the facts of the particular case.

(2) The agency promptly informs the claimant in writing if assistance will be discontinued, based on the State agency's determination.

(b) Alternatively, the State may provide for continuing assistance in all cases.

In cases in which a fair hearing is requested after expiration of the advance notice period, the State may provide for an additional period during which time the request for a hearing will result in reinstatement of assistance to be continued until the fair hearing decision.

(6) Information and referral services are provided to help claimants make use of any legal services available in the

community that can provide legal representation at the hearing.

(7) The hearing will be conducted at a time, date and place convenient to the claimant, and adequate preliminary written notice will be given.

(8) The hearings will be conducted by an impartial official (or officials) of the State agency. Under this requirement, the hearing official must not have been involved in any way with the action in question.

(9) When the hearing involves medical issues such as those concerning a diagnosis, or an examining physician's report, or the medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision will be obtained at agency expense from a source satisfactory to the claimant and made part of the record if the hearing officer or the appellant considers it necessary.

(10) The claimant, or his representative, will have adequate opportunity:

(i) To examine all documents and records used at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of others including legal counsel;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(11) Prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing, except where the claimant requests a delay in the hearing.

(12) The claimant will be notified of the decision, in writing, in the name of the State agency and, to the extent it is available to him, of his right to judicial review.

(13) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency will make corrective payments retroactively to the date the incorrect action was taken or such earlier date as is provided under State policy.

(14) Recommendations of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The verbatim transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendations of the hearing officer or panel will constitute the exclusive record for decision by the hearing authority and will be available to the claimant at a place accessible to him or his representative at any reasonable time.

(15) Decisions by the hearing authority, rendered in the name of the State agency, shall specify the reasons for the decision and identify the supporting evidence. They shall be binding on the State and local agency. Under this requirement:

(i) No person who participated in the local decision being appealed will participate in a final administrative decision on such a case;

(ii) The State agency is responsible for seeing that the decision is carried out promptly.

(16) The State agency will establish and maintain a method for informing, at least in summary form, all local agencies of all fair hearing decisions by the hearing authority and the decisions will be accessible to the public (subject to provisions of safeguarding public assistance information).

(17) In respect to title XIX, when the appeal has been taken on the basis of eligibility determination, the agency responsible for the determination of eligibility for medical assistance, if different from the single State agency administering the medical assistance plan, shall

participate in the conduct of the fair hearing.

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision;

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Service costs incurred by the agency, at the applicable matching rates, for:

(i) Providing legal counsel to represent clients at hearings or in judicial review;

(ii) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(iii) Meeting other expenditures incurred by the client in connection with the hearing.

(5) Administrative costs incurred by the agency in carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

(Sec. 1162, 49 Stat. 647, 42 U.S.C. 1362)

*Effective date.* These regulations shall become effective 60 days from the date of their publication in the FEDERAL REGISTER.

Dated: November 23, 1970.

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Approved: February 6, 1971.

ELLIOT L. RICHARDSON,  
Secretary.

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