

106 CMR 343.000: FAIR HEARING RULES

Section

- 343.010: Purpose
- 343.020: Scope
- 343.030: Definitions
- 343.100: The Division of Hearings (DOH)
- 343.110: General Description of the Fair Hearing Process
- 343.120: Methods for Conducting a Fair Hearing
- 343.130: Availability of Fair Hearing Decisions
- 343.140: Time Limits
- 343.150: Authorized Representative
- 343.160: Auxiliary Aids and Reasonable Accommodation
- 343.200: Adequate Notice Requirements
- 343.210: Timely Notice Exceptions
- 343.225: Notification of the Right to Request a Hearing
- 343.230: Grounds for Appeal
- 343.235: Coercive or Otherwise Improper Conduct
- 343.240: Request for Fair Hearing
- 343.245: Dismissal of Request for a Hearing
- 343.250: Continuation of Benefits Pending Appeal
- 343.300: Notification of Hearing
- 343.310: Scheduling
- 343.320: Procedures and Requirements for Rescheduling
- 343.330: Dismissal for Failure to Prosecute
- 343.340: Right to Examine Case File and Documents, or "Discovery"
- 343.350: Adjustment Procedures
- 343.360: Subpoenas
- 343.410: Rights of the Appellant
- 343.420: Department Rights and Responsibilities
- 343.430: Responsibilities of the Department Attorney
- 343.440: Rights of the Department Employee
- 343.450: Powers and Duties of the Hearing Officer
- 343.500: Evidence
- 343.510: Hearing Involving Medical Issues
- 343.520: Interim Orders
- 343.530: Continuance
- 343.540: Consolidated Hearings
- 343.550: The Record
- 343.600: Reopening Prior to Decision
- 343.610: Basis of Fair Hearing Decisions
- 343.620: Content of Decision
- 343.625: Transmittal of Decision
- 343.630: Finality of the Appeal Decision
- 343.640: Implementation of the Appeal Decision
- 343.710: Remand of Hearing Officer Decisions
- 343.720: Judicial Review
- 343.730: Access to the Record

343.010: Purpose

106 CMR 343.00 sets forth the rules for hearings and appeals filed by applicants or clients dissatisfied with certain actions or inactions by the Department of Transitional Assistance.

343.020: Scope

106 CMR 343.000 sets forth the exclusive rules for hearings and appeals filed by applicants, clients and, if applicable, any sponsors of aliens under the programs of Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to the Elderly, Disabled and Children (EAEDC) and State Supplement Program (SSP), and by clients or former clients and/or their spouses under M.G.L. c. 62D. Hearings and appeals arising under Supplemental Nutrition Assistance Program (SNAP) are governed by 106 CMR 367.000: *Supplemental Nutrition Assistance Program: Violations, Hearings and Claims*, excepting that matters not addressed therein shall be governed by 106 CMR 343.000. The Department may enter into interdepartmental service agreements with other state agencies to conduct hearings in accordance with 106 CMR 343.000.

343.030: Definitions

(A) Adequate Notice. A notice of an intended action to reduce, suspend or terminate assistance or to change the manner or form of payments to protective, vendor, or two-party payments, or to deny a prior approval request for services, which contains the elements provided in 106 CMR 343.200(A).

(B) Appellant. An applicant, client, resident or certain sponsors of aliens or certain spouses of clients requesting a fair hearing.

(C) Applicant. A person or family who has applied or attempted to apply for a program administered by the Department of Transitional Assistance.

(D) Assistance. Any financial assistance provided by the Department.

(E) Authorized Representative. Any person, such as a legal counsel, a relative, or a friend, who is authorized in writing by the appellant to represent him or her at the hearing.

(F) Cyclical Month. The monthly issuance cycle which begins and ends on a date determined by the Department by using the client's social security number or other identifying number.

(G) Department. The Department of Transitional Assistance of the Commonwealth of Massachusetts.

(H) DOH. The Division of Hearings within the Department of Transitional Assistance.

(I) Fair Hearing. A proceeding where the legal rights, duties, benefits, or privileges of persons and agencies are determined.

(J) Interpreter. A person who translates for the appellant, when the appellant's primary language is not English or when the appellant is deaf or hearing-impaired. The interpreter is sworn to make an impartial and accurate translation of the events occurring at the hearing.

(K) Party. The appellant or the Department.

(L) Client. A person or family who is or had been receiving assistance under a program administered by the Department of Transitional Assistance.

(M) Hearing Officer. An impartial and independent person designated by the Director of the Division of Hearings to conduct hearings and render decisions under 106 CMR 343.000.

No hearing officer who has a direct or indirect interest, personal involvement or bias in a hearing shall conduct such a hearing or participate in the decision-making process of such matters.

(N) Timely Notice. A timely notice shall be adequate notice which meets the requirements found in 106 CMR 343.140. Prior to an intended action to reduce, suspend or terminate assistance, the Department must send a timely notice to the client except as provided in 106 CMR 343.210 and 702.950: *Inadequate or Incomplete Monthly Report*. A timely notice is a notice mailed at least ten calendar days prior to the action. This is called the timely notice period.

343.030: continued

(O) Timely Request. A timely request for a hearing is one received by DOH within the timely notice period.

343.100: The Division of Hearings (DOH)

The Division of Hearings (DOH) has the responsibility for administering the fair hearing process, holding hearings, and rendering decisions. DOH is administered by a Director who is appointed by the Commissioner. DOH is wholly separate and independent from all other offices and divisions of the Department and from all other personnel of the Department. No person shall attempt to interfere with or influence the independence of DOH, the decision of the hearing officer, or the implementation of the decision. No person shall review the decision of the hearing officer before it is issued.

343.110: General Description of the Fair Hearing Process

The fair hearing process is an adjudicatory proceeding which allows dissatisfied applicants and clients and certain spouses, as well as certain sponsors of aliens, upon written request, to obtain a determination of the appropriateness of certain actions or inactions on the part of the Department, or of alleged coercive or otherwise improper conduct by a Department employee.

The process is designed to secure and protect the interests of both the appellant and appropriate Department personnel and to ensure fair and equitable treatment for all involved. A hearing is conducted by an impartial hearing officer of DOH. The decision of the hearing officer is based only on evidence and testimony presented at the hearing. The hearing officer examines the facts, the law, and the other circumstances of the case presented by the parties to determine the legality and appropriateness of the disputed Department actions or decision of the Department. The hearing decision is binding upon the Department and is not subject to any review within the Department except in the case of a remand of the decision for a new hearing pursuant to 106 CMR 343.710.

343.120: Methods for Conducting a Fair Hearing

A fair hearing may be conducted face-to-face, whether in person or by video conferencing or telephonically.

343.130: Availability of Fair Hearing Decisions

Copies of fair hearing decisions are available upon request after steps have been taken to delete personal data, including the appellant's name and address, in order to protect the confidentiality of public assistance information.

343.140: Time Limits

(A) Timely Notice. Prior to an action to reduce, suspend or terminate assistance, the Department must send a timely notice to the client, except as provided in 106 CMR 343.210 and 702.950: *Inadequate or Incomplete Monthly Report*. A timely notice is a notice mailed at least ten calendar days prior to the action.

(B) Time Limitation on the Right of Appeal. The date of request for a fair hearing is the date on which the Division of Hearings receives a written statement from the appellant asking for the opportunity for a fair hearing will be treated as a request for an appeal. The Division of Hearings must receive the request within the following time limits:

- (1) 90 days from the date of official written notice of action by the Department.
- (2) Unless waived by the Division of Hearing Director or his or her designee, 120 days from:
 - (a) the date of application when the Department fails to act on an application;
 - (b) the date of request for service when the Department fails to act on the request;
 - (c) the date of Department action when the Department fails to send official written notice of the action;

343.140: continued

(d) the date of the alleged coercive or otherwise improper conduct. This time limit can be extended up to one year from the date of the conduct provided that the appellant files an affidavit with the Director of the Division of Hearings stating that, and can establish at a hearing that:

1. he or she did not know of the right to appeal;
2. he or she reasonably believed that the problem was being resolved administratively; or
3. he or she was justifiably unaware of the conduct in question; and
4. the appeal is made in good faith.

Failure to substantiate allegations of coercive or improper conduct either prior to or at the hearing shall be grounds for dismissal.

(3) 30 days from the date of mailing by the Department of Revenue of the notice of state income tax refund intercept to offset an overpayment due to the Department of Transitional Assistance.

(C) Computation of Time Periods. Any time period referred to in these regulations shall be on the basis of calendar days unless stated otherwise. Time periods shall expire on the last day of such periods unless the day falls on a Saturday, Sunday, legal holiday or other day when the Division of Hearings is closed. In this situation, the last day of the time period shall be deemed to be the next business day.

(D) Time Limits for Rendering Decision.

(1) The hearing officer must issue the hearing decision within 45 days of the date of the request for a hearing when the issue under appeal is:

- (a) the denial of the right to apply or reapply for assistance;
- (b) the denial of an application for assistance;
- (c) the failure to act on an application in a timely manner; or
- (d) the failure to issue Disaster Benefits for SSI clients.

(2) The hearing officer must issue the hearing decision within 90 days of the date of request for a hearing for all other appeals.

(3) The above time limits may be extended for good cause as follows:

- (a) Where delays are caused by the appellant or his or her representative, the time limits may be extended by the total number of days of the delay, which includes the advance notice period prior to scheduled hearing dates. Such delays include the appellant's delay in the submission of evidence, briefs or other statements, rescheduling or continuances granted at the request or for the benefit of the appellant, and any other delays caused by the actions of the appellant or his or her representative.
- (b) Where delays occur due to acts of God or serious illness of the hearing officer which makes him or her unable to render a decision.

343.150: Authorized Representative

(A) An appellant has the right to be represented at his or her own expense by a person who is authorized in writing to do so or is present at the hearing with the appellant. Such written authorization shall contain the name, address, and telephone number of the representative and the signature of the appellant. This information will be submitted at the hearing if DOH was not previously told that the appellant had an authorized representative. An authorized representative may exercise on a party's behalf any of the rights and powers vested in that party by these rules.

(B) Where an interpreter also acts as the appellant's authorized representative, the appellant shall supply a signed written statement in both English and the primary language that authorizes the representative's dual roles. If the appellant is a deaf or hearing-impaired person, one person shall not act as both interpreter and authorized representative.

343.160: Auxiliary Aids and Reasonable Accommodation

Upon request DOH shall provide reasonable accommodations including appropriate auxiliary aids to appellants with disabilities. DOH shall inform appellants of the availability of this assistance. DOH shall appoint an interpreter for an appellant who is deaf or hearing-impaired unless the appellant provides his or her own interpreter or the appellant knowingly and voluntarily signs a waiver of such assistance.

343.200: Adequate Notice Requirements

(A) In addition to the requirements of timely notice as provided in 106 CMR 343.140, a notice about an intended action to reduce, suspend or terminate assistance or to change the manner or form of payments to a protective, vendor, or two-party payment must be "adequate" in that it contains:

- (1) A statement of the intended Department action;
- (2) The reason(s) for the intended action;
- (3) A citation to the regulations supporting such action;
- (4) An explanation of the client's right to request a fair hearing and the time limits for the appeal request; and
- (5) The circumstances under which assistance is continued if a hearing is requested.

(B) When changes in either federal or state law require automatic grant adjustments for classes of clients, notice is adequate if it cites the law requiring the reduction, suspension or termination. In these instances a citation to a Department regulation is not required.

(C) Prior to a Department action to recoup an overpayment, a timely and adequate notice must be mailed to the client. In addition to the requirements of adequate notice as provided above, the notice must contain:

- (1) The repayment amount;
- (2) The amount of any monthly deduction; and
- (3) The expected duration of the repayment period.

343.210: Timely Notice Exceptions

The Department need not send a timely notice for a reduction or termination, but must send an adequate notice as defined in 106 CMR 343.200, no later than the date of the Department action when:

(A) There is factual information confirming the death of a client and there is no relative to serve as a new grantee;

(B) The Department receives a clear written statement signed by the client that he or she no longer wants to receive benefits;

(C) The client has been admitted or committed to an institution and he or she is not eligible for further payments or service under any category of assistance;

(D) The client has been placed in a skilled nursing home, intermediate care facility or chronic hospital;

(E) A client's whereabouts are unknown and the Department's mail directed to that person has been returned by the Postal Service indicating there is no known forwarding address. However, if the client was receiving TAFDC or EAEDC and the client's whereabouts become known, the lost benefit must be made available if the client is found to be eligible during the time period at issue. The client's MassHealth card must likewise be made available;

(F) A TAFDC child is removed from the home by a court or is voluntarily placed in foster care by the grantee;

(G) An EAEDC client starts receiving Supplemental Security Income (SSI) or State Supplement Program (SSP) benefits;

(H) The Department takes action because of information the client furnished in a monthly report or because the client has failed without good cause to submit a complete or timely monthly report;

(I) A special allowance granted for a specific period is terminated and the client has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

343.210: continued

(J) The Department recovers an unaccessed EBT cash benefit; or

(K) The Department lowers or terminates benefits in state-funded programs due to reduced or eliminated funding.

343.225: Notification of the Right to Request a Hearing

(A) At the time of application, and at the time of any Department action affecting his or her assistance, each applicant or client shall be informed in writing of his or her right to a hearing, how to request a hearing and of the right to an authorized representative.

(B) At any time that an applicant or client indicates disagreement with a Department action, he or she shall be told of the right to request a fair hearing. The Department shall help the applicant or client by providing an appeal form and, if asked, help completing the form. The Department must assure the unrestricted freedom to request a fair hearing.

(C) If there is an individual or organization that gives free legal representation, the person asking for a hearing shall be told of the availability of that service.

343.230: Grounds for Appeal

Applicants and clients have a right to request a fair hearing for:

(A) Denial of an application or request for assistance or the right to apply or reapply for assistance (including supplemental payments) programs administered by the Department.

(B) The failure of the Department to give official notice of action on an application for financial assistance within 30 days.

(C) Any Department action concerning the suspension, reduction or termination of financial assistance.

(D) The failure of the Department to give official notice to the client of action taken on a request for increased assistance within 30 days of the denial, in whole or in part, of such a request.

(E) Unresolved disputes pertaining to:

(1) classification regarding employment on issues concerning the suitability of employment under EAEDC or TAFDC;

(2) manner or form of assistance payments including appropriateness of paying as protective or vendor payments;

(3) scope and amount of payment; and

(4) a decision to recoup an overpayment;

(G) Coercive or otherwise improper conduct as defined in 106 CMR 343.235 on the part of any Department employee acting in the capacity of a worker directly involved in the applicant's or client's case.

(H) Any condition of eligibility for assistance or receipt of assistance which is not authorized by regulations of the Department.

(I) The failure of the Department to act upon a request for assistance within the required time limits.

(J) The failure of the Department to pay up to the first \$50 of monthly current support collected by the Department of Revenue on behalf of the assistance unit.

(K) Denials of requests for reasonable accommodations/modifications under the Americans with Disabilities Act.

343.235: Coercive or Otherwise Improper Conduct

(A) Definitions.

- (1) Coercive conduct means knowingly compelling an applicant, client or former client by force, threat, intimidation, or other abuse of position to take action which is harmful to his or her best interest and which he or she would not otherwise have done.
- (2) Improper conduct means reckless and unreasonable abuse of authority. Examples of improper conduct include, but are not limited to:
 - (a) A worker recklessly and unreasonably violates a Department regulation or procedure in a manner which is directly harmful to the best interests of an applicant, client or former client;
 - (b) A worker recklessly and unreasonably requires documents, visits or other actions by the applicant, client or former client which are not authorized by regulation or procedures of the Department;
 - (c) A worker recklessly and unreasonably violates the confidentiality of the applicant, client or former client;
 - (d) worker recklessly and unreasonably fails to treat the applicant, client or former client with dignity and respect to which he or she is reasonably entitled; or
 - (e) A worker recklessly and unreasonably discourages the applicant, client or former client from applying for assistance or discourages the applicant, client or former client from making inquiries regarding their rights or appealing.

(B) Remedies. When a hearing officer has found coercive or otherwise improper conduct on the part of any Department employee acting in the capacity of a worker directly involved in the applicant's, client's or former client's case at a fair hearing, the local office director shall:

- (1) assign a different worker; and
- (2) initiate appropriate personnel action in accordance with 106 CMR 343.640(B)(2) including a copy of the written findings, if any, in the worker's personnel file; and
- (3) where appropriate, require the worker to send a written apology to the client.

343.240: Request for Fair Hearing

(A) A request for a fair hearing is defined as a written statement by the appellant or his or her authorized representative which asks for the opportunity to present the case to a higher authority. The request for a fair hearing must be received by DOH within the time limits provided in 106 CMR 343.140.

(B) Any request for a fair hearing which alleges coercive or otherwise improper conduct on the part of a Department employee must state the name of the employee and the place, date and nature of the incident. If the request lacks the information required by 106 CMR 343.240, DOH shall notify the appellant of the requirement. If the appellant then fails to provide the information within ten days, the appeal shall be dismissed.

343.245: Dismissal of Request for a Hearing

(A) DOH shall dismiss a request for a hearing when:

- (1) The request is not received within the appropriate time frame provided in 106 CMR 343.140;
- (2) The request is withdrawn either orally or in writing by the appellant or his or her authorized representative;
- (3) The sole issue is one of state or federal law requiring automatic adjustments for classes of clients and the correctness of the grant computation is not at issue;
- (4) The stated reason for the request is not grounds for appeal as defined in 106 CMR 343.230;
- (5) The stated reason for the hearing request is outside the scope of 106 CMR 343.000; or
- (6) The party requesting the hearing has no standing.

(B) The Director may schedule a hearing to allow the appellant the opportunity to contest the dismissal.

343.250: Continuation of Benefits Pending Appeal

(A) If the Division of Hearings receives the request within the timely notice period, assistance shall be continued, or a change in the manner or form of payment shall be postponed, until the appeal decision is rendered. If assistance has been terminated or reduced prior to a timely request for a hearing, it shall be reinstated. If the decision is adverse to the appellant, the proposed action shall take place immediately.

If a change affecting the client's grant occurs while the hearing decision is pending, the Department shall take appropriate action to implement the subsequent change, subject to the advance notice requirements and the right to assistance pending a hearing decision.

(B) Assistance pending a hearing shall not be granted if the Department has granted assistance on a presumption of eligibility and subsequently determines that the client is ineligible, and that determination is the subject of a hearing request.

(C) Assistance continued pending the appeal is subject to recoupment by the Department.

343.300: Notification of Hearing

(A) The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the appellant. At least ten days' advance written notice shall be sent to all parties involved to permit adequate preparation of the case. However, the appellant or his or her representative may ask for less advance notice to expedite the scheduling of the hearing.

(B) The notice shall contain the following:

- (1) Date, Time and Site of Hearing.
- (2) Contact Person in the Division of Hearings. The name, address, and phone number of the person to notify in DOH in the event it is not possible for the appellant to attend the scheduled hearing.
- (3) Fair Hearing Procedures. An explanation of the Department's hearing procedures and other relevant information to provide the appellant with an understanding of the proceedings and assist the appellant in presenting an effective case, including the right to counsel or authorized representation at the appellant's expense.
- (4) The Right to Examine the Case File. A statement that the appellant or representative may examine the case file prior to the hearing.
- (5) Notice that the Appeal will be Dismissed for a Failure to Appear. A statement notifying the appellant that the Department will dismiss the hearing request if the appellant or his representative fails to appear for the hearing without good cause.

343.310: Scheduling

Upon receipt of a request for a fair hearing, DOH will register the appeal, set a date for a hearing and so notify the appellant, the appropriate office of the Department, and if applicable, the Department employee against whom allegations of coercive or otherwise improper conduct have been made.

DOH shall designate a hearing site accessible to the appellant. If the appellant has a disability which reasonably prevents his or her appearance at the designated site, he or she may request the hearing be held telephonically, at his or her home, or other accessible location.

343.320: Procedures and Requirements for Rescheduling

(A) Rescheduling Prior to the Day of the Hearing.

- (1) DOH may change the date, time, and place of the hearing upon due notice to the parties involved.
- (2) For all hearings for good cause shown as defined in 106 CMR 343.320(D) (except for initial scheduled SNAP hearings where good cause need not be demonstrated), DOH may at the request of either party to a hearing, or a Department employee charged with coercive or otherwise improper conduct, reschedule the hearing provided that the request is received before the hearing date. If the Director of DOH or designee concludes that the request does not constitute good cause, the request shall be denied. If that request is denied, the appellant shall have the right to a hearing on the issue of good cause. If the request is approved, the requesting party will be required at the rescheduled hearing to establish good cause for the prior nonappearance. A finding by the hearing officer that good cause has not been shown shall result in the appeal's dismissal.

343.320: continued

(3) DOH shall inform the parties of these procedures.

(B) Rescheduling Following Failure to Appear at a Scheduled Hearing.

(1) If the appellant fails to appear at the hearing, DOH shall notify the appellant in writing (at the address supplied by the appellant) that if he or she fails to request a rescheduled hearing and show good cause for the failure to appear within ten days of the notice, the appeal will be considered abandoned. If, the determination of the Director of DOH or designee, is that good cause has not been shown, the appeal shall be dismissed subject to the vacate procedures provided below and any aid pending shall be discontinued. The Director or designee may, at his or her discretion, reschedule the hearing at which time the appellant will be required to establish good cause for the failure to appear. A finding by the hearing officer that good cause has not been shown shall result in dismissal of the appeal.

(2) In cases where coercive or otherwise improper conduct has been alleged against a Department employee and the employee fails to appear at the hearing after notice, the hearing officer shall proceed with the hearing in his or her absence.

Whether or not the employee is present, the hearing officer shall make a decision on the basis of evidence produced at the hearing. If a Department employee fails to appear at the hearing, he or she may file a written request with the hearing officer within five days of the hearing that the hearing be reopened. Such requests shall be granted by the hearing officer only for good cause shown for the failure to appear.

(C) Procedures for Vacating a Dismissal.

(1) The appellant shall be informed by written notice of the dismissal and of the procedures for requesting that the dismissal be vacated.

(2) A request to vacate a dismissal must be in writing and signed by the appellant or authorized representative. This request must be received by DOH within ten days of the date of the dismissal notice. A dismissal shall be vacated if the Director of DOH or designee finds that the appellant has shown good cause both for:

- (a) Failure to appear at a scheduled hearing; and
- (b) Failure to inform DOH prior to the date of a scheduled hearing of his or her inability to appear.

(D) Good Cause.

(1) The following circumstances shall constitute good cause subject to 106 CMR 343.320(D)(2):

- (a) A death in the family;
- (b) A personal injury or illness which reasonably prevents the party from attending the hearing;
- (c) A sudden and serious emergency which reasonably prevents the party from attending the hearing;
- (d) An obligation or responsibility which a reasonable person in the conduct of his or her serious affairs would conclude takes precedence over attendance at the hearing; or
- (e) The reasonable need for additional time to produce evidence or witnesses or get legal assistance.

(2) In evaluating a party's good cause claim, the hearing officer shall consider the following factors:

- (a) The amount of time the party had advance notice of the hearing date;
- (b) The party's ability to anticipate the circumstances which resulted in the inability to appear for the hearing;
- (c) The party's ability to reschedule the conflicting event;
- (d) Any delay by the party in notifying DOH of his or her inability to attend the hearing; and
- (e) Previous rescheduling requests or failure to appear for scheduled hearings which indicate a pattern of abuse or neglect of the hearings process.

(3) If a party will be required to show good cause at the hearing, DOH shall notify that party in advance that the hearing officer will address that issue. The party shall also be notified of the advantage of bringing documentation and witnesses in support of the good cause claim and of the possible consequences if the hearing officer finds against the party on this issue.

343.330: Dismissal for Failure to Prosecute

When the appellant fails to file documents required by 106 CMR 343.000, respond to correspondence, or comply with DOH orders or when the appellant otherwise indicates his or her intention not to continue to prosecute the appeal, DOH may issue an order requiring the appellant to show cause why the matter should not be dismissed for lack of prosecution. That determination shall be made by the Director of DOH, except in cases where the hearing has been scheduled and a hearing officer has been designated to conduct the hearing, the determination shall be made by the hearing officer. If the appellant is found to have failed to show such cause, the appeal shall be dismissed with or without prejudice.

343.340: Right to Examine Case File and Documents, or "Discovery"

The appellant and his or her authorized representative shall have reasonable opportunity to examine the entire contents of his or her case file, subject to the Fair Information Practices Act requirements set forth in 106 CMR 100.000: *General Provisions*, as well as all documents and records to be used by the Department at the hearing. An appointment must be scheduled in advance with the appellant's worker for examination of the case file.

343.350: Adjustment Procedures

(A) Local Office Procedures. The worker is primarily responsible for responding to complaints from applicants or clients and facilitating a resolution, if possible. If a complaint cannot be resolved, the Department shall remind the applicant or client of the right to request a fair hearing.

(B) Prehearing Adjustment.

(1) The Department may make an adjustment in the matters at issue prior to a hearing. If the adjustment resolves the issue and the appellant wishes to withdraw his or her appeal, the Department shall send the appellant's written withdrawal to DOH. DOH shall not delay a fair hearing because a possible adjustment is under consideration unless the appellant requests such a delay.

(2) If the appellant and the Department resolve the issues appealed at the hearing, they may agree to proposed language for the hearing officer's decision. The hearing officer may accept such proposals.

(3) Any adjustment arising from allegations of coercive or otherwise improper conduct must be agreed to by the Department, the appellant, and the Department employee.

343.360: Subpoenas

(A) A subpoena is a document which commands a witness to appear at a given time to give testimony before a court or an administrative proceeding such as a fair hearing. A subpoena can also require the witness to produce specified books, documents, papers or records in his possession or control at the hearing.

(B) Right to Subpoena. Any party to a hearing and DOH on its own shall have the right to a subpoena requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondence or documents relating to any matter in question at the hearing. Any party may:

(1) Have a subpoena issued by a notary public or justice of the peace in the name of DOH; or

(2) Apply to DOH in writing for the issuance of a subpoena. A subpoena shall be issued within two business days of receipt of the application.

(C) Petition to Vacate Subpoena. Any witness subpoenaed may petition the director of DOH to vacate or modify a subpoena.

(1) The Director shall give notice to the party who requested the subpoena notice of such petition orally or in writing. The notice shall include the contents of the petition and shall indicate that the party may oppose the petition orally or, if time permits, in writing to the Director. If time does not permit a party to respond to the request to vacate, the hearing shall be postponed long enough to permit the party to respond to the petition. This procedure shall not be construed to require a hearing or adjudicatory proceeding.

343.360: continued

(2) After any investigation the Director considers appropriate, the Director may grant the petition in whole or in part upon a finding that:

- (a) The testimony or the evidence subpoenaed does not relate with reasonable directness to any matter in question;
- (b) The subpoena is unreasonable or oppressive; or
- (c) The subpoena has not been issued a reasonable period in advance of the hearing.

Unless the Director finds that at least one of the above conditions exists, the Director shall deny the petition.

(D) Failure to Comply with a Subpoena. If any person fails to comply with a properly issued subpoena, DOH (or the party who requested the subpoena) may petition the Superior Court for an order requiring compliance with the subpoena. If the Superior Court issues such an order and any person who is subject to it does not comply with it, he or she will be subject to the contempt powers of the Court.

343.410: Rights of the Appellant

The appellant shall have the right to:

- (A) be assisted by an authorized representative;
- (B) present witnesses;
- (C) examine and introduce evidence from his or her case record, and examine and introduce any pertinent Department documents;
- (D) present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (E) make any pertinent arguments without undue interference; and
- (F) question or refute any testimony, and confront and cross-examine adverse witnesses.

343.420: Department Rights and Responsibilities

The Department can present its case or can request the assistance of a Department attorney. The Department shall:

- (A) submit all evidence on which any decision at issue is based at the hearing;
- (B) designate a representative to represent the Department at the hearing and arrange for adequate space for the hearing;
- (C) present witnesses when appropriate and subpoena witnesses upon request to DOH;
- (D) ensure that the case record is available at the hearing and that the appellant has adequate opportunity to examine it prior to and during the hearing;
- (E) introduce evidence from the case record and other pertinent Department documents which pertain to the issues raised during the hearing;
- (F) present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (G) have the right to make pertinent arguments without undue interference;
- (H) have the right to question and refute any testimony and confront and cross-examine adverse witnesses; and
- (I) arrange for the appearance at the hearing of a representative of other programs, if appropriate.

343.430: Responsibilities of the Department Attorney

An attorney for the Department may appear at the request of the Department or DOH. The appearance shall be for the purpose of representing the interests of the Department.

343.440: Rights of the Department Employee

Any Department employee against whom allegations of coercive or otherwise improper conduct have been made may present his or her own case, or may be assisted by an authorized representative at his or her own expense, and shall have the right to:

- (A) bring witnesses or subpoena witnesses upon request to DOH;
- (B) present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (C) make any pertinent arguments without undue interference;
- (D) question or refute any testimony and confront and cross-examine adverse witnesses; and
- (E) examine and introduce any pertinent evidence, including material from the case record.

343.450: Powers and Duties of the Hearing Officer

- (A) The hearing officer shall:
 - (1) administer the oath or affirmation to those testifying at the hearing including any interpreter/translator;
 - (2) help all those present in making a full and free statement of the facts to bring out all the information necessary to decide the issues involved and to ascertain the rights of the parties;
 - (3) ensure an orderly presentation of the evidence;
 - (4) ensure that all parties have a full opportunity to present their claims orally or in writing and to present witnesses and evidence to establish their claims;
 - (5) receive, rule on, exclude, or limit evidence;
 - (6) introduce into the record by reference or production any regulations, statutes, memoranda, or other materials he or she believes relevant to the issues at the hearing;
 - (7) ensure a record is made of the proceedings;
 - (8) render a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with the law and to order Department action if appropriate; and
 - (9) inform appellants who are not fluent in English of the right to a full and accurate interpretation by their own interpreter, or by a Department-provided interpreter. The hearing officer shall conduct any bilingual hearing in accordance with the guidelines for conducting hearings through interpretation in the Department's manual for hearing officers. To ensure full understanding and participation by non-English-speaking appellants, all statements, including questions, answers, and comments, of all persons participating in the hearing, shall be fully translated without alteration of such statements, such as by changing the statement from the first person to the third person.
- (B) The hearing officer shall have the following powers:
 - (1) to limit attendance at the hearing;
 - (2) to change the date, time, or place of the hearing on his or her own motion or at the request of any party, upon due notice to the parties;
 - (3) to request a statement of the issues and define the issues;
 - (4) to regulate the presentation of evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings;
 - (5) to issue subpoenas on his or her own motion or upon request of any party to secure the presentation of evidence or testimony;
 - (6) to question witnesses and ensure that relevant evidence is secured and introduced;
 - (7) to continue the hearing to a later date to let either party to produce additional relevant evidence, witnesses, or other materials;

343.450: continued

- (8) to authorize, when appropriate, the Department to pay for the costs of an independent medical examination;
- (9) to rule on any requests that may be made during the hearing;
- (10) to reconvene the hearing at his or her discretion at any time prior to the rendering of the decision in accordance with 106 CMR 343.600; and
- (11) to order written briefs to be submitted provided that all parties shall be notified of the submission of the briefs and have opportunity to answer.

343.500: Evidence

(A) General. The rules of evidence observed by courts shall not apply to fair hearings, but the hearing officer shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded.

The hearing officer shall not exclude evidence at the hearing because it had not been previously submitted to the Department, provided that the hearing officer may permit the Department representative reasonable time to respond to newly submitted evidence. The effective date of any adjustments to the appellant's grant level or eligibility status shall be the date on which all eligibility conditions were met, regardless of when the supporting evidence was submitted. In hearings regarding SNAP household-caused delays within 30 days of the end of SNAP certification periods, the date on which all eligibility conditions were met shall be the date on which all required household actions were taken. See 106 CMR 361.900 through 361.960. Likewise, the rules of 106 CMR 366.120: *Department Responsibility to Take Timely Action* apply in determining the date on which all eligibility conditions were met, when a case maintenance is reported that affects the SNAP grant amount but is not timely verified.

(B) Presentation at Hearing. Except as the hearing officer may otherwise order within his or her discretion in accordance with 106 CMR 343.600, any evidence on which a decision is based must be presented at the hearing. Copies of any evidence not submitted at the hearing shall be provided to all other parties who shall then have the opportunity to respond.

(C) Oral Testimony. Oral testimony shall be given under oath or affirmation. Witnesses shall be available for examination and cross-examination.

(D) Regulations, Statutes, Memoranda. Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the regulations. Memoranda and other materials may be put into evidence by submission of the original or a copy.

(E) Stipulations. Stipulations of facts or stipulations as to the testimony that would have been given by an absent witness may, if agreed upon by the parties, be used as evidence at the hearing.

(F) Additional Evidence. The hearing officer may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

343.510: Hearing Involving Medical Issues

When the hearing involves medical issues, the hearing officer may upon his or her own motion order that a medical examination and assessment be obtained from an impartial medical practitioner designated by the Director of DOH. The examination and assessment shall be made a part of the record and be at the expense of the Department.

343.520: Interim Orders

(A) If the hearing officer determines at the hearing that the sole issue is the legality of a state or federal law or regulation, or change in federal or state law, he or she shall issue a written interim order denying the appeal and directing the Department to proceed with the planned action, if the action was delayed pending the hearing. The order shall be made a part of the record. A final written decision must also be rendered.

343.520: continued

(B) The hearing officer may further order, in writing, the Department to take immediate action to implement a decision announced at the hearing pending issuance of the decision.

343.530: Continuance

Once a hearing has been opened, it may be continued at the discretion of the hearing officer. All parties shall be notified as to the time, date, and place of the continued hearing.

343.540: Consolidated Hearings

DOH may respond to a series of individual requests for hearings by conducting a single group hearing. DOH may consolidate only cases where the sole issue is one of state and/or federal law, regulation or policy and where individual issues of fact are not disputed. In all group hearings, the regulations governing individual hearings must be followed. Each appellant shall be permitted to present his or her own case or have the case presented by a representative.

343.550: The Record

(A) All documents and other evidence offered and taken shall become part of the record. The record shall further contain recordings or transcripts of the proceedings and all exhibits and documents introduced at the hearing and, wherever applicable, medical documents obtained to resolve medical issues. The record shall be the exclusive source of the hearing officer's decision. For purposes of judicial review, the record shall also include the decision.

(B) All evidence and testimony at the hearing shall be recorded electronically.

(1) At the discretion of the hearing officer, any party may record the hearing.

(2) Regardless of whether an appellant intends to file a Complaint for Judicial Review, transcripts or recordings of the proceedings shall be supplied, upon request by the appellant, at his or her expense. The record shall be open for inspection by any party or his or her authorized representative during the regular business hours of DOH.

343.600: Reopening Prior to Decision

After the close of the hearing and prior to a decision, the hearing officer, if he or she determines the need of further testimony, evidence, materials or legal support is warranted before rendering his or her decision, the hearing officer may reopen the record or, if appropriate, the hearing to consider further information. If the hearing officer decides to reopen the hearing, DOH must send written notice within seven days to all parties of the reopening including the date, time and place of the resumed hearing, and the reasons for reopening the hearing. The hearing shall be held at a location accessible to the appellant. Prior to the issuance of a hearing decision, any party to a hearing may request in writing that the hearing officer exercise his or her power to reopen the hearing, which request shall become part of the record.

343.610: Basis of Fair Hearing Decisions

(A) The hearing officer's decision shall be based upon evidence, testimony, materials and legal rules presented at the hearing. Any evidence, testimony, materials, legal rules or arguments presented after the close of the hearing will be excluded unless the hearing is reopened, the parties stipulate procedures for response, or otherwise waive the right to respond.

(B) The decision shall be based upon a preponderance of evidence.

(C)(1) The decision must be rendered in accordance with the law. The law includes the State and Federal Constitutions, statutes, and duly promulgated regulations, as well as decisions of the State and Federal Courts.

(2) Notwithstanding 106 CMR 343.610(C)(1) hearing officers shall not render decisions which require their determination of the legality of the Department's regulations. If the legality of a Department regulation is at issue, the hearing officer shall render a decision that he or she cannot rule on that issue and base the decision on the applicable regulation.

343.610: continued

(3) The Department memoranda and materials containing legal rules, standards, or interpretations which are not in the form of duly promulgated regulations cannot be relied on as the sole basis for the decision. However, where the Departmental procedures or policies are pertinent, they may be entered into evidence. Time to respond in writing to those items admitted into evidence may be allowed by the hearing officer upon request by the appellant.

(D) When the subject of an appeal is an adverse action regarding a request for a family cap waiver pursuant to 106 CMR 703.140: *Concluding the Application Process*, a domestic violence waiver pursuant to 106 CMR 703.110: *The Application Process* or an extension of benefits beyond the 24-month period pursuant to 106 CMR 703.130: *Responsibility for Eligibility Determination*, the hearing officer shall not substitute his or her judgment for that of the Commissioner. Such actions may only be overturned by a hearing officer if it is found that the Commissioner (or designee) abused his or her discretion when making the determination on the waiver or extension request.

343.620: Content of Decision

(A) The decision of the hearing officer shall contain the following:

- (1) Statement of the issues involved in the hearing;
- (2) Summary of evidence;
- (3) Findings of fact on all relevant factual matters;
- (4) Rulings of law on all relevant legal issues, with citations to supporting regulations or other law;
- (5) Conclusions drawn from the findings of fact and rulings of law if appropriate; and
- (6) An order of the hearing officer which shall order appropriate action to be taken by the Department including, if appropriate, retroactive and/or prospective relief.

(B) The hearing officer shall also notify the appellant of his or her right to full and prompt implementation of the decision in accordance with 106 CMR 343.640. The appellant shall be further notified of this right to judicial review in accordance with 106 CMR 343.720.

343.625: Transmittal of Decision

Copies of the decision shall be forwarded to the appellant, the appellant's authorized representative, interpreter (if requested) and appropriate Departmental offices. The appellant and his or her authorized representative shall also be notified in writing of the right of judicial review.

343.630: Finality of the Appeal Decision

The decision of the hearing officer is final and binding on the Department. The Department shall not interfere with the independence of the decision-making process of the hearing officer. Facts found and issues decided by the hearing officer in each case are binding on the parties to that case and cannot be disputed again between them in any other administrative proceeding, except as provided in 106 CMR 343.710 or otherwise provided by law.

343.640: Implementation of the Appeal Decision

(A) Notification to Appellant. When the decision is issued, DOH shall notify the appellant of his or her right to full and prompt implementation of the decision within 30 days. The notice shall direct the appellant to notify the appropriate Department official in writing if there is not full compliance within 30 days.

(B) Responsibility to the Department.

- (1) The Department shall be responsible for implementation of all fair hearing decisions so that the appellant will receive any benefits due within 30 days of the date of the decision. No official or any other employee of the Department shall obstruct or otherwise interfere with, review, change or attempt to influence the implementation of the fair hearing decision.

343.640: continued

(2) In a case where the hearing officer has found coercive or otherwise improper conduct on the part of the Department employee, the hearing officer shall refer the record, together with the findings and any supporting documents, directly to the Commissioner or his or her designee, who shall determine what disciplinary action, if any, is appropriate and shall take such action within 30 days of the date of the decision. The remainder of 106 CMR 343.640 does not apply to appeal decisions where the sole finding is coercive or otherwise improper conduct on the part of a Department employee.

(C) Procedure for Monitoring Implementation. The Department shall monitor appeal decisions to ensure implementation and compliance within 30 days of the decision.

343.710: Remand of Hearing Officer Decisions

Following the issuance of a decision of the Division of Hearings, the Commissioner, upon the recommendation of the General Counsel and for good cause shown, may remand a case for further consideration by the hearing officer who rendered the original decision or by another hearing officer. A petition to the Commissioner for a remand must be received within 14 calendar days following issuance of the hearing officer's decision.

343.720: Judicial Review

If the appellant is dissatisfied with the final decision of the hearing officer, he or she may exercise the right of judicial review in accordance with M.G.L. c. 30A. If the appellant seeks judicial review, he or she must file a Complaint with the Superior Court in the county where he or she resides or has his or her principal place of business, or in Suffolk County within 30 days after receipt of the fair hearing decision. If the appellant petitions for remand, then the decision following the remand, or the denial of the request for the remand, is the Department's final action and the appellant has 30 days from the final action to file a Complaint for Judicial Review. The Department must notify the appellant and his or her authorized representative of his or her right to seek judicial review and of the time limits for seeking said review.

343.730: Access to the Record

The record of the fair hearing shall be provided to the appellant within the appropriate time limits after filing a Complaint for Judicial Review. DOH will provide access to the record of the hearing. Such access may be accomplished by allowing the appellant or his or her representative to examine all the documentary evidence and to listen to the recording of the hearing.

REGULATORY AUTHORITY

106 CMR 343.000: 42 USC 602, M.G.L. c. 18, § 16, c. 62D, c. 30A, and 801 CMR 1.03(7).

(PAGES 655 THROUGH 660 ARE RESERVED FOR FUTURE USE.)