

651 CMR: DEPARTMENT OF ELDER AFFAIRS

651 CMR 9.00: ADJUDICATORY RULES OF PRACTICE AND PROCEDURES IN CLAIMS RELATING TO CONTRACTS AND GRANTS FUNDED BY TITLE III

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9.01: Scope and Purpose

651 CMR 9.00 are promulgated pursuant to M.G.L. c. 19A, §§ 3 and 307(A)(5) of the Older Americans Act of 1965, as amended, (42 U.S. Code 3001 *et seq.*), and the implementing federal regulations 45 CFR 1321.51(a)(4) *et seq.*, to provide an opportunity for a hearing to any service provider funded under Title III whose application to provide services under an area plan is denied or whose subgrant or contract is terminated or not renewed, except as provided in 45 CFR part 74, Subpart M. The purposes of the hearing are to provide all parties a full and fair hearing to resolve any grievances that may have arisen in the administration of the Title III statutory programs referred to in the previous sentence and to create a complete, clear and accurate record for the formation of a decision.

9.02: Definitions

Appellant means any Provider or Applicant requesting a hearing, or any other review, following a denial of its application to provide services, or whose subgrant is terminated or not renewed.

Applicant means an individual or organization which makes application to an Area Agency to provide services to Elders under an Area Plan.

Area Agency on Aging means the single agency designated by the State agency charged with the responsibility of developing and implementing an Area Plan for the provision of services to elderly persons in a Planning and Service Area under Title III.

Area Plan means a plan submitted by an Area Agency on Aging and approved by the Department which enables the Area Agency to administer activities under Title III.

Days means calendar days, unless specified otherwise.

Department means the Massachusetts Department of Elder Affairs.

Elders means residents of the Commonwealth who are 60 years of age or older.

Hearing Officer means the official selected by the Secretary of Elder Affairs to conduct the hearing and

to render a written decision.

9.02: continued

Local Administrative Review means the Area Agency's procedure for consultation and review with the Provider.

Party means either an Area Agency or its designated representative or an Appellant or its designated representative or any other individual or organization that is admitted into the proceedings as a participant.

Provider means an individual or organization which is awarded a subgrant or contract from an Area Agency on Aging to provide services to Elders under the Area Plan.

Secretary means the Secretary of Elder Affairs of the Massachusetts Department of Elder Affairs.

State means the Commonwealth of Massachusetts.

Title III means Title III of the Older Americans Act of 1965, as amended, (42 U.S.C. 3001 *et seq.*) and all applicable regulations and directives implementing it.

9.03: Notice

An Applicant or Provider shall receive written notice from the Area Agency that its application to provide service has been substantially denied or that its contract to provide services has been terminated or not renewed within ten days after the decision by the Area Agency. The notice shall be delivered or forwarded by registered or certified mail, and specify the reason or reasons for the adverse action as well as notification that the Applicant or Provider has ten days from the receipt of the notice to request a hearing by the Department.

9.04: Request for a Hearing

A request for a hearing may be made by an Applicant or Provider who claims to be aggrieved by an action taken by an Area Agency affecting the Applicant or Provider which substantially denies an application for funding, or terminates or does not renew a grant or contract, except as provided in 45 CFR Part 74, Subpart M. The notice of appeal must be delivered or mailed, registered or certified mail, to the Hearing Officer within ten days of the written notification to the Applicant or Provider of the adverse action by the Area Agency on Aging, and a copy of the request must be simultaneously mailed by the Applicant or Provider to the Area Agency on Aging. Thereafter, each party must provide all other parties with copies of all submissions made to the Hearing Officer.

9.05: Local Administrative Review

The Area Agency on Aging must conduct an Administrative Review promptly after receipt of a notice of appeal from an Appellant. This review must provide the Appellant an opportunity to state in writing or in person to the Area Agency the reason or reasons why an appeal was filed with the Department and the factual circumstances or issues which the hearing should consider.

The purpose of the Local Administrative Review is to provide all parties an opportunity to resolve disputes at the local level prior to a hearing at the Department. A good faith effort should be made to review the facts and issues and to achieve an amicable settlement.

Each Area Agency on Aging shall develop a fair and adequate administrative review procedure and notify the Department of the adopted procedures or any changes that may from time to time thereafter be made. The review procedures may be a formal or informal hearing, an arbitration or mediation, or a combination of elements of several such methods. When disputes between the Area Agency and the Appellant are resolved through Local Administrative Review, both the Area Agency and the Appellant must notify the Hearing Officer promptly and in writing by delivery or registered or certified mail so that the appeal may be removed from the list of scheduled hearings.

9.05: continued

If the dispute is not resolved, the Department will conduct a *de novo* hearing; but the Hearing Officer may examine documents and papers considered at the Local Administrative Review, if this is believed to be useful to the hearing on appeal.

The Local Administrative Review should be completed promptly, and within 20 days after the Area Agency receives notice of the appeal.

9.06: Grounds for Appeal

A request for an appeal may be based on any one or more of the following grounds:

- (1) Denial by an Area Agency in whole or in substantial part of an application for funding, where there is reason to claim such denial is arbitrary, capricious, biased, or not based upon substantial evidence.
- (2) Any action on the part of the Area Agency concerning non-renewal or termination of a grant or contract, where there is a reason to claim such actions are arbitrary, capricious, biased or not based upon substantial evidence.

9.07: Notice of Hearing and Time Schedule

The Hearing Officer shall act upon the request for an appeal by scheduling a hearing promptly. Ordinarily a hearing will be scheduled no later than 25 days after receipt of a request for a hearing. The parties will be notified by mail of the time, date and location of such hearing must be completed, and the decision of the Hearing Officer forwarded to the Secretary, within 40 days of the date scheduled for the hearing. The period of any extensions of time allowed by the Hearing Officer shall be excluded from these time periods.

9.08: Extension of Time and Additional Information

The Hearing Officer may extend a date for a hearing for good cause if it is requested in writing by the Appellant or the Area Agency. If the Hearing Officer deems it necessary, he may seek additional information to perfect the request for a hearing or to clarify the facts and issues relative to the dispute.

9.09: Emergency Scheduling

For good cause, the Hearing Officer may order an accelerated hearing or may postpone a scheduled hearing date.

9.10: Disqualification

A Hearing Officer shall not participate in the conduct of a hearing if he is prejudiced with respect to any party, or has a conflict of interest, financial or otherwise, in the matter pending. Personal or professional acquaintance is not a valid basis for disqualification. Any party may suggest to the Secretary the possibility of the existence of grounds for disqualification, provided it is made in writing and prior to the date set for the hearing. The decision of the Secretary as to the qualification or disqualification of the Hearing Officer shall be final.

9.11: Rights of the Parties at the Hearing

The parties to a hearing shall have the right to a full and fair hearing. Accordingly, any party to the hearing shall be entitled to the following:

- (1) to be represented by legal counsel or other representative, at the party's own expense;
- (2) to present witnesses and to cross examine witnesses of the other party;

9.11: continued

(3) to present both oral and documentary evidence, subject to the rulings of the Hearing Officer as to pertinence, relevance, or materiality.

(4) to submit a brief or memorandum setting forth the position of the party and substantiation for it.

9.12: Evidence

In order to provide a full and fair hearing, the Hearing Officer shall permit the parties to present testimony and documents in support of their positions. The Hearing Officer shall rule as to the admissibility of evidence so as to ensure that the evidence is pertinent, relevant and material to the proceedings, and his rulings on evidence will be final and binding. When ruling upon the admissibility of evidence, the Hearing Officer will not be bound by the usual rules of evidence used in court proceedings, and substance rather than form will prevail. The Hearing Officer may exclude repetitious or cumulative testimony. The Hearing Officer on his own motion or upon the request of a party may take judicial notice of decisions of courts or other tribunals, and official notice of generally accepted scientific and technical matters that are capable of recognition by a court of law. The Hearing Officer, in his discretion, may exclude any prospective witness or spectator from the hearing room if it is deemed their presence may influence the testimony of others. The Hearing Officer, in his discretion, may admit depositions or affidavits, or portions thereof.

9.13: Transcript of the Proceedings

Proceedings will be taped or otherwise transcribed, and a transcript will be made available to either party upon written request for a fee in such sum as may be necessary to defray cost of preparation of a transcript, by determination from time to time of the Department of Elder Affairs.

9.14: Default

In the event a Party shall fail to appear at a hearing, the Hearing Officer shall notify said Party in writing that a default will be entered against such Party. The defaulting Party shall then have five days in which to seek a new hearing date. A new hearing date shall be granted only for the good cause shown. If the Hearing Officer determines a good cause has not been shown, or if the five days expires without response, a default shall be entered as to the defaulting party, and a decision may be rendered based upon the evidence available, or the case may be dismissed.

9.15: Withdrawal

An appellant may file a written request to withdraw a claim of appeal at any time and shall not thereafter be permitted to resubmit a claim based upon the same facts.

9.16: Conduct of the Hearing

The Hearing Officer will preside at the hearing and will decide any preliminary motions and the order of presentation of evidence. The initial burden of proof to establish a case will be on the Appellant. The parties, or their representatives, shall indicate in advance the number and where possible the names of witnesses to be called and the likely time estimated to be needed in order to have a final determination of all issues in dispute. The Hearing Officer has exclusive authority and complete responsibility for the conduct of the hearing as well as any pre-hearing proceedings. The Secretary of Elder Affairs has sole authority to make the final administrative decision.

9.17: Decision and Action by the Secretary

The decision of the Hearing Officer will be in writing and forwarded to the Secretary with copies to be mailed to the Appellant and the Area Agency. Within 21 days of the decision, the Secretary will approve it, disapprove it, or approve it with modifications or additions. Either party may submit a written statement to the Secretary concerning the Hearing Officer's decision within seven days of receiving it but neither party shall be entitled to a further hearing before the Secretary.

The decision of the Secretary shall be the final administrative review. The decision will be binding upon all parties to the hearing, unless one or more of the parties commences an action to obtain judicial review within 30 days after the date of the decision. The Secretary in making his decision, is bound by the statutory provisions referred to in 651 CMR 9.01 and the regulations from time to time promulgated pursuant thereto.

9.18: Inapplicability

The terms of these rules and any hearings hereunder are subject to the applicable exceptions set forth in 45 CFR 1321.51(a)(4).

9.19: Graphic Time Frame

GRAPHIC TIME FRAME
TITLE III PROVIDER APPEALS

APPLICANT NOTIFIED OF ADVERSE ACTION	_____	DAY 1
APPLICANT REQUESTS LOCAL HEARING WITH COPY TO STATE AGENCY	_____	DAY 10
LOCAL ADMINISTRATIVE REVIEW	_____	DAY 20
APPLICANT AND STATE AGENCY NOTIFIED OF LOCAL REVIEW DECISION	_____	DAY 30
APPLICANT REQUESTS STATE AGENCY HEARING	_____	DAY 35
NOTICE OF DATE, TIME, AND PLACE OF HEARING	_____	DAY 45
STATE AGENCY HEARING	_____	DAY 60
DECISION RENDERED BY HEARING OFFICER FORWARDED TO ALL PARTIES	_____	DAY 100
SECRETARY'S REVIEW AND FINAL DECISION	_____	DAY 121

REGULATORY AUTHORITY:

651 CMR 9.00: M.G.L. c. 19A, § 3; Older Americans Act of 1965, § 307(A)(5); 42 U.S.C. 3001; 45 CFR 1321.51(a)(4).