

121 CMR 1.000: FAIR HEARINGS

Section

- 1.100: Authority and Scope
- 1.110: General Description of the Fair Hearing Process
- 1.120: Definitions

- 1.200: Appointment of Hearing Officer
- 1.210: Powers and Duties of the Hearing Officer

- 1.300: Rights of the Appellant
- 1.310: Authorized Representative
- 1.320: Auxiliary Aids and Interpreter Assistance for the Appellant
- 1.330: Case Management Provider Rights and Responsibilities

- 1.400: Notification of the Right to Request a Hearing
- 1.405: Time Limits for Requesting a Hearing
- 1.410: Continuation of Benefits Pending Appeal
- 1.415: Grounds for Appeal
- 1.420: Dismissal of Request for a Hearing
- 1.425: Adjustment Procedures
- 1.430: Submission without a Hearing

- 1.500: Notification of Hearing
- 1.510: Scheduling
- 1.520: Procedures and Requirements for Rescheduling
- 1.530: Dismissal for Failure to Prosecute
- 1.540: Procedures for Vacating a Dismissal

- 1.600: Discovery
- 1.605: Subpoenas
- 1.610: Evidence
- 1.615: Hearing Involving Medical Issues
- 1.620: Consolidated Hearings
- 1.625: Interim Orders
- 1.630: Continuance
- 1.635: Reopening Prior to Decision
- 1.640: The Record

- 1.700: Time Limits for Making a Decision
- 1.710: Basis of Fair Hearing Decision
- 1.720: Content of Decision
- 1.730: Transmittal of Decision
- 1.740: Finality of the Appeal Decision
- 1.750: Implementation of the Appeal Decision
- 1.800: Judicial Review
- 1.810: Access to the Record
- 1.820: Compilation of Fair Hearing Decisions

1.100: Authority and Scope

121 CMR 1.000 is promulgated pursuant to M.G.L. c. 6, § 207, c. 30A; 45 CFR 205.10, 400.23, 400.54 and 400.83; 801 CMR 1.02: *Informal/Fair Hearing Rules* and 1.03: *Miscellaneous Provisions Applicable to All Adjudicatory Proceedings*. They are applicable, as specified in 121 CMR 1.000, to appeals of decisions made under the Massachusetts Refugee Resettlement Program (MRRP), 121 CMR 2.000: *Massachusetts Refugee Resettlement Program*, and 121 CMR 3.000: *Auxiliary Activities*.

1.100: continued

801 CMR 1.02: *Informal/Fair Hearing Rules*, 1.03: *Miscellaneous Provisions Applicable to All Adjudicatory Proceedings* are incorporated in 121 CMR 1.000 and govern the conduct of hearings under the Massachusetts Refugee Resettlement Program (MRRP), for an applicant or participant appealing an adverse action or failure to act by a Case Management Provider. 121 CMR 1.000, is intended to supplement those regulations. The Office for Refugees and Immigrants (ORI) may enter into inter-departmental service agreements with other state agencies or outside independent hearing officers to conduct hearings.

1.110: General Description of the Fair Hearing Process

A fair hearing is an appeal of an action proposed, taken or not taken by a Case Management Provider. The hearing is conducted by a hearing officer who is the ORI Director or designated by him or her. The hearing shall be conducted in a fair and impartial manner and determine the legal rights, duties, benefits, or privileges of applicants and participants.

The hearing officer's decision is based on the facts, the law, and the other circumstances of the case as presented by the parties. The decision of the hearing officer is not subject to review by the ORI Director. The decision of the impartial hearing officer is a final agency decision within the meaning of the state Administrative Procedures Act, M.G.L. c. 30A.

1.120: Definitions

The following terms are used primarily in 121 CMR 1.000:

Adequate Notice. A written notice of an intended action to reduce, suspend or terminate assistance. It must contain:

- (a) a statement of the intended action;
- (b) the reason(s) for the intended action;
- (c) a citation to the regulation(s) supporting the action;
- (d) an explanation of the right and procedures to request a fair hearing;
- (e) the circumstances under which assistance is continued if a hearing is requested; and
- (f) a statement that if the action is upheld, assistance paid pending appeal is subject to recovery.

Appeal. A written request for a fair hearing on an action proposed or taken by a Case Management Provider or on the Provider's failure to act.

Appellant. An applicant or participant requesting a fair hearing.

Applicant. A person or family who has applied or been denied the opportunity to apply for benefits available under MRRP.

Assistance. Case Management, an employment service(s), or financial or medical assistance offered under MRRP.

Authorized Representative. A person who is authorized in writing by the appellant to represent him or her at a hearing.

Fair Hearing. A proceeding conducted by the ORI Director or his or her designee who shall be an impartial hearing officer appointed to review an action proposed, taken or not taken by a Case Management Provider, which has been appealed. If the hearing is conducted by an appointed hearing officer, the decision of the hearing officer shall not be subject to review by the ORI Director. The decision of the hearing officer shall be a final agency decision within the meaning of and subject to judicial review under M.G.L. c. 30A.

Interpreter. A person who interprets, translates speech orally, 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.

Party. The appellant or a Case Management Provider.

1.120: continued

Subpoena. A document which commands a witness to attend and give testimony before a court or an administrative proceeding such as a fair hearing, at a scheduled time and place. A subpoena also can require a witness to produce before the court or administrative proceeding any books, documents, papers, records, or tangible evidence relating to any matter in question at the hearing.

Timely Notice. Adequate notice mailed or given to a refugee at least ten calendar days prior to the effective date of an intended action.

1.200: Appointment of Hearing Officer

If the ORI Director is not going to preside as the hearing officer, he or she shall designate an impartial person or persons to conduct hearings and make decisions under 121 CMR 1.000. No person shall attempt to interfere with or influence the decision of the hearing officer or the implementation of the decision. No person shall review the decision of the hearing officer prior to its issuance. Neither the ORI Director nor an appointed hearing officer shall preside in a hearing in which a decision in which he or she has had prior involvement is in dispute.

1.210: Powers and Duties of the Hearing Officer

(1) The hearing officer has a duty to:

- (a) Administer the oath or affirmation to anyone who will testify at the hearing and to an interpreter/translator;
- (b) Insure that everyone present has a full opportunity to offer all information necessary to decide the issues involved and protect the rights of the parties;
- (c) Insure an orderly presentation of the evidence;
- (d) Give all parties a full opportunity to present their claims orally or in writing and to secure witnesses and evidence to establish their claims;
- (e) Receive, rule on, exclude, or limit evidence;
- (f) 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;
- (g) Insure a record is made of the proceedings;
- (h) Make a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with the law and, when appropriate, order ORI or Case Management Provider action; and
- (i) Inform appellants who are not fluent in English of the right to a full and accurate interpretation by their own interpreter, or by an ORI-provided interpreter. All statements, including questions, answers and comments, of the appellant, hearing officer, witnesses, and any other persons participating in the hearing, shall be fully translated without any alteration.

(2) The hearing officer has the power to:

- (a) Limit attendance at the hearing;
- (b) Change the date, time, or place of the hearing;
- (c) Request a statement of the issue(s) and define the issue(s);
- (d) Regulate the presentation of evidence to insure a complete record of the proceedings;
- (e) Issue subpoenas on his or her own or upon request of any party;
- (f) Examine witnesses;
- (g) Continue the hearing to permit either party to produce additional evidence, witnesses, or other materials;
- (h) Authorize, when appropriate, ORI to pay for the costs of an independent medical examination;
- (i) Rule on any requests that may be made during the hearing;
- (j) Reconvene the hearing at his or her discretion at any time prior to making the final decision under 121 CMR 1.635; and
- (k) Order parties to submit briefs.

1.300: Rights of the Appellant

The appellant shall have the right to:

- (a) Be assisted by an authorized representative;
- (b) Present witnesses;
- (c) Introduce evidence from his or her case record or any other pertinent Case Management Provider documents;
- (d) Present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (e) Present oral and written arguments without undue interference;
- (f) Question or refute any testimony, and confront and cross-examine adverse witnesses.
- (g) Be assisted by an interpreter when limited English proficiency prevents adequate participation in the fair hearing.

1.310: Authorized Representative

(1) An appellant has the right to be represented at his or her own expense by any person who is authorized in writing to do so or who accompanies the appellant to the hearing. The appellant shall submit a signed authorization, prior to or at the hearing, containing the name, address, and telephone number of the representative.

A representative may exercise on a party's behalf the rights and powers vested in that party by 121 CMR 1.000.

(2) Where an interpreter also acts as the appellant's authorized representative, the appellant shall sign a statement acknowledging such roles and waiving any objection to having the representative/interpreter serve in both capacities.

1.320: Auxiliary Aids and Interpreter Assistance for the Appellant

(1) ORI shall inform appellants that, upon reasonable request, it will provide auxiliary aids to appellants who have impaired sensory, manual or speaking skills if the impairment(s) would prevent adequate participation of the appellant at the hearing. ORI shall appoint an interpreter for an appellant who is deaf or hearing-impaired, unless the appellant provides his or her own interpreter or knowingly and voluntarily signs a waiver of interpreter assistance.

(2) ORI shall inform appellants that if their limited English language proficiency prevents them from participating in a hearing an interpreter will be appointed at no cost to them unless they want to bring their own interpreters.

1.330: Case Management Provider Rights and Responsibilities

The Case Management Provider shall:

- (a) Submit at the hearing all evidence on which any decision at issue is based;
- (b) Designate a representative to represent the Case Management Provider at the hearing;
- (c) Present witnesses when appropriate;
- (d) Insure that the case record is present at the hearing and that the appellant has adequate opportunity to examine it prior to and during the hearing;
- (e) Introduce into evidence material from the case record and other pertinent Case Management Provider documents which pertain to the issue raised during the hearing and which are not otherwise confidential;
- (f) Present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (g) Present arguments without undue interference;
- (h) Have the right to question and refute any testimony and confront and cross-examine adverse witnesses;
- (i) Arrange for the appearance at the hearing of a representative of other agencies, if appropriate.

1.400: Notification of the Right to Request a Hearing

(1) At the time of application and of any Case Management Provider action affecting an applicant's or participant's assistance, the agency shall inform the applicant or participant in

writing of his or her right to a hearing, of the method for requesting a hearing, and of the right to an authorized representative.

1.400: continued

(2) Whenever an applicant or participant disagrees with a Case Management Provider action, the agency shall inform him or her of the right to request a fair hearing. Agency actions include a determination on a claim of exemption from participation under 121 CMR 2.725: *Exemptions from Participation* or a denial of good cause under 121 CMR 2.730: *Good Cause for Failure to Cooperate, Failure to Participate, or Terminating or Refusing Employment or Employment Services*.

(3) The Case Management Provider shall assist the applicant or participant by providing an appeal form and, if requested, by helping with the completion of the form. The Case Management Provider must assure the unrestricted freedom to request a fair hearing.

(4) If there is an individual or organization that provides free legal representation, the Case Management Provider shall inform the applicant or participant requesting a hearing of the possible availability of that service.

1.405: Time Limits for Requesting a Hearing

(1) The date of request for a fair hearing is the date on which ORI receives a written statement from the applicant or participant or his or her representative appealing an action or proposed action or failure to act by a Case Management Provider. Receipt by the refugee's Case Management Provider, who shall forward the request to ORI, shall also constitute receipt by ORI.

(2) The request for a fair hearing must be postmarked or delivered to ORI or the refugee's Case Management Provider within the following time limits:

(a) 45 days from the date of official written notice of action by the Case Management Provider.

(b) Unless waived by the ORI Director or his or her designee, 60 days from:

1. The date of application when the Case Management Provider fails to act on an application;
2. The date of request for service when the Case Management Provider fails to act on said request; or
3. The date of Case Management Provider action when the Case Management Provider fails to send official written notice of the action, unless the appellant files an affidavit with the Director of the ORI stating that he or she:
 - a. Did not know of the right to appeal;
 - b. Reasonably believed that the problem was being resolved administratively;
 - c. Was justifiably unaware of the conduct in question; or
 - d. Was unaware of the action taken.

1.410: Continuation of Benefits Pending Appeal

(1) If a refugee requests a hearing within the ten-day timely notice period (postmarked or delivered to ORI or the refugee's Case Management Provider), Refugee Cash Assistance shall not be reduced or terminated until a decision is made after a hearing, unless:

(a) The sole issue is one of state or federal law requiring automatic adjustments for classes of participants and the computation of the grant is not an issue;

(b) A change affecting the participant's grant occurs while the fair hearing decision is pending and the participant fails to request a hearing after notice of the change;

(c) The participant requests that he or she not receive continued assistance pending appeal; or

(d) The reason for termination is the expiration of time eligibility unless there is a factual dispute about the dates of eligibility. Note: If there is a dispute regarding date of entry, it shall be resolved by information from the U.S. Citizenship and Immigration Services, rather than fair hearing as specified in 121 CMR 2.655: *End of Time-eligibility Period*.

(2) Refugee Cash Assistance paid while an appeal is pending is subject to recovery if the decision to reduce or terminate is upheld.

1.415: Grounds for Appeal

Applicants and participants have a right to request a fair hearing in any of the situations described below:

- (a) Denial of an application or request for participation in MRRP or a component under MRRP or the right to apply or reapply for participation in MRRP or a component under MRRP;
- (b) The failure of a Case Management Provider to give notice in a timely manner of action on an application for MRRP;
- (c) A Case Management Provider action concerning the suspension, reduction or termination of assistance of any kind under MRRP;
- (d) The failure of the Case Management Provider to give notice in a timely manner of action taken on a request for increased assistance;
- (e) Unresolved disputes involving:
 - 1. issues concerning employment or training services, including, but not limited, to the designation of a participant, exemption from participation status, good cause determination;
 - 2. scope and amount of payment; or
 - 3. a decision to recoup an overpayment;
- (f) Any condition of eligibility for, or receipt of, assistance which is not authorized by 121 CMR 2.400 through 2.565;
- (g) The failure of the Case Management Provider to act upon a request for assistance within time limits required by 121 CMR 2.600: *Determination of Initial and Continuing Eligibility*.
- (h) A denial or termination of eligibility for Refugee Medical Assistance. If a specific medical service is denied or a provider of medical services is denied, the appeal is through the Division Office of MassHealth.

1.420: Dismissal of Request for a Hearing

- (1) ORI shall dismiss a request for a hearing when:
 - (a) The request is not received within the time limits specified in 121 CMR 1.405;
 - (b) The request is withdrawn in writing by the appellant or his or her authorized representative;
 - (c) The sole issue is one of state or federal law requiring automatic adjustments for classes of participants and the grant computation is not an issue;
 - (d) The stated reason for the request is not grounds for appeal as specified in 121 CMR 1.415;
 - (e) The stated reason for the hearing request is outside the scope of 121 CMR 1.000 as stated in 121 CMR 1.100;
 - (f) The party requesting the hearing is not an applicant for or a participant in MRRP;
 - (g) The sole issue is the refugee's date of entry, which determines his or her benefits time eligibility period. The dispute shall be resolved by information from the U.S. Citizenship and Immigration Services, as specified in 121 CMR 2.655: *End of Time-eligibility Period*.
- (2) The ORI Director has the discretion to order a hearing scheduled to allow the appellant an opportunity to contest the dismissal.

1.425: Adjustment Procedures

The Case Management Provider may change its decision prior to a hearing. If the change resolves the issue and the appellant wishes to withdraw his or her appeal, the Case Management Provider shall transmit to ORI the appellant's written withdrawal, which contains the changes, signed by the case manager. ORI shall not delay a fair hearing because a possible adjustment is under consideration unless the appellant requests a delay.

1.430: Submission without a Hearing

The appellant may waive the right to appear at a hearing and submit documentary evidence and a supporting memorandum.

1.500: Notification of Hearing

- (1) The hearing officer shall notify the appellant and the appellant's representative, if any, of the time, date, and place of the hearing. The notice shall be mailed to all parties at least ten days prior to the hearing to permit adequate preparation of the case. However, the appellant or his or her representative may request less advance notice to expedite the scheduling of the hearing.
- (2) The notice shall contain the following:
 - (a) Date, Time and Place of Hearing;
 - (b) Contact Person. The name, address, and phone number of the person to notify if the appellant cannot attend the scheduled hearing and the procedure for requesting a postponement;
 - (c) Fair Hearing Procedures. An explanation of ORI's hearing procedures and any other information which will provide the appellant with an understanding of the proceedings and contribute to the effective presentation of the appellant's case, including the right to counsel or authorized representation at the appellant's expense;
 - (d) The Right to Examine the Case File. A statement that the appellant or representative may examine the case file prior to the hearing;
 - (e) Dismissal of Appeal for Failure to Appear. A statement to the appellant indicating that ORI will dismiss the hearing request if the appellant or his or her representative fails to appear for the hearing without good cause.
 - (f) Right to an Interpreter. A statement that the appellant may bring an interpreter of his or her own choosing to the hearing at her or his cost or have one provided at no cost.

1.510: Scheduling

- (1) ORI must register the appeal and set a date for a hearing no later than five working days from the date it receives the request for a hearing. The hearing officer will notify all parties of the hearing date at least ten calendar days prior to the date scheduled for the hearing.

The appellant may request an expedited hearing. A request for an expedited hearing automatically waives the requirement for the ten-day advance mailing notifying the appellant of the hearing date. The appellant and/or the appellant's representative will be contacted, orally when possible, at least 48 hours prior to the hearing.

- (2) ORI shall select an accessible hearing site. If the appellant has a handicap or disability which reasonably prevents his or her appearance at the designated site, he or she may request that the hearing be held at his or her home or other accessible location.

1.520: Procedures and Requirements for Rescheduling

- (1) The hearing officer may change the date, time, and place of the hearing upon prior notice to all parties.
- (2) The hearing officer has the discretion to reschedule the hearing at the request of either party to a hearing.

1.530: Dismissal for Failure to Prosecute

- (1) If the appellant fails to appear at the hearing, the hearing officer shall notify the appellant in writing with a copy to the appellant's representative, if any, that if within ten calendar days of the notice the appellant fails to request a rescheduled hearing and show good cause for the failure to appear, the appeal will be considered abandoned.
- (2) When the record discloses the failure of the appellant to file documents required by these rules, respond to notices or correspondence, or comply with orders or when the appellant otherwise indicates intention not to continue with the prosecution of his or her appeal, ORI may issue an order requiring the appellant to show cause why the matter should not be dismissed for lack of prosecution.
- (3) If the hearing officer finds good cause, the appeal shall be rescheduled; if not, the appeal shall be dismissed and aid pending appeal shall be discontinued.

1.540: Procedures for Vacating a Dismissal

- (1) The hearing officer shall notify the appellant of the dismissal and of the procedures for vacating a dismissal.
- (2) The appellant must request vacation of the dismissal in writing within ten days of the date of the dismissal notice.
- (3) The hearing officer may vacate the dismissal upon finding that the appellant has shown good cause for failure to appear at a scheduled hearing or otherwise prosecute the appeal.

1.600: Discovery

- (1) ORI encourages all parties to engage in voluntary discovery.
- (2) The Case Management Provider must give the appellant or authorized representative reasonable opportunity to examine and copy or photocopy the entire content of the case file and all other documents and records to be used by the Case Management Provider at the hearing.

1.605: Subpoenas

- (1) Any party to a hearing and ORI on its own shall have the right to a subpoena requiring the attendance and testimony of witnesses and the production of tangible evidence relating to any matter in question at the hearing.
- (2) Any party may have the subpoena issued by a notary public or justice of the peace in the name of ORI, or apply to ORI in writing for the issuance of the subpoena, which shall issue a subpoena within two working days of receiving the application.
- (3) Any witness subpoenaed may petition ORI to vacate or modify a subpoena.
 - (a) The hearing officer shall in an informal manner give the party who requested the issuance of the subpoena notice of the petition orally or in writing. The notice shall quote the contents of the petition and shall indicate that the party may oppose the petition orally or, if time permits, in writing to the hearing officer. 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.
 - (b) After such investigation as the hearing officer considers appropriate, the hearing officer may grant the petition in whole or in part only if the hearing officer finds that:
 1. the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question;
 2. the subpoena is unreasonable or oppressive;
 3. the subpoena has not been issued a reasonable period in advance of the time when the evidence is requested.
- (4) If any person fails to comply with a properly issued subpoena, ORI (or the party who requested the subpoena) may petition the Superior Court for an order requiring compliance with the terms of the subpoena. If the Superior Court issues such an order, the person against whom the order is issued must comply with the subpoena or be subject to the contempt powers of the Court.

1.610: Evidence

- (1) There are no formal rules of evidence in fair hearings. The hearing officer shall follow statutory rules of privilege recognized in Massachusetts. The hearing officer may admit any evidence if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The hearing officer may exclude repetitious or irrelevant evidence.

1.610: continued

(2) The hearing officer shall not exclude evidence at the hearing for the reason that it had not been previously submitted to the Case Management Provider, provided that the Case Management Provider representative has reasonable time to examine and respond to the newly submitted evidence. However, the Case Management Provider may not offer documents or records that it has not previously made available to the appellant.

(3) 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.

(4) Except as the hearing officer may order under 121 CMR 1.635 and 1.710, 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.

(5) Witnesses shall give oral testimony under oath or affirmation and be available for cross-examination.

(6) 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.

(7) Parties may submit as evidence stipulations of facts or stipulations to the accuracy of testimony by absent witnesses.

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

1.615: Hearing Involving Medical Issues

When the hearing involves medical issues, the hearing officer may order that a medical examination and assessment be obtained from an impartial medical practitioner. Such examination and assessment shall be made a part of the record and shall be at the expense of ORI.

1.620: Consolidated Hearings

ORI may respond to a series of individual requests for hearings by conducting a single group hearing when 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. However, all or part of the appellants in the hearing may submit their case as a group.

1.625: Interim Orders

(1) If the hearing officer determines that the sole issue is the legality of state or federal law or regulation, or change in federal or state law, the hearing officer shall issue a written interim order denying the appeal and directing the Case Management Provider to proceed with any action delayed pending the hearing. The order shall be made a part of the record. The hearing officer is also required to issue a final written decision.

(2) The hearing officer may further order, in writing, the Case Management Provider or ORI to take immediate action to implement a decision announced at the hearing pending issuance of the decision.

1.625: continued

(3) If at the hearing the appellant and the Case Management Provider resolve the issue(s) appealed, they may propose language for the hearing officer's decision. The hearing officer has the discretion to accept the proposed language.

1.630: Continuance

The hearing may be continued at the discretion of the hearing officer. All parties shall be notified as to the time, date, and place of the continuance.

1.635: Reopening Prior to Decision

After the close of the hearing and prior to a decision, the hearing officer, if he or she finds it necessary, may reopen the record or, if appropriate, the hearing to consider additional testimony, evidence, materials or legal rules before making a decision. If this procedure is elected, the hearing officer must give ten days' written notice to all parties of the reopening together with the reasons for the action. The notice must include the date, time and place of the resumed hearing, which shall be held at a location accessible to the appellant. Prior to a hearing decision, any party to a hearing may request in writing that the hearing officer exercise this power and the request shall become part of the record.

1.640: The Record

(1) The record shall be the exclusive source of the hearing officer's decision. The record shall include:

- (a) All documents and other evidence offered and taken;
- (b) Complete tape recordings or transcripts of the proceedings;
- (c) All exhibits and documents introduced at the hearing; and
- (d) For purposes of judicial review, the hearing officer's decision.

(2) All evidence and testimony at the hearing shall be recorded electronically or stenographically.

- (a) At the discretion of the hearing officer, any party may also record the hearing.
- (b) Whether or not an appellant intends to file a Complaint for Judicial Review, transcripts or duplicate tapes 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 ORI.

1.700: Time Limits for Making a Decision

(1) The hearing officer must make a final decision within 30 days of the date of 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.

(2) The hearing officer must make a decision within 60 days of the date of request for a hearing for all other appeals.

(3) These time limits may be extended for good cause.

1.710: Basis of Fair Hearing Decision

(1) The hearing officer's decision shall be based upon testimony, documentary evidence, other tangible evidence 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 waive the right to respond.

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

1.710: continued

- (3) The decision must be made in accordance with the law.
 - (a) The law includes the State and Federal Constitutions, statutes, regulations, and decisions of State and Federal Courts.
 - (b) The hearing officer may not determine the legality of ORI regulations. If the legality of an ORI regulation is at issue, the hearing officer shall base the decision on the regulation, explaining in the decision that he or she is without authority to decide the legality of the regulation.
 - (c) The hearing officer cannot as the sole basis for the decision rely on ORI memoranda and materials containing nonregulatory rules, standards, or interpretations.
 - (d) However, the hearing officer may admit as evidence pertinent ORI procedures or policies and may allow the appellant time to respond in writing to those items admitted as evidence.

1.720: Content of Decision

- (1) The decision of the hearing officer shall contain the following:
 - (a) Statement of the issues involved in the hearing;
 - (b) Summary of evidence;
 - (c) Findings of fact on all relevant factual matters;
 - (d) Rulings of law on all relevant legal issues, with citations to supporting regulations or other law;
 - (e) Conclusions drawn from the findings of fact and rulings of law if appropriate;
 - (f) The hearing officer's order, which shall require appropriate action to be taken by the Case Management Provider or ORI including, if appropriate, retroactive and/or prospective relief.

(1) The hearing officer shall notify the appellant of the right to full and prompt implementation of the decision under 121 CMR 1.750 and of the right to judicial review under M.G.L. c. 30A.

1.730: Transmittal of Decision

The hearing officer shall transmit copies of the decision to the appellant, the appellant's authorized representative, interpreter (if requested) and appropriate Case Management Provider.

1.740: Finality of the Appeal Decision

The decision of the hearing officer shall be final and binding on the Case Management Provider. ORI shall not interfere with the independence of the decision-making process of the hearing officer. The hearing officer's findings of facts are binding on the parties to that case and cannot be disputed again between them in any other administrative proceeding, unless otherwise provided by law.

1.750: Implementation of the Appeal Decision

(1) Notification to Appellant. When the decision is issued, the Case Management Provider shall notify the appellant of his or her right to full and prompt implementation of the decision within ten days. The notice shall direct the appellant to notify the appropriate ORI official in writing if there is not full compliance.

(2) Responsibility of the Case Management Provider. The Case Management Provider shall be responsible for the full and prompt 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 Case Management Provider or ORI shall obstruct or otherwise interfere with, review, change or attempt to influence the implementation of the fair hearing decision.

1.800: 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. The appellant seeking judicial review must file a complaint either 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.

1.810: 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. ORI will provide the appellant access to the record by allowing the appellant and/or representative to examine and copy all documentary evidence and to listen to the tape recording or review the hearing with the stenographer, if applicable.

1.820: Compilation of Fair Hearing Decisions

ORI will compile all fair hearing decisions for each calendar month. ORI will make copies of this compilation available to the public. ORI will protect applicant/participant confidentially by deleting personal data, including the appellant's name and address.

REGULATORY AUTHORITY:

121 CMR 1.000: M.G.L. c. 6, § 207(g); c. 30A; 45 CFR 205.10, 400.23, 400.54 and 400.83;
801 CMR 1.02 and 1.03.

(PAGES 17 THROUGH 30 ARE RESERVED FOR FUTURE USE.)