

1000 Overview (09-01, 9/1/08)

These are the rules that govern all proceedings conducted by the Vermont Human Services Board. They were promulgated by the Board pursuant to 3 V.S.A. § 3091(b).

1000.1 Requests for fair hearing (09-01, 9/1/08)

- A. A hearing may be requested by an applicant or recipient of assistance, benefits, or social services, or by a licensee or an applicant for a license, as provided at § 3091 of Title 3, or by any other individual as specifically provided by statute.
- B. Appeals shall be commenced by communicating a request for fair hearing with the clerk of the Human Services Board. Requests shall include the name, address, and phone number of the appellant and a statement of the basis for the appeal, if known.
- C. Any department or office in the Agency of Human Services, including contractors and delegates of any such office or department, shall respond to any clear indication (oral or written) that a person wishes to present his or her case to a higher authority by helping that person to submit a request for hearing in the form provided by this rule or by advising that person to obtain legal representation. The department or office shall promptly forward all such requests to the Board.
- D. The Board shall mail a copy of all requests to the attorney representing the department or office that is the subject of the appeal.

1000.2 Timeliness (09-01, 9/1/08)

As a general matter, timeliness for appeals is based on the statutes and/or regulations governing a particular program.

- A. Appeals involving eligibility, benefits, coverage and financial assistance decisions by the Department of Disabilities, Aging and Independent Living; or the Economic Services Division or Health Access Eligibility Unit of the Department for Children and Families; or the Office of Vermont Health Access in cases not covered by the MCO rules shall not be considered by the Board unless the applicant or recipient has made a request for fair hearing **within 90 days** from the date when his or her grievance with that office or department arose.
- B. Appeals involving coverage of services or service disagreements by the Managed Care Organization (MCO) shall not be considered by the Board unless the applicant or recipient has made a request for fair hearing within 90 days of the initial notice of adverse action or within 30 days of notice of the MCO internal appeal decision or as otherwise provided by law.
- C. Food Stamp cases. In Food Stamp cases, a household may also request a fair hearing at any time within a certification period to dispute its current level of benefits.
- D. Office of Child Support. Appeals from decisions involving the Office of Child Support must be filed **within 30 days** from the date the appellant's grievance with that office arose.

- E. Child Development Division. Appeals from decisions by the Child Development Division of the Department for Children and Families must be made within 30 days from the date the grievance with that department arose, unless otherwise provided by statute or regulation.
- F. All other appeals. All other appeals must be made **within 30 days** from the date the grievance with the action of the affected office or department arose, unless otherwise provided by statute or regulation.
- G. Computation of time limits. In computing any period of time prescribed or allowed by these rules, the day from which the designated period begins to run is not counted. The last day of the prescribed period shall be included, except if the last day falls on a weekend or a state or federal holiday. Weekends and all state and federal holidays are excluded only in determining the last day of the prescribed period.

1000.3 The Fair Hearing (09-01, 9/1/08)

- A. Hearing Officer. The hearing shall be conducted by an impartial hearing officer appointed by the Board who is not involved in any way with the action in question. The hearing officer shall rule upon all motions and questions relating to the presentation of the appeal.
- B. Right to representation. The appellant may present his or her own case or obtain representation by a friend, relative or legal counsel. Attorneys representing appellants shall file a notice of appearance with the Board and with the department or office involved in the appeal as soon as practicable.
- C. Setting the hearing. Upon the filing of an appeal with the Board the hearing officer or the clerk shall set the date, time, and place of the hearing, or shall set the matter for a preliminary status conference. Upon setting the hearing or status conference the hearing officer or the clerk shall mail an appropriate notice to the parties and to their attorneys. The notification to the appellant shall include a copy of these rules.
- D. Status Conferences. Status conferences, either in person or by telephone, may be held to determine factual, legal, and procedural issues, plan a hearing, consider motions, facilitate exchange of documents and information regarding witnesses, track the progress of a case, or to consider any other matter that may aid the disposition of the appeal.
- E. Timelines. When possible, the hearing or status conference will be scheduled for a date not sooner than 7 days nor later than 30 days from the filing of the appeal. Hearings or status conferences will be scheduled consistent with any program specific statutory or regulatory requirements governing timeliness. When practicable, hearings will be scheduled at a time, date, and within a district convenient to the appellant.

- F. Time, manner and location of hearing. The hearing officer shall rule on requests for changing the timing, manner, or location of the hearing. Such requests shall be made to the hearing officer within a reasonable time. The opposing party shall have the right to oppose such a request. In ruling on such a request the hearing officer shall include consideration of the sufficiency of the grounds for the request, the length of time appropriate for a continuance, and the degree of prejudice, if any, to the party opposing the request.
- G. Agency review. Prior to the hearing, the commissioner or director of the department or office involved in the appeal, or his or her designee, shall review the appellant's stated grievance and determine whether or not the appellant is entitled to relief, and shall provide the appellant and the hearing officer with a rationale for its decision.
- H. Production of documents. Prior to the hearing, or at any time when directed by the hearing officer, the department or office involved in the appeal, unless prohibited by statute or the compelling confidentiality rights of others, shall make available to the appellant all documents and records relevant to its decision. The hearing officer may at any time also direct an appellant to make available to the department or office any appropriate documents and records requested by the department or office.
- I. Travel expenses. If the hearing or Board meeting is held outside the town of residence of the appellant, the department or office shall pay the appellant's reasonable travel expenses in accordance with and if required by existing policies and guidelines.
- J. Subpoenas. Requests for subpoenas shall be submitted to the hearing officer, except for licensed attorneys as provided in 3 V.S.A. § 809(h).
- K. Medical evidence. In an appeal of a department or office decision involving an appellant's medical condition the hearing officer may obtain a medical assessment other than that of the person or persons involved in making the original decision at the department's or office's expense from a source satisfactory to the appellant. The parties may agree to obtain and submit updated medical reports to the assessing authority. When such agreement is reached, the new assessment shall be completed as rapidly as practicable and the hearing officer may, upon being advised of the agreement by the parties, continue the matter until the new assessment is completed and reviewed by the department or office.
- L. Motions to dismiss and other preliminary motions. Motions to dismiss and other preliminary motions, including claims for relief due to non-compliance with these rules, may be submitted for the hearing officer's consideration prior to the time the case in chief is submitted. The hearing officer may submit any ruling on a motion to the Board prior to holding a hearing on the merits if it is likely to expedite the final resolution of the appeal.

- M. Closed session. The proceedings (including the fair hearing, status conferences, and the meeting of the Human Service Board) shall be conducted in closed session unless the appellant is a licensee of or an applicant for a license from the department. When the appellant is a licensee of the department or an applicant for a license, the proceedings shall be public to the extent that public access does not violate confidentiality rights of people receiving department services. Where public access threatens confidentiality rights or the ability of the hearing officer to conduct the hearing, the hearing officer may take necessary steps to protect client confidentiality and the integrity of the hearing.
- N. Telephone hearings. If deemed appropriate in the discretion of the hearing officer, and upon consideration of any objection by either party, hearings may be held by telephone, but shall otherwise be conducted in accordance with these rules.
- O. Evidence.
1. Copies. Upon request, and subject to a ruling on any objection made by the affected party, a party shall promptly furnish an adverse party with copies of all documents and records that are or may become relevant to the issues raised by the appeal.
 2. Relevance. Disputes on the question of relevance shall be resolved by the hearing officer in the first instance, subject to the Board's review on the motion of either party.
 3. Testimony. Any party or his or her representative shall have the opportunity to produce witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written; to advance any arguments without undue interference; and to question or refute any testimony or evidence.
 4. Burden of proof. The burden of proving facts alleged as the basis for decisions to terminate or reduce benefits, services or assistance, or to revoke or fail to renew a license, shall be on the office or department by a preponderance of evidence, unless otherwise provided by law. Otherwise, the burden of proof by a preponderance of evidence shall be on the appellant.
 5. Rules of evidence. The rules of evidence applied in civil cases by the courts of the State of Vermont shall be followed, except that the hearing officer may allow evidence not admissible thereunder where, in his or her judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- P. Records. All proceedings relating to the presentation of evidence and rulings on procedural matters shall be recorded. The evidence presented, both oral and written, and any oral or written arguments submitted in a timely manner shall constitute the exclusive record for decision. Under the supervision of the hearing officer or the Board's clerk either party shall be given the opportunity to listen to or receive a copy of the recording of the proceeding.

- Q. Failure to appear. If neither the appellant nor his or her representative appears at the time and place noticed for the hearing, or is not available for a duly noticed telephone status conference, the Board's clerk shall inquire by mail as to what caused the failure to appear. If no response to this inquiry is received by the Board within 7 working days of the mailing thereof, or if the hearing officer determines that no good cause has been shown for the failure to appear, the clerk may dismiss the appeal.
- R. Recommendation by the hearing officer. After the hearing record is complete, the hearing officer shall timely, and in accordance with any applicable statutes, mail his or her findings, a recommended order, and a statement of reasons in support of that order to the Board and the parties.

1000.4 Decisions and orders by the Human Services Board (09-01, 9/1/08)

- A. Notice of Board meeting. The hearing officer's recommendation shall inform the parties to the appeal of the date, time and place of the Board meeting at which the hearing officer's recommendation will be considered.
- B. Oral argument before the Board. At its meeting the Board shall hear oral arguments in the case upon the request of either party. The argument before the board shall be recorded. Objections to facts found, or not found, by the hearing officer shall be made to the Board by written or oral motion. To the extent practicable, such objections shall be submitted to the hearing officer at least 7 days prior to the day of the scheduled Board meeting. A motion to present additional evidence must identify good cause why the evidence was not presented during the initial fair hearing.
- C. Questions before the Board. In reaching its decision in a fair hearing, if raised by either party, or presented by the evidence, the Board will consider: 1) an act, decision, omission or delay which adversely affects the appellant; and 2) the office or department's application of the law if the appellant is aggrieved by its application to his or her situation.
- D. Scope of authority. The Board will reverse a decision that conforms with office or department policy only if it determines that the policy is in conflict with state or federal law. The Board will not reverse or modify a decision that is found to be in compliance with the applicable law and policy even though the Board might disagree with the results effected by that decision.
- E. Quorum. The members of the Human Services Board constitute the hearing authority and a majority of the Board shall constitute a quorum. However, three members shall constitute a quorum at any meeting upon the written authorization of the chair.
- F. Decision. Upon considering all of the facts and arguments in the case the Board may adopt the recommendation of the hearing officer, or reject it and reach different conclusions on the basis of the evidence at hand, or refer the matter back to the hearing officer for a continuation of the hearing or for the receipt of additional evidence. At the request of a party, or on its own motion, the Board may authorize the hearing officer to submit additional or amended findings of fact

without further hearing. The Board shall approve the findings of the hearing officer and adopt them as the findings of the Board unless good cause is shown for disapproving them.

- G. Orders. Upon deciding the case the Board shall enter an appropriate order. The order shall include a statement of the facts that the Board relied on, a statement of the reasons for its decision, and a statement of the parties' right to appeal to the Vermont Supreme Court. When the decision of the Board is unanimous, the chairperson at that meeting may sign the order on behalf of the entire Board.
- H. Timeliness. A copy of the order will be mailed to the parties within 75 days of the Board's receipt of the request for fair hearing, unless a continuance in the case is granted or there is a program specific statutory or regulatory requirement directing another timeline by which an order shall be mailed to the parties. For example, in food stamp cases the Board shall issue its order within 60 days, and any continuance may not exceed an additional 30 days. An order of the Board issued after the expiration of any of the above time periods shall be valid notwithstanding the other provisions of this rule.
- I. Retroactive benefits. If the Board reverses or modifies a decision, the department or office shall issue corrected benefits retroactively to the date the incorrect action was taken.
- J. Record on appeal. The Board's order may be appealed as provided by law and as specified by the Vermont Rules of Appellate Procedure. When an appeal from a decision of the Board has been taken, the Board's clerk, at the request of either party and in accordance with Rule 10, Vermont Rules of Appellate Procedure, shall furnish the parties with a printed transcript of the proceedings.
- K. Motions to reopen. Within 30 days of the Board's issuance of any order, a party may move the Board to reopen and reconsider that order. Motions to reopen shall be referred to the hearing officer for recommendation as to disposition in accordance with the above rules. Such motions shall be granted only upon a showing of good cause by the moving party.