

Title 3 : Executive

Chapter 053 : Human Services

Subchapter 004 : DEPARTMENTS, DIVISIONS, COUNCILS, AND BOARDS

(Cite as: 3 V.S.A. § 3090)

§ 3090. Human Services Board

(a) The Human Services Board is created within the Agency of Human Services as the successor to and the continuation of the present Social Welfare Board. It consists of seven members. The Governor, with the advice and consent of the Senate, shall appoint members for terms of six years so that not more than three terms expire in the same biennium. The Governor shall designate the Board's Chair.

(b) The duties of the Board shall be to act as a Fair Hearing Board on appeals brought pursuant to section 3091 of this title.

(c) The Board shall hold meetings at times and places warned by the Chair on his or her own initiative or upon request of two Board members or the Governor. Four members shall constitute a quorum, except that three members shall constitute a quorum at any meeting upon the written authorization of the Chair issued in connection with that meeting.

(d) With the approval of the Governor the Board may appoint one or more hearing officers, who shall be outside the classified service, and it may employ such secretarial assistance as it deems necessary in the performance of its duties.

(e) On or before January 15 of each year, the Board shall report to the House Committees on Human Services and on Health Care and the Senate Committees on Appropriations and on Health and Welfare regarding the fair hearings conducted by the Board during the three preceding calendar years, including:

(1) the total number of fair hearings conducted over the three-year period and per year;

(2) the number of hearings per year involving appeals of decisions by the Agency itself and each department within the Agency, with the appeals and decisions relating to health insurance through the Vermont Health Benefit Exchange reported distinctly from other programs;

(3) the number of hearings per year based on appeals of decisions regarding:

(A) eligibility;

(B) benefits;

(C) coverage;

(D) financial assistance;

(E) child support; and

(F) other categories of appeals;

(4) the number of hearings per year based on appeals of decisions regarding each State program over which the Board has jurisdiction;

(5) the number of decisions per year made in favor of the appellant; and

(6) the number of decisions per year made in favor of the department or the Agency.

(Added 1973, No. 101, § 4; amended 2013, No. 161 (Adj. Sess.), § 72; 2013, No. 179 (Adj. Sess.), § E.304; 2017, No. 154 (Adj. Sess.), § 8, eff. May 21, 2018.)

Title 3 : Executive

Chapter 053 : Human Services

Subchapter 004 : DEPARTMENTS, DIVISIONS, COUNCILS, AND BOARDS

(Cite as: 3 V.S.A. § 3091)

§ 3091. Hearings

(a) An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and Families, of Vermont Health Access, of Disabilities, Aging, and Independent Living, of Mental Health, or of the Department of Health's Women, Infant, and Children program, or an applicant for a license from one of those departments, except for the Department of Health, or a licensee may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because the individual's claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Agency action affecting the individual's receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects the individual's situation.

(b) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. The Chair of the Board may compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. All witnesses shall be examined under oath. The Board shall adopt rules with reference to appeals, which shall not be inconsistent with this chapter. The rules shall provide for reasonable notice to parties, and an opportunity to be heard and be represented by counsel.

(c) The Board or the hearing officer shall issue written findings of fact. If the hearing is conducted by a hearing officer, the hearing officer's findings shall be reported to the Board, and the Board shall approve the findings and adopt them as the findings of the Board unless good cause is shown for disapproving them. Whether the findings are made by the Board, or by a hearing officer and adopted by the Board, the Board shall enter its order based on the findings.

(d) After the fair hearing, the Board may affirm, modify, or reverse decisions of the Agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the Agency to provide appropriate relief including retroactive and prospective benefits. The Board shall consider, and shall have the authority to reverse or modify, decisions of the Agency based on rules that the Board determines to be in conflict with State or federal law. The Board shall not reverse or modify Agency decisions that are determined to be in compliance with applicable law, even though the Board may disagree with the results effected by those decisions.

(e)(1) The Board shall give written notice of its decision to the person applying for fair hearing and to the Agency.

(2) Unless a continuance is requested or consented to by an aggrieved person, decisions and orders concerning Temporary Assistance to Needy Families (TANF) under 33 V.S.A. chapter 11, TANF-Emergency Assistance (TANF-EA) under Title IV of the Social Security Act, and medical assistance (Medicaid) under 33 V.S.A. chapter 19 shall be issued by the Board within 75 days after the request for hearing.

(3) Notwithstanding any provision of subsection (c) or (d) or subdivision (1) of this subsection (e) to the contrary, in the case of an expedited Medicaid fair hearing, the Board shall delegate both its fact-finding and final decision-making authority to a hearing officer, and the hearing officer's written findings and order shall constitute the Board's decision and order in accordance with timelines set forth in federal law.

(f) The Agency or the appellant may appeal from decisions of the Board to the Supreme Court under V.R.A.P. 13. Pending the final determination of any appeal, the terms of the order involved shall be given effect by the Agency except insofar as they relate to retroactive benefits.

(g) A party to an order or decree of the Board or the Board itself, or both, may petition the Supreme Court for relief against any disobedience of or noncompliance with the order or decree. In the proceedings and upon such notice thereof to the parties as it shall direct, the Supreme Court shall hear and consider the petition and make such order and decree in the premises by way of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning the enforcement of the order and decree of the Board as shall be appropriate.

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning TANF, TANF-EA, Office of Child Support Cases, Medicaid, and the Vermont Health Benefit Exchange. The Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

(i) the Board's findings of fact lack any support in the record; or

(ii) the decision or order misinterprets or misapplies State or federal policy or rule; and

(B) issue a written decision setting forth the legal, factual, or policy basis for reversing or modifying a Board decision or order.

(2) Notwithstanding subsections (d) and (f) of this section, a Board decision and order concerning TANF, TANF-EA, Office of Child Support, Medicaid, and the Vermont Health Benefit Exchange shall become the final and binding decision of the Agency upon its approval by the Secretary. The Secretary shall either approve, modify, or reverse the Board's decision and order within 15 days of the date of the Board decision and order. If the Secretary fails to issue a written decision within 15 days as required by this

subdivision, the Board's decision and order shall be deemed to have been approved by the Secretary.

(3) Notwithstanding subsection (f) of this section, only the claimant may appeal a decision of the Secretary to the Supreme Court. Such appeals shall be pursuant to V.R.A.P. 13. The Supreme Court may stay the Secretary's decision upon the claimant's showing of a fair ground for litigation on the merits. The Supreme Court shall not stay the Secretary's order insofar as it relates to a denial of retroactive benefits.

(i) In the case of an appeal of a Medicaid covered service decision made by the Department of Vermont Health Access or any entity with which the Department of Vermont Health Access enters into an agreement to perform service authorizations that may result in an adverse benefit determination, the right to a fair hearing granted by subsection (a) of this section shall be available to an aggrieved beneficiary only after that individual has exhausted, or is deemed to have exhausted, the Department of Vermont Health Access's internal appeals process and has received a notice that the adverse benefit determination was upheld.

(Added 1973, No. 101, § 5; amended 1989, No. 181 (Adj. Sess.); 1989, No. 219 (Adj. Sess.), § 9(a); 1993, No. 105, § 1; 1999, No. 147 (Adj. Sess.), § 4; 2005, No. 174 (Adj. Sess.), § 8; 2007, No. 15, § 6; 2007, No. 172 (Adj. Sess.), § 3; 2009, No. 156 (Adj. Sess.), § 1.9; 2015, No. 172 (Adj. Sess.), § E.304; 2017, No. 210 (Adj. Sess.), § 13, eff. June 1, 2018; 2019, No. 131 (Adj. Sess.), § 4; 2023, No. 113 (Adj. Sess.), § C.104, eff. May 23, 2024.)