

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 JUN 25 PM 3:53

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT TITLE NUMBER: 97

RULE TYPE: LEGISLATIVE CITE AUTHORITY: W.V.A. CODE § 48-18-105 (19)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 7/25/13 AT 12 NOON ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

HEIDI L. TALMAGE, ESQUIRE

GENERAL COUNSEL

BUREAU FOR CHILD SUPPORT ENFORCEMENT

350 CAPITOL STREET, ROOM 147

CHARLESTON, WV 25301-3703

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

**Earl Ray Tomblin**  
Governor

**Rocco S. Fucillo**  
Cabinet Secretary

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***MEMORANDUM***

**TO:** The Office of the Secretary of State  
Administrative Law Division

**FROM:** Heidi L. Talmage, Esquire  
General Counsel

**DATE:**

**SUBJECT:** Brief Summary of Proposed Legislative Rule 97-1

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Pursuant to West Virginia Code § 48-8-105 (19), the Bureau for Child Support Enforcement is authorized to file rules to address issues related to the establishment of paternity, the establishment, modification, and enforcement of support obligations, and other issues required to maintain compliance with Federal IV-D requirements. This proposed Legislative Rule explains that the Bureau does not represent individuals, permits applicants for services to obtain counsel, provides for confidentiality of Bureau records, explains the procedure to obtain information from the Bureau and explains the procedures to be used if an employee has a conflict of interest.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: The Bureau for Child Support Enforcement

Type of Rule:  Legislative  Interpretive  Procedural

Agency: The Bureau for Child Support Enforcement

Address: 350 Capitol Street, Room 147  
Charleston, WV 25301-3703

Phone Number: 304-356-4730 Email: kim.s.rider@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The contents of the proposed legislative rule do not change the type of services provided by the Bureau. The proposed rule also does not change the method of delivery of services. The proposed rule simply places the pertinent contents of the Bureau's existing policy manual into legislative rule format in order to bring the Bureau into compliance with State law. There will be no effect on either the costs of the services or the revenue of the Bureau.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: The Bureau for Child Support Enforcement

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

None anticipated, as this is merely placing the current Policy Manual into Legislative Rule format in order to bring the Bureau into compliance.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

\_\_\_\_\_

Date: 6/4/13

Signature of Agency Head or Authorized Representative

W. S. M. O.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 6/25/13

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) THE BUREAU FOR CHILD SUPPORT ENFORCEMENT  
350 CAPITOL STREET, ROOM 147  
CHARLESTON, WV 25301-3703

LEGISLATIVE RULE TITLE: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT

1. Authorizing statute(s) citation § 48-18-105 (19)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 25, 2013

b. What other notice, including advertising, did you give of the hearing?  
\_\_\_\_\_  
\_\_\_\_\_

c. Date of Public Hearing(s) or Public Comment Period ended:

July 25, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kim Rider, Assistant to General Counsel  
Bureau for Child Support Enforcement  
350 Capitol Street, Room 147  
Charleston, WV 25301-3703

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304-356-4730 - phone 304-558-4092 - fax kim.s.rider@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Heidi L. Talmage, General Counsel  
Bureau for Child Support Enforcement  
350 Capitol Street, Room 147  
Charleston, WV 25301-3703

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304-558-3780 - phone 304-558-4092 - fax

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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2013 JUN 25 PM 3:53

**TITLE 97  
LEGISLATIVE RULE  
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

**Series 1**

**The Bureau for Child Support Enforcement**

**§ 97-1-1. General.**

1.1. Scope. -- This legislative rule establishes the cost of providing copies of the Bureau for Child Support Enforcement Policy Manual, provides for confidentiality of records, establishes a procedure to be followed to obtain confidential information contained in a case record, and addresses potential conflicts of interest of employees.

1.2. Authority. -- W.Va. Code § 48-18-105 (19)

1.3. Filing Date. -- *June 25, 2013*

1.4. Effective Date. --

**§ 97-1-2. Definitions.**

2.1. Bureau. -- The Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement is established by W. Va. Code § 48-18-101 and is designated as the single state agency to fulfill the obligations of the State of West Virginia under Title IV-D of the Social Security Act. Pursuant to W.Va. Code § 48-18-122, the bureau operates the central state case registry.

2.2. Department. -- The Department of Health and Human Resources. The Department of Health and Human Resources is established pursuant to W. Va. Code § 5F-1-2 and contains within it the Bureau for Child Support Enforcement.

**§ 97-1-3. The Bureau for Child Support Enforcement.**

3.1. The Bureau for Child Support Enforcement and its employees represent the interests of the State. The bureau does not represent the interests of any individual litigant or child. The term "the State" means the State of West Virginia or any other state, country, tribe or territory involved in the specific individual case.

3.2. The authority of the Bureau for Child Support Enforcement to act is governed by state and federal law. The bureau has no authority to provide services related to the establishment or enforcement of custody, visitation or shared parenting of a minor child and no authority to establish or modify orders relating to spousal support.

3.3. In addition to any actions taken by the bureau, an applicant for bureau services retains the right and the obligation to take any other actions he or she may see fit to take to establish, collect, protect and preserve any support that is due and owing.

3.3.a. Any party to a child support or spousal support case is free to seek counsel from an attorney of his or her own choosing and to be represented by an attorney of his or her own choosing in any legal or departmental proceeding.

3.3.b. The employees of the bureau shall respect the right of a party to obtain counsel and shall not communicate directly with a party with respect to legal issues if the individual has retained counsel.

#### **§ 97-1-4. The Bureau for Child Support Enforcement's Policy Manual.**

4.1. The bureau's policy manual is a public document. As such, it is available for viewing by the public at any bureau office, upon reasonable request, during normal office hours. The manual is also available for review in the Office of the Secretary of State of West Virginia.

4.2. Copies of the entire manual or of specific sections of the manual shall be provided to the public upon receipt of payment. The cost for providing a complete copy of the policy manual is \$40.00 if a paper copy is requested. The cost of providing a complete copy of the policy manual in electronic format is \$5.00. Paper copies of specific sections of the manual shall be billed at the rate of 50 cents per page. The copying fee shall be waived for requests made by other state agencies, federal agencies, legal aid corporations, requests that result in the copying of ten pages or less, or requests from individuals who provide proof that their income is below the federal poverty level.

4.3. The contents of the policy manual include applicable state and federal laws, applicable legislative rules, and procedural instructions on the technical processing of the bureau's cases.

#### **§ 97-1-5. Confidentiality.**

5.1. Information about a specific party to a case, including the party's Social Security number, address, information related to banking or other financial transactions, state and federal tax information, information relating to medical treatment and place of employment is deemed to be confidential. The designation as confidential information includes content stored in paper format, digital format, or any other method of storage of information.

5.2. Information relating to the date and amount of support owed, the date and amount of support payments received, and copies of any court orders contained in the bureau case record, whether in paper form or digital format, may be provided upon verbal or written request to the parties in the case, to their attorneys, to a court of competent jurisdiction for this case, or to any individual to whom a party has indicated in a written release of information.

5.3. An attorney for an individual may receive any information from the case file that it would be lawful to provide to that party to the case.

5.4. The legal doctrines of attorney-client privilege and attorney work product apply to the work of attorneys employed by the bureau, including the attorney's mental impressions, conclusions, opinions, advice or legal theories concerning a case. Information of this nature is considered to be confidential and shall not be released to the parties, their attorneys, or to any individual.

5.5. Without the permission of the party whose information is being sought or an order of a court of competent jurisdiction, confidential information contained in a bureau case record may only be released to a court with jurisdiction over the case, to a state agency with which the bureau has a cooperative agreement to facilitate the establishment of paternity and/or establishment/modification/collection of support, or to another state or tribal child support agency for the purpose of establishment of paternity and the establishment and enforcement of support orders and to prosecuting attorneys for the purpose of evaluating and pursuing criminal actions arising directly from the non-payment of support obligations.

5.6. The release of confidential information is prohibited when there is reasonable evidence of domestic violence or child abuse and that such disclosure could be harmful to the party.

5.7. Medical information contained in a bureau case record may be subject to heightened confidentiality and disclosure requirements created by the Health Insurance Portability and Accountability Act of 1996.

5.8. Without the permission of the party whose information is sought or an order of a court of competent jurisdiction, medical information contained in a bureau case record may only be released to a court with jurisdiction over the case, or to another state child support program for the establishment of paternity or to obtain reimbursement of medical expenses or to prosecuting attorneys for the purpose of evaluating and pursuing criminal actions arising directly from the non-payment of support obligations.

5.9. When the bureau receives a written request for information contained in its file that is deemed to be confidential, the bureau shall mail a notice by first-class mail to the last known address of the party who is the owner of the requested information to notify him or her of the request. The notice shall advise the party of the right to object to the release of

the information on the grounds that the information is not relevant to the establishment of paternity, the determination of the amount of support or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the party of his or her right to review the records of the bureau in advance of responding to the request for the release of information in order to determine what information may exist in the bureau's file.

5.9.a. If the party responds that he or she has no objection to the release of the requested information, the bureau attorney assigned to the case shall review the request and release the information, unless state or federal law would specifically prohibit such a release.

5.9.b. If the party files a written objection to the release of the requested information, the bureau attorney assigned to the case shall review the request and the response, and make a determination as to whether the release of the requested information complies with state and federal law. The parties to the case and the requestor, if the requestor is not a party to the case, shall be notified in writing of the attorney's decision and shall be given ten days advance notice of the release of the information, if the determination is to release all or part of the requested information.

5.9.c. If no response is received to the request, the bureau's attorney assigned to the case shall review the request and make a determination as to whether the release of the requested information complies with state and federal law. The parties to the case and the requestor, if the requestor is not a party to the case, shall be notified in writing of the decision of the bureau's attorney and shall be given ten days advance notice of the release of the information, if the determination is to release all or part of the requested information.

5.10. Notwithstanding the requirements of confidentiality of information contained in the bureau's files, if a bureau employee believes that information contained in a file would impact a case member's eligibility for means-tested benefits administered by the Department of Health and Human Resources, the bureau employee shall report this information to the appropriate worker within the Bureau for Children and Families and to the employee's own supervisor. Because of the nature of this type of disclosure, no advance notice shall be provided to the parties to the case when information is released under this subsection.

5.11. Notwithstanding the requirements of confidentiality of information contained in the bureau's files, if a bureau employee believes that he or she has obtained information in the course of his or her employment pertaining to the abuse and/or neglect of a minor child or a disabled individual of any age, the employee shall immediately report this information to the appropriate worker within the Bureau for Children and Families and to the employee's own supervisor. Because of the nature of this type of disclosure, no advance notice shall be provided to the parties to the case when information is released under this subsection.

5.12. Agents or attorneys of the United States or of a state or territory may be provided with reasonable and appropriate information normally deemed as confidential if said request is related to allegations of parental kidnapping or the unlawful taking or restraint of a child or the making or enforcing of a child custody or visitation determination. Any such request and response shall comply in all respects with 45 C.F.R. § 303.15. Because of the nature of the request, no advance notice shall be provided to the parties to the case when information is released under this subsection.

5.13. The bureau also maintains personnel records regarding its employees. An employee's personnel records may be disclosed to the employee, to the employee's attorney, or to any individual to whom a party has indicated in a written release of information.

5.14. Upon the signing of the appropriate documentation acknowledging their duty of confidentiality, state and federal auditors may review documentation contained in the bureau's records, including information designated as confidential information, for the purpose of determining the bureau's compliance with standards.

**§ 97-1-6. Application for and receipt of Bureau services by Bureau employees, family members, and household members.**

6.1. Employees of the bureau, their spouses and dependents, or members of their households desiring to make application for benefits or services offered by the bureau shall make arrangements to complete the application process through a supervisor.

6.2. The supervisor shall process the application, complete all case maintenance activities, and perform any necessary reviews.

6.3. Any bureau employee who receives services from the Bureau for Child Support Enforcement is strictly prohibited from viewing or accessing his or her own case record, except under the same circumstances as any party to a case would be permitted to review his or her case file. This prohibition applies to the case record in paper format, digital format or any other format for the storage of case information. If an employee's obligee or obligor has more than one case, the employee is prohibited from viewing or accessing the information in those cases as well.

6.4. When an employee applies for or receives services from the bureau, the employee must use annual leave or compensatory time for any time spent in making the application for services or for any actions the employee takes regarding his or her own case, such as meeting with the case worker, attending hearings, or completing forms or documents.

6.5. All active or closed employee paper files are maintained separately from regular files. These case records shall be kept in locked personnel file cabinets and only the bureau's unit supervisor and Regional Manager shall have access. All active or closed employee digital case records shall be maintained as confidential case records, accessible

only by the bureau's unit supervisor or Regional Manager.

6.6. Employees shall not provide services to or make decisions concerning cases involving present or former co-workers. All cases involving present or former co-workers shall be referred to a supervisor for reassignment.

**§ 97-1-7. Potential conflicts of interest involving persons not employed by the Bureau for Child Support Enforcement.**

7.1. Bureau employees shall not access, process, or make decisions on cases involving relatives, friends, neighbors, present or former co-workers, or business, club, or church acquaintances. The bureau's unit supervisor shall either perform the case work or assign the case to another bureau employee.

7.2. No bureau employee shall accept any gifts from any party or family member of a party to a bureau case to which that employee is assigned.

**§ 97-1-8. Fair Hearings.**

8.1. Recipients of the bureau's services are entitled to a Fair Hearing to challenge or dispute certain actions taken by the bureau. Rules relating to the right to a Fair Hearing and the procedure to be followed are found in the Common Chapters Manual of the Department of Health and Human Resources.

**TABLE OF CONTENTS**

**97 CSR 1**

Attachment A - Common Chapters Manual

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**730 SUBPART C – FAIR HEARINGS FOR BUREAU FOR CHILD SUPPORT ENFORCEMENT****730.10 General**

Scope - This procedural rule is intended to set forth the procedures for fair hearings concerning the Bureau for Child Support Enforcement held within the Department of Health and Human Resources by the Board of Review. Pursuant to §29A-1-3 of the West Virginia Code, these hearings are exempt from the Administrative Procedures Act.

**730.11 Definitions**

- A. Claimant - A person challenging a decision or action of the Department.
- B. Department – The West Virginia Department of Health and Human Resources.
- C. Hearing Officer – Member of the Department's Board of Review authorized to conduct hearings and render decisions on behalf of the Board.
- D. Hearing Request – Any written or oral statement by the claimant, or his or her attorney/representative, requesting an opportunity to appeal to the Board of Review any proposed adverse action or adverse action taken by the Department. The written or oral statement may be made to the Board of Review or the office or bureau within the Department that is taking the adverse action.
- E. Public Assistance - The term public assistance as used within this rule shall have the same meaning as the term "welfare assistance" as defined by West Virginia Code §9-1-2(f) which definition states the term "welfare assistance" means the three (3) classes of assistance administered by the state division of human services, namely: Federal-state assistance, federal assistance, and state assistance.

The terms "federal-state assistance," "federal assistance," and "state assistance" are defined by West Virginia Code §9-1-2(c), (d) and (e) respectively.

F. Recipient – One who receives public assistance through the Department.

**730.12 Computing Time**

In computing any period of time prescribed within this rule, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

**730.13 Hearings Covered by These Rules**

A. Hearings concerning matters before the Bureau for Child Support Enforcement shall be heard by the Board of Review. Specific reasons for which a hearing may be granted are listed below.

B. Reasons for Hearing

1. An application for child support services has been acted upon erroneously, or not acted upon with reasonable promptness;
2. Claimant believes that child support payments, including payments owed to the claimant due to Department error, are not being issued with reasonable promptness;
3. Claimant believes that child support collections have not been distributed or disbursed correctly or questions the accuracy of the arrears owed to the Department at the termination of WV WORKS assistance;
4. Claimant disagrees with the Department's decision to close the child support case;
5. Claimant believes that the Department has failed to take action against an employer for failure to promptly forward payments withheld from the absent parent's wages.

**C. Exceptions for Certain Child Support Actions**

Decisions to act or not to act which fall within the professional legal judgment of a child support attorney for the Department are not subject to administrative review through the fair hearing process. Prior to assertion of the legal judgment exception by a child support attorney, that attorney must notify the applicant/recipient or his or her legal representative and the General Counsel for the Bureau for Child Support Enforcement in writing of the factual basis for the assertion. The defense of legal judgment should be asserted only after a careful review of the file. The necessity of such defense is most likely to occur when an issue or matter is currently pending in a court of law or when the child support attorney has elected and commenced a means for enforcement of support that will involve a court of law.

**730.14 Pre-Hearing Rights**

- A. Right to a Hearing – Any claimant must be advised, in writing, of his or her right to a fair hearing any time an adverse action occurs in his or her case. The claimant must be advised, by the Department, of any legal services that may be available to him or her.
- B. Pre-hearing Conference – Any claimant requesting a hearing shall be advised, in writing, on the “Request for Hearing” form or on the notice of adverse action of his or her right to have a pre-hearing conference with an employee of the Department who was involved in the decision making process on the applicant’s or recipient’s case.

A pre-hearing conference is required in all hearings under this subpart. However, at no time shall the claimant be discouraged from pursuing his or her right to a fair hearing.

- C. Release of Information to the Claimant – Except where prohibited by law or regulation as outlined in the BCSE policy manual, for the purpose of the fair hearing process, the claimant shall have access to his or her case record, including all documents that pertain to the change in the claimant's case that is the subject of the fair hearing. With written authorization from the claimant, the applicant's or recipient's attorney or representative may review the record. The review of the record shall take place during normal business hours at the Departmental location where the record is housed. Additionally, claimant, or his or her attorney/representative, may request and receive, free of fees or costs, a copy of documents from the case record and a copy of any policy, manual section or other document that may be used in a hearing involving the claimant.

**730.15 Time Limits for Requesting and Scheduling a Hearing or Pre-Hearing Conference**

- A. Time Limit for Requesting a Hearing after Action Taken on Claimant's Case - The Claimant shall have ninety (90) days from the effective date of any negative action to request a hearing.
- B. Notice of Right to a Pre-Hearing Conference – An individual shall be notified in writing, at the time of notification of adverse action, of his or her right to a pre-hearing conference.
- C. Notice of Right to a Fair Hearing -
1. An individual shall be notified in writing, at the time of notification of negative action, of his or her right to a fair hearing.
  2. Once a fair hearing request is received by the office or bureau that issued the adverse action, that office or bureau shall notify the appropriate Hearing Officer of the hearing request and the office or bureau will send Form IG-BR-29 along with the original hearing request or a copy of letter confirming verbal request and a copy of the notification letter that corresponds to the request.
  3. The Hearing Officer shall send written notice to the claimant giving the date, time and place for the hearing. The hearing shall take place after the pre-hearing conference. The Notice of Hearing shall contain also the name, address and telephone number of a person to contact in the event the claimant cannot attend the scheduled hearing. An outline of claimant's rights concerning the hearing process and an outline of the hearing procedures shall be attached to the notice.

4. The Notice of Hearing shall be sent to all parties at least thirteen (13) days prior to the hearing.

#### **730.16 Notice of Hearing, Service of Documents, and Location of Hearing**

- A. Notice of hearing and any document or order shall be served on all parties of record. When a party is represented by an attorney, service shall be made on the attorney as the proper recipient of all such notices, documents, and orders.
- B. The hearing shall be held at the Department's office in or adjacent to the county in which the claimant resides. A hearing may be held videoconference where available or by telephone conference if requested by the claimant. If the hearing will be held by telephone conference or videoconference, all parties shall submit, to the Hearing Officer and the opposing side at least five (5) days prior to the hearing, any evidence to be used at the hearing.
  1. If claimant requests a telephone hearing, then the Department's representative(s) and witnesses may participate by telephone as well.
  2. A telephone hearing shall be conducted as follows: 1) Claimant provides Hearing Officer with a telephone number at which he or she may be reached at the date and time scheduled by the Hearing Officer for the hearing. 2) At the date and time appointed for the hearing, the Hearing Officer will initiate a conference call, contacting the Department's representative and the claimant. The Department's representative shall have with him or her all witnesses necessary for the Department's case. The claimant shall have with him or her all witnesses necessary to prove his or her case. 3) The Hearing Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing. Or all parties shall call into a central number set up for that purpose.

A videoconference hearing shall be conducted as follows: 1) Hearing Officer contacts claimant to determine the closest Department of Health and Human Resources office with videoconference capabilities. 2) Hearing Officer reserves videoconferencing equipment at all necessary locations. Hearing Officer may be at the same location as the claimant or may be at a separate location. Department's Representative may be at the same location as either the claimant or the Hearing Officer or may be at a third location. 3) The Hearing

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Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing.

#### **730.17 Continuation of a Hearing**

A request for continuance shall only be granted for good cause. In all cases involving a request for good cause, the Hearing Officer shall determine good cause.

#### **730.18 Denial or Dismissal of a Hearing**

- A. Withdrawal – The Hearing Officer may dismiss a request for hearing if the claimant withdraws the request in writing.

If a claimant makes a verbal request of withdrawal to his or her worker, then the worker receiving that request shall confirm the withdrawal request in writing with the claimant. The worker shall send a copy of the withdrawal confirmation to the Hearing Officer and shall place a copy in the claimant's file. The Hearing Officer shall dismiss the hearing. A withdrawal shall not prevent the claimant from reinstating a hearing request, without penalty, within the applicable time limits for hearings (see Section 730.16 above).

- B. Abandonment – The Hearing Officer may dismiss a request for hearing if the claimant fails to appear at a scheduled hearing without good cause. The Hearing Officer shall determine good cause. The Hearing Officer shall send to claimant an Abandonment Letter offering to reschedule the hearing if the claimant establishes good cause for missing the original hearing in writing within ten (10) days of receipt of the Abandonment Letter. Good cause includes, but is not limited to:

- Death in the family
- Personal illness or injury
- Sudden or unexpected emergency

#### **730.19 Hearing**

- A. Attendance at Hearing - The hearing may be attended by the claimant and/or the applicant's or recipient's representative(s), any attorney representing the claimant, any employee(s) of the Department who took the action that was allegedly adverse to the claimant, and/or his or her designee, and an attorney for the Department.

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Due to the confidential nature of the cases, these hearings are not open to the public. The Hearing Officer shall have the authority to determine who may attend the hearing, and under this authority shall recognize the claimant's wishes concerning persons in attendance at his or her request.

- B. Communication with Board of Review - No person may confer or correspond with the Board of Review or any Hearing Officer therein regarding the merits of a hearing unless all parties to the hearing are present.
- C. Witnesses - Either party may have witnesses testify to the issues in controversy. Witnesses may be sequestered upon request by either party or at the discretion of the Hearing Officer.

At the request of the claimant, any employee or consultant of the Department who may have relevant evidence or information regarding the applicant's or recipient's appeal must appear at the hearing prepared to give testimony in the applicant's or recipient's case. The claimant must make this request at least seven (7) days prior to the hearing.

- D. Official Record - All hearings shall be recorded electronically on tapes or other electronic recording media. The Board of Review shall prepare the official record, which shall include reported testimony and exhibits in each contested case as well as all papers, motions and requests, and rulings filed in the case. It shall not be necessary to transcribe the recorded testimony unless required for purposes of judicial review.
- E. Impartiality - All hearings shall be conducted in an impartial manner.
- F. Presentation of the Case - The Department will present its case and then the claimant will present his or her case. The burden of proof is first on the Department to prove, by a preponderance of the evidence, that its adverse action was correct, then shifts to the applicant or recipient to prove, again by a preponderance of the evidence, that the Department's action was incorrect.
- G. Cross Examination - Either party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal evidence.
- H. Admissibility of Evidence - The Hearing Officer shall rule on the admissibility of any evidence presented by either party at a hearing.

In ruling on the admissibility of evidence, the Hearing Officer shall consider:

1. Oral statements of a person made to another (contained in writing or as told by a witness) only when the person making the statement is present at the hearing and available for cross-examination;
  2. All reports resulting from medical examinations without a requirement that a physician be present; and
  3. Evidence presented in written form only when the individual preparing the report is present at the hearing for cross-examination.
- I. Rules of Evidence – Unless otherwise provided in these rules, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The parties shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.
- J. Decision – The Hearing Officer's decision must be based on the facts as they existed at the time of the Department's action or proposed action at issue. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.
- K. The decision must be carried out within ten (10) working days, and the appropriate bureau is to complete Form IG-BR-45 and return to the Hearing Officer to notify him or her of action taken and the amount of any retroactive payments made.

#### **730.20 Time Limits for Final Disposition of a Hearing Request**

Final Administrative action shall be taken within ninety (90) days of the request for a hearing.

**730.21 Appeal of a Hearing Decision**

- A. Circuit Court of Kanawha County, West Virginia – Upon a final decision of a Hearing Officer, the claimant may file, pursuant to West Virginia Code §53-3-2, a Petition for Writ of Certiorari in the Circuit Court of Kanawha County, West Virginia within four (4) months of the date of the final decision. The claimant shall be advised of this right, as well as any applicable time frames within which the petition must be filed, upon receipt of the final decision.
  
- B. United States Department of Health and Human Services – In all cases except Food Stamp cases, if the claimant believes that the Department or the fair hearing process has discriminated against him or her based on race, color, national origin, age, sex or handicap, the claimant may file a complaint with the Secretary of the United States Department of Health and Human Services in Washington, DC.