

Title 76

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~~WEST VIRGINIA~~ PROCEDURAL RULE
WEST VIRGINIA COMMISSION ON AGING
SERIES 1

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1986
ADMINISTRATIVE LAW DIVISION

Title: Hearing and Appeals Procedure

Section 1. General

1.1 Scope - These procedural rules govern regional and state hearings and appeals.

1.2 Authority and Related Code Citations - West Virginia Code 29-14, 29A-5 and 45CFR.

1.3 Filing Date - July 1, 1986

1.4 Effective Date - July 31, 1986

Section 2. Regional Hearing.

2.1 The Governing Board of the Area Agency (AAA) shall provide an opportunity for a hearing to:

A. Any nutrition project specified in Title III of the Older Americans' Act (1) which the Area Agency proposes to defund.

B. Any service provider whose application to provide services under the area plan is denied or whose subgrant or contract is suspended, terminated or not renewed.

2.2 Continuity of Services to:

2.2.1 During the appeal process, any nutrition project specified in I.A. whose contract is suspended or terminated, shall:

2.1.A.

- (1) Continue operating until this appeal process is final and a decision rendered; or
- (2) During unusual circumstances the West Virginia Commission on Aging shall determine alternative contractual arrangements to assure that services continue.

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2.2.2 During the appeal process, a service provider specified in I.B., whose application is not renewed, shall:

- (1) Continue operating until this appeal process is final and a decision rendered; or
- (2) During unusual circumstances the West Virginia Commission on Aging shall determine alternative contractual arrangements to assure that services continue.

2.3 Request for Hearing

2.3.1 If an entity wishes to appeal the decision of the AAA Governing Board, it must file a written request for an informal hearing to the Governing Board within five working days after receipt of the adverse action. A copy of this request shall also be sent to the AAA.

2.3.2 A written request for a hearing shall contain the following information:

- (1) The name, address and telephone number of the complainant.
- (2) A concise statement of the complaint.
- (3) A statement of all relevant facts and the grounds on which the complaint is based.
- (4) The relief being sought.

2.3.3 Within five working days of the request, the Governing Board shall schedule a hearing date. The hearing before the Governing Board shall be completed within 30 days following receipt of the request.

2.3.4 The Governing Board shall notify the complainant, in writing, of the date, time and location of the hearing, allowing for at least 10 working days' notice.

2.3.5 The hearing shall be informal and shall provide for participation by the complainant and the executive committee of the Advisory Council.

2.4 The Decision

2.4.1 Within three (3) working days following the hearing, the Governing Board shall issue a written decision notifying the complainant and the executive committee of the Advisory Council of its decision.

2.4.2 The Decision shall include:

- (1) A statement setting forth the reason(s) for and the evidence on which the decision was based;
- (2) Any instructions necessary to facilitate implementation of the decision; and
- (3) Instructions on how to appeal the decision.

Section 3. State Hearing/Appeal.

3.1 The State Commission on Aging (CoA) shall provide an opportunity for a hearing/appeal to:

3.1.1 The Governing Board of any Area Agency on Aging when the State Agency proposes to:

- (1) Disapprove the area plan or plan amendment submitted by the Governing Board of the Agency as specified in 45 C.F.R. § 1321.39(b); or
- (2) Withdraw the Area Agency's designation as a planning and service area as provided in 45 C.F.R. § 1321.43.

3.1.2 Any applicant for designation as a planning and service area under 45 C.F.R. § 1321.39 whose application is denied.

3.2 The State CoA shall provide an opportunity to appeal the decision of the Regional Governing Board as specified in I (A) (B) to:

3.2.1 Any nutrition project specified in Title III of the Older Americans' Act (1) which the Area Agency proposes to defund.

3.2.2 Any service provider whose application to provide services under an area plan is denied or whose subgrant or contract is suspended, terminated or not renewed.

3.3 Request for Hearing

3.3.1 If an entity wants a hearing/appeal, it must file a written request for a hearing with the State CoA within five working days following the receipt of the notice of adverse action of the Governing Board.

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3.3.2 A written request for a hearing shall contain the following information:

- (1) The name, address and telephone number of the complainant.
- (2) The name, address, and telephone number of the respondent.
- (3) A concise statement of the complaint.
- (4) A statement of all relevant facts and the grounds on which the complaint is based.
- (5) The relief being sought.

3.4 Continuity of Services.

3.4.1 During the hearing process of an Area Agency Governing Board or applicant specified in I. A. and B., the CoA may:

- (1) Perform the responsibilities of the Area Agency; or
- (2) Assign the responsibilities of the Area Agency to another agency in the planning and service area.

3.4.2 During the appeal process of a nutrition project or service provider specified in VI. A. and B., the service shall continue as specified in III. A. or B.

3.5 Scheduling of the Hearing

3.5.1 Upon receipt of a request for hearing, the State agency (CoA) will appoint an impartial Hearing Examiner to conduct the hearing.

3.5.2 The State agency must complete the hearing process within 15 working days of the date the request for hearing was received by the State agency.

3.5.3 The hearing examiner shall notify the complainant and respondent, in writing, of the date, time and location of the hearing, allowing for at least five (5) working days notice to be given to the parties and their representatives.

3.6 Pre-Hearing Discovery

3.6.1 The hearing examiner shall disseminate a copy of the complainant's request for hearing to respondent and all relevant parties to the appeal.

3.6.2 The hearing examiner shall request, from the respondent, written statements in response to complainant's statement.

3.6.3 The hearing examiner shall see that all relevant parties have received written statements from all other relevant parties.

3.7 Conduct of the Hearing

3.7.1 A hearing examiner appointed by the CoA shall preside at the hearing. Technical rules of evidence shall not apply at such hearing.

3.7.2 The purpose of the hearing shall be:

- (1) To give both complainant and respondent an opportunity to appear in person and present testimony, witnesses and documentary evidence relevant to the issue in question.
- (2) To give both complainant and respondent an opportunity to cross-examine the opposing party's witnesses.

3.7.3 The hearing examiner shall have the following responsibilities:

- (1) To assure that all documents and records presented or referred to during the course of the hearing are made part of the record.
- (2) To assure that a stenographic and tape recording be made of all proceedings. The tape shall be retained for a period of one year.

3.8 Order of the Hearing

3.8.1 The hearing examiner shall open with a statement of the following:

- (1) The purpose of the hearing.
- (2) The procedure the hearing will follow.
- (3) The way the decision will be transmitted to the parties.

3.8.2 The hearing examiner shall ask each party to state the issue being contested.

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3.8.3 The complaint or its representative shall present its case through witnesses or documentary evidence. The respondent shall be offered the opportunity to cross-examine.

3.8.4 The respondent or its representative shall present its case through witnesses or documentary evidence. The complaint shall be offered an opportunity to cross-examine.

3.8.5 At any time the hearing examiner may question any witness in order to clarify the witness' testimony.

3.8.6 The hearing examiner shall give each party an opportunity to make a closing statement before terminating the hearing.

3.8.7 The hearing may be adjourned and continued to another date at the discretion of the hearing examiner.

3.8.8 The CoA may terminate formal hearing procedures at any point if the CoA or the agency or organization that requested the hearing negotiated a written agreement that resolves the issues which led to the hearing.

3.9 The Decision

3.9.1 The hearing examiner shall submit an impartial, written recommendation to the West Virginia Commission on Aging, setting forth the reasons for and the evidence on which the recommendation is based. The recommendation shall be submitted within three (3) working days following the conclusion of the hearing.

3.9.2 The CoA shall review the recommendation of the Hearing Examiner and render a decision.

3.9.3 The CoA shall issue the written decision within five (5) working days following the conclusion of the hearing. The decision shall set forth the reasons for the decision and the evidence on which the decision is based, along with any necessary instructions to facilitate the implementation of the decision.

3.9.4 Copies of the decision shall be sent to all parties.

3.10 Final Appeal

3.10.1 The hearing/appeal before the CoA is final and exhausts all administrative remedies, with one exception.

3.10.2 Any applicant for designation in a planning and service area whose application is denied by the CoA may appeal the denial to the United States Commissioner of the Administration on Aging.

3.11 Definitions

3.11.1 West Virginia Commission on Aging (CoA)

The agency created by the Legislature to establish programs and services for the elderly and to implement and administer the Federal Older Americans Act of 1965, as amended. The CoA consists of 15 members. Five of these are "government representatives" and 10 are citizens of the State, or "citizen representatives" appointed by the Governor.

3.11.2 Executive Director

The chief administrative officer appointed by the Commission on Aging.

3.11.3 Area Agency on Aging (AAA)

An agency designated by the CoA to develop and administer the area plan for a comprehensive and coordinated system of services for older persons. The AAA serves as the advocate and focal point for older persons in the planning and service area.

3.11.4 Governing Board

The grantee agency of state and federal funds which directs the policy making and administration of the Area Agency.

3.11.5 Advisory Council

The entity which advises the Area Agency to: develop and administer the area plan; review and comment on community policies, programs and actions which affect older persons.

3.11.6 Adverse Action

An action or decision not to act which directly affects the complainant and with which the complainant disagrees and wishes to appeal.

3.11.7 Service Provider

An entity that is awarded a subgrant or contract from an area agency to provide services under the area plan. (Note: A contract with a profit-making organization requires prior approval from CoA).

3.11.8 Hearing

A proceeding where the relevant facts and applicable law will be addressed and considered.

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3.11.9 Complainant

A party who makes the complaint in a formal action or proceeding.

3.11.10 Respondent

The party against whom the appeal or complaint is brought.

3.11.11 Hearing Examiner

A person designated by the CoA to preside at hearings, take evidence and make factual and legal findings.

3.11.12 Parties

The complainant and respondent.