

1032
1032.05
REV:08/1987

FAIR HEARINGS
AVAILABILITY OF HEARINGS

A hearing is provided to any household aggrieved by any action of the agency which affects the participation of the household in the Food Stamp Program.

At the time of application, each household is informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the agency that it disagrees with an agency action, it is reminded of the right to request a hearing.

The household is also informed of the availability of free legal service through Rhode Island Legal Services. Hearing procedures are published and made available to any interested party.

1032.05.05 Agency Conference
REV:01/2002

The household is informed of the following optional agency provisions for hearing its complaint:

- * A discussion of the disputed issue(s) can be arranged between the household and the agency representative and the appropriate AP or food stamp supervisor.
- * If the household prefers, instead of the supervisory conference or following it, an "Adjustment Conference" may be arranged with either the appropriate Chief Casework Supervisor or the Food Stamp Chief Casework Supervisor. This is an informal hearing in which a household has an opportunity to state its dissatisfaction with the agency action. The agency representative presents the facts upon which the action was based. The chief casework supervisor or food stamp assistant administrator determines whether or not the staff decision was made in accordance with appropriate policy.
- * Since the household has a right to request and receive an unconditional hearing, the household can proceed directly to a formal hearing review of its complaint.

1032.05.10 Consolidated Hearings
REV:08/1987

The agency, at its discretion, may respond to a series of individual requests for hearings by conducting a single group hearing. Only cases where related issues of State and/or Federal law, regulation, or policy are the issues being raised are heard as consolidated hearings. In all group hearings, the policies governing individual hearings are followed. Each individual household is permitted to present its own case or have the case presented by a representative.

1032.05.15 Time Period for Requesting Hearings
REV:08/1987

A household is allowed to request a hearing on any action by the agency or loss of benefits which occurred in the prior ninety (90) days. Action by the agency includes a denial of a request for restoration of any benefits lost more than 90

days but less than a year prior to the request. In addition, at any time within the certification period, a household may request a hearing to dispute its current level of benefits.

1032.10 TIMELY ACTION ON HEARINGS
REV:01/2002

Within sixty (60) days of receipt of a request for a hearing, the appeals officer conducts the hearing, makes a decision, and notifies the household and agency representative of the decision.

A decision which results in an increase in household's benefits is implemented within ten (10) days of the receipt of the hearing decision even if the agency representative must approve a supplemental benefit. Decisions which result in a decrease in household benefits are implemented at the next issuance subsequent to the receipt of the hearing decision.

1032.10.05 Household Request for Postponement
REV:08/1987

The household may request, and is entitled to receive, a postponement of the scheduled hearing. The postponement should not exceed thirty (30) days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a hearing is postponed by the household for ten (10) days, the final action is required within seventy (70) days from the date of the request for the hearing.

1032.15 EXPEDITED HEARINGS
REV:01/2002

The agency expedites hearing requests from households, such as migrant farmworkers, which plan to move from the jurisdiction of the appeals officer before the hearing decision would normally be reached. Hearing requests from these households are processed faster than others, if necessary, to enable them to receive a decision and a restoration of benefits before they leave the area.

Agency Conference

Agency conferences, as discussed in Section 1032.05.05, must be offered to households who wish to contest a denial of expedited service under the procedures in Section 1016.10. Households are advised that use of an agency conference is optional and that it in no way should delay or replace the hearing process.

The agency conference is held with the appropriate Chief Casework Supervisor or the Food Stamp Chief Casework Supervisor and must be attended by the agency representative responsible for the agency action and his/her supervisor.

An agency conference may lead to a resolution of the dispute.

However, a hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

An agency conference for a household contesting a denial of expedited service must be scheduled within two (2) working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

1032.20 SUBMITTAL OF A REQUEST FOR A HEARING
REV:08/1987

The household is requested to submit its appeal to the appropriate office on a

not expired, the household's participation in the Food Stamp Program is continued on the basis authorized immediately prior to the notice of adverse action unless the household specifically waives continuation of benefits. The form for requesting a hearing contains space for the household to indicate whether or not continued benefits are requested. If the household does not positively indicate that it has waived continuation of benefits, the agency representative must assume that continuation of benefits is desired and the benefits are issued accordingly. If the agency action is upheld by the hearing decision, a claim against the household must be established for any overissuance (see Section 1022.)

If a hearing request is not made within the period provided by the notice of adverse action, benefits are reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the agency representative must reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis is reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or policy has been misapplied or misinterpreted.

1032.25.15 Reduction or Termination of Benefits
REV:08/1987

Once continued or reinstated, benefits must not be reduced or terminated prior to the receipt of the official hearing decision except for the following reasons.

* Expiration of Certification

The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the agency representative.

* Issue of Federal Law, Regulation or Policy

The appeals officer makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law, regulation or policy and that the household's claim that the agency improperly computed the benefits or misinterpreted or misapplied such law, regulation or policy is invalid.

* Change in Household Eligibility or Benefit Level

A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action.

* Mass Change

A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

* Notification of Reduction or Termination

The agency representative must promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

1032.25.20 Notification of the Hearing
REV:12/1995

When a completed hearing form is received at Central Office, the Appeals Office

schedules the date, time, and place of the hearing. A hearing is generally held at the E&SS Providence Regional Office but may be held at other regional or district offices, or in an individual's home when circumstances require.

Official notice of the hearing is sent to all parties involved at least ten (10) days before the scheduled hearing date unless the household requests less advance notice to expedite the scheduling of the hearing.

- * The individual is notified by use of a DHS-121B Hearing Appointment form with an attached copy of the completed DHS-121. Also enclosed is a form entitled Information about Hearings for Applicants and Recipients of Financial Assistance, Food Stamps, Medical Assistance, and Social Services (DHS-121A), which explains the purpose of the hearing and the basic procedures followed in conducting it.

If an individual chooses to have legal representation at the hearing, e.g., be represented by an attorney, paralegal, or legal assistant, the representative must file a written Entry of Appearance with the Hearing Office at or before the hearing. The Entry of Appearance acts as a release of confidential information, allowing the legal representative access to the agency case record. (See DHS Manual Section 0102 regarding confidentiality of information.) The Entry of Appearance is also needed for the Hearing Office to confirm the representation for purposes of follow-up, review, requests for continuances, etc.

- * The agency representative whose decision is being appealed receives a copy of the DHS-121B and the completed DHS-121.
- * All participants must be promptly notified if the demands of the agency and/or the convenience of the individual make a postponement or other adjustment in the date, time, and/or place of a hearing necessary.

1032.30 THE APPEALS OFFICER
REV:08/1987

Hearings are conducted by an impartial designee of the Director of DHS. No person who has participated in the issue under review is eligible to serve as appeals officer.

Powers and Duties of the Appeals Officer

The appeals officer has the following powers and duties:

- * The appeals officer administers oaths or affirmations.
- * The appeals officer ensures that all relevant issues are considered.
- * The appeals officer requests, receives and makes part of the record all evidence determined necessary to decide the issue(s) being heard.
- * The appeals officer regulates the conduct and course of the hearing consistent with due process to ensure an orderly hearing.
- * The appeals officer may order, where relevant and useful, an independent medical assessment or professional evaluation

from a source mutually satisfactory to the household and the agency.

- * The appeals officer renders a hearing decision in the name of the agency, in accordance with paragraph IX. which resolves the dispute.

1032.35 CONDUCT OF THE HEARING & HOUSEHOLD'S RIGHTS
REV:12/1995

The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease.

Attendance at the Hearing

The hearing must be attended by a representative of the agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends and relatives of the household if the household so chooses. However, the appeals officer has the authority to limit the number of persons in attendance at the hearing if it is determined that space limitations exist.

Examination of Documents

The household or its representative must be given adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the agency representative to establish the household's ineligibility or eligibility and allotment must be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the agency representative must provide free copies of the relevant portions of the case file. Confidential information which is protected from release and other documents or records which the household does not otherwise have an opportunity to contest or challenge must not be presented at the hearing or affect the appeals officer's decision.

The Household's Other Rights

In addition to its right to examine its case records, the household also has the opportunity to:

- * Examine the Department's past hearing decisions. These are available for inspection at the Hearing Office, 600 New London Avenue, Cranston between the hours of 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 3:00 p.m., Monday through Friday. An index of decisions is available to facilitate this examination;
- * Present the case itself or have it presented by another person (if it is represented by legal counsel, e.g., be represented by an attorney, paralegal, or legal assistant, the legal representative must file an Entry of Appearance at or before the hearing);
- * Bring witnesses;
- * Advance arguments without undue interference;

* Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and,

* Submit evidence to establish all pertinent facts and circumstances in the case.

1032.40 THE HEARING DECISION

REV:08/1987

Decisions of the appeals officer must comply with Federal law, regulations or policy and be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the appeals officer. This record must be retained for three (3) years and be available, for inspection and copying, to the household or its representative at any reasonable time.

Effect and Content of the Hearing Decision

A decision by the appeals officer is binding on the agency and should summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent FSP regulation or policy. The decision becomes a part of the record.

Judicial Review

The household is notified that it has the right to pursue judicial review of an adverse hearing decision.

1032.40.05 Notification of the Hearing Decision

REV:08/1987

The household and the agency representative are notified in writing of:

- * the decision;
- * the reasons for the decision in accordance with Section 1032.40.05.;
- * the available appeal rights; and,
- * that the household's benefits will be issued or terminated as decided by the appeals officer. The notice advises that an appeal request may result in a reversal of the decision.

1032.45 IMPLEMENTATION OF FINAL AGENCY DECISIONS

REV:01/2002

The agency is responsible for ensuring that all final hearing decisions are implemented within the time limits specified in Section 1032.10.

When the appeals officer determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits are provided to the household in accordance with Section 1020.

Benefits to households which are leaving the project area are restored before the departure, whenever possible.

When the appeals officer upholds the agency's action, a claim against the household for any overissuance is prepared in accordance with Section 1022.