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## ADMINISTRATIVE HEARINGS

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### INTRODUCTION

Basic to the administrative process is the right to a fair and adequate hearing in contested cases involving disputes in such matters as subgrants and contracts and other appropriate issues as determined on a case-by-case basis and approved by the Executive Director of the Mississippi Department of Human Services (MDHS). The Mississippi Administrative Procedures Law generally defines a contested case as a proceeding in which the legal rights, duties, or privileges of a party are required by rules, regulations, or statutes to be determined by an agency following opportunity for a hearing, other than disciplinary proceedings and agency actions involving only employees of an agency. Three conditions must be met before a hearing can be held under the jurisdiction of this procedure in a contested case:

1. It must be a matter that can be reviewed as a contested case, or under a federal or state statute, regulation or policy.
2. There must be a final decision signed by the MDHS Executive Director or the appropriate Division Director that specifies the petitioner has 30 days in which to request a contested case hearing.
3. A written request for a review of a contested case must be received in the MDHS Executive Director's Office within 30 days of the subgrantee's receipt of the Executive Director's final decision.

The Subgrantee Administrative Hearing Procedures policy serves as a guide in requesting a review of a contested case. Subgrantees should also refer to the Mississippi Administrative Procedures Law, Section 25-43-1 *et. seq.*, Mississippi Code of 1972, as amended; and/or obtain from the MDHS funding division a copy of the MDHS Administrative Policy 18 (AP-18), "New Procedure for Hearing Contested Cases."

### POLICY

**Notice of an Adverse Act.** Written notice to a subgrantee of an adverse final decision, marked registered or certified mail, must include a closing statement that the subgrantee agency may submit a written request to the MDHS Executive Director for a review of the final decision within 30 days of its receipt of the notice letter. A subgrantee requesting a review of the final decision should indicate the issue in dispute, state its position, explain the reason(s) the subgrantee believes the decision is in error, request a copy of MDHS AP-18, enclose a copy of all correspondence relevant to this decision, and attach a copy of the Department's notice of an adverse decision.

**Petition for Review.** The subgrantee's written request for a review must be submitted to the MDHS Executive Director within 30 days of receipt of the adverse final decision. The request may be in the form of a petition or a letter and should specify the name, address, and telephone number of the petitioner's representative. If the subgrantee fails to cite specific reason(s) it believes the final decision is in error, the Administrative Law Judge assigned to the case by the MDHS Executive Director may order it to file a written statement or show good cause that the reason(s) cannot be stated.

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**Representative for Petitioner.** Any petitioner may appear in person, be represented by an officer, board member, or bona fide employee in its stead, upon presentation of written authority; or be represented at the subgrantee's own expense by a licensed attorney authorized to practice law in the State of Mississippi.

**Respondent's Legal Representative.** As respondent, MDHS shall be represented by a Special Assistant Attorney General who normally provides counsel to the MDHS Executive Director or the affected programmatic division.

**Written Notice of Hearings.** The written notice of the hearing will include a statement of the date, time, and location in Jackson, Mississippi, where the hearing is to be held.

**Preparation of Case File and Written Arguments.** The subgrantee should provide a thorough statement of the facts giving rise to the dispute and develop legal arguments on the issues raised by the facts. Whenever possible, the subgrantee should stipulate, where appropriate, material facts and provide copies of documents that have not been submitted previously. The Administrative Law Judge can dismiss an appeal or proceed to Recommended Decision if a party fails to comply with an order, deadline, or other requirement. Only the Administrative Law Judge may grant an extension of time, based upon a written request submitted prior to the established deadline.

The petitioning subgrantee, within 30 days after requesting a review of adverse action, should submit an original and one working copy to the Administrative Law Judge, with a copy to the respondent, of the following: 1) a chronological case file containing numbered, tabbed, and indexed documents supporting the subgrantee's position, and 2) a written statement of the subgrantee's arguments (petitioner's brief) concerning why the respondent's adverse action is considered in error.

The respondent within 30 days after receiving the petitioner's submission shall present the following to the Administrative Law Judge, with a copy to the petitioner: 1) a tabbed and indexed supplement to the case file that does not duplicate documents submitted by the petitioner, and 2) a written statement (respondent's brief) responding to the petitioner's brief. Within 15 days after receiving the respondent's submission, the petitioner may submit a short reply.

**Authority and Responsibility of the Administrative Law Judge.** The Administrative Law Judge has delegated powers specified in MDHS AP-18, including, but not limited to, the following: to issue orders; to administer oaths; to call, hear and examine witnesses; to take steps necessary for the conduct of an orderly hearing; to rule on requests and motions; to dismiss cases for failure to meet deadlines and other requirements; to close, suspend, or remand a case for further action; to waive or modify procedures with notice to parties; to compile the record of the proceedings and make a Recommended Decision or a Recommended Reconsideration Decision; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures. The Administrative Law Judge shall enjoy absolute immunity from all liability and shall have decisional administrative proceedings.

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**Filing of Documents.** All documents relating to any pending docketed proceeding must be filed with the Office of the Administrative Law Judge. The documents are considered filed only when received. Parties must put the assigned document numbers on all submissions and should use standard, not legal, size paper.

**Informal Disposition.** Informal disposition may be made of any case by written stipulation, agree settlement, consent order, or default.

**Prehearing Procedure.** On the motion of the petitioner, the respondent, or the Administrative Law Judge, the parties may be directed to appear for a prehearing conference for the purpose of formulating issues and such other matters that may aid in the simplification of the proceedings and the disposition of the matters in controversy. The Administrative Law Judge may direct that other certain information be submitted, as specified in MDHS AP-18.

**Conduct of Hearings.** Subject to the Administrative Law Judge's rulings and orders, opportunity must be given to all parties to respond and present evidence and argument on all issues involved and to call witnesses. A recording of each hearing should be made. If a party fails to appear, it may forfeit all rights and be assessed the court reporter fee. The Administrative Law Judge may grant a postponement or continue the hearing for just cause based upon a written, advance request. The parties may conduct cross-examinations. Any motion relating to a pending proceeding, unless made during a hearing, must be in writing and specify the desired relief and the specific reasons and the basis for this relief. Hearings will be ordinarily open to the general public and as informal as reasonably possible. The Administrative Law Judge may request the parties to submit written statements of witnesses prior to the hearing so that the hearing will primarily be concerned with cross-examination and rebuttal. All participants and observers must show proper dignity, courtesy, and respect for the Administrative Law Judge and each other.

**Order of Hearing Proceeding.** The Administrative Law Judge may confer with the parties prior to the hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters. The Administrative Law Judge calls the meeting to order; introduces himself/herself and gives a brief statement of the nature of the proceeding; if applicable, calls upon petitioner's counsel and respondent's counsel to introduce themselves; states what documents the record contains; may administer oaths or affirmations or may ask court reporter to do so; asks the parties whether they wish to have all witnesses excluded from the hearing room except during their testimony; entertains preliminary motions, stipulations, or agreed orders; calls for opening statements by each party; questions witnesses at will, and adjourns the meeting after all evidence has been heard. During testimony, the petitioner and then the respondent questions witnesses, cross examines the other's witnesses, and redirects. The petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.

**Recommended and Final Decisions.** Following hearing adjournment, the Administrative Law Judge will forward both the record and Recommended Decision to the MDHS Executive Director for adoption, modification, or reversal. The Final Decision of the Department will be forwarded to the petitioning party or their representative. The MDHS Executive Director's Office will maintain an appropriate record of that mailing. A party or attorney of record, notified by mailing of a Final Decision, is presumed to have been notified on the date such notice is mailed.