

ALABAMA DEPARTMENT OF HUMAN RESOURCES GENERAL ADMINISTRATION
DIVISION
ADMINISTRATIVE CODE

CHAPTER 660-1-5
HEARINGS

TABLE OF CONTENTS

| | |
|-------------|---|
| 660-1-5-.01 | Definitions |
| 660-1-5-.02 | Hearings |
| 660-1-5-.03 | Hearing Requests |
| 660-1-5-.04 | Acknowledgment Of Hearing Requests |
| 660-1-5-.05 | Denial Or Dismissal Of Hearing Requests |
| 660-1-5-.06 | Withdrawal And Settlement Of Hearing Requests |
| 660-1-5-.07 | Notice Of Hearing |
| 660-1-5-.08 | The Hearing Officer |
| 660-1-5-.09 | Issuance Of Subpoenas |
| 660-1-5-.10 | Final Decision |
| 660-1-5-.11 | Group Hearing |
| 660-1-5-.12 | Combined Hearings |
| 660-1-5-.13 | Failure To Attend Hearing |
| 660-1-5-.14 | Application For Rehearing |
| 660-1-5-.15 | Judicial Review |
| 660-1-5-.16 | Retroactive And Unentitled Benefits Or Services |
| 660-1-5-.17 | Records |
| 660-1-5-.18 | Exceptions |
| 660-1-5-.19 | Teleconference Hearing |
| 660-1-5-.20 | Evidence |
| 660-1-5-.21 | Discovery |
| 660-1-5-.22 | Public Access |

660-1-5-.01 Definitions.

(1) Aggrieved person. An "aggrieved person" as used in these rules includes persons contending one of the following: that their claim for financial assistance, benefits, or services has been denied; or that their application has not been acted upon within the Department's standard of promptness; or that they have been notified that there will be a suspension, reduction, or discontinuance of assistance, benefits, or services; or that they have been aggrieved by a failure to take account of recipient choice in assignment to a program, or a determination that the individual not participate in a service program; or that they are adversely affected by any action or inaction of the Department.

(2) Department. "Department" as used in these rules means, unless specified, the Alabama State Department of Human Resources.

(3) Appeal. "Appeal" as used in these rules denotes a judicial review requested by an appellant of a decision made by the agency or its designee.

(4) Appellant. "Appellant" as used in these rules denotes a person who claims or asserts a demand or right or party who takes an appeal from a hearing to an Alabama circuit court.

(5) Claimant. "Claimant" as used in these rules denotes a person who claims or asserts a right or demand.

(6) Commissioner. "Commissioner" as used in these rules means the Commissioner of the State Department of Human Resources.

(7) Due Process. "Due process" as used in these rules denotes the rights of a person affected by an agency decision to present a complaint at a hearing and to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the questions of the individual's rights in the matter involved without undue delay or hindrance.

(8) Fair Hearing. "Fair hearing" or "hearing" as used in these rules denotes a hearing in which authority is exercised fairly and consistently where the fundamental principles of justice are embraced within the conception of due process of law.

(9) Gender. Words in the masculine gender include the feminine and neuter.

(10) Hearing Authority. "Hearing Authority" as used in these rules means the person or persons entitled to make the final administrative decision for the Department.

(11) Party. "Party" as used in these rules means each person or agency or department named or admitted as a party or properly seeking and entitled as a matter of right to be admitted as a party, or admitted as an intervenor.

(12) Person. "Person" as used in these rules means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency or department.

Author: J. Long

Statutory Authority: Code of Ala. 1975, §§38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective August 12, 1986.

Succedent emergency amendment effective August 12, 1986. Succedent permanent amendment effective December 9, 1986.

660-1-5-.02 Hearings.

(1) General. The Department of Human Resources, hereinafter referred to as the Department, or the State Department or County Department when appropriate, is required to provide notice and opportunity for a hearing to any aggrieved person entitled by law to be given an opportunity for a hearing when the Department's action, intended action, or failure to act would adversely affect the individual's or family's right to assistance, benefits, or services.

(2) Choice of Action. Any aggrieved person requesting a review has a choice of whether such review shall be handled through an informal county conference, an informal review by the State Department, or a hearing. Upon notification that the aggrieved person is dissatisfied with the action taken or not taken, the Department has the responsibility to explain the methods by which the complaint may be handled. The initiation of an informal conference or State review has no effect on the time period for taking an appeal or requesting a hearing. All appeals or requests for hearing must comply with applicable time periods to be considered.

(3) Informal Conference.

(a) County Department Conference. At the request of the aggrieved person or his representative, either before or after the hearing request, an opportunity shall be provided for a county conference with the County Department to discuss the situation, to obtain an explanation of the action, proposed action or action not taken, and to present information to show that the action in question is incorrect. After a hearing has been requested, any informal resolution of the case must be in writing.

(b) State Department Review. At the request of the aggrieved person or his representative, either before or after a hearing request, an opportunity shall be provided for an informal review by the State Department. After the case record is reviewed, the State Department will notify the aggrieved person or his representative and the County Department of the results of the review. After a hearing has been requested, any informal resolution of a case must be in writing.

(4) Hearing. An aggrieved person or his representative may still choose to request a hearing although a conference is held or his case is either reviewed by the County or State Department. The initiation of an informal conference or state review has no effect

on the time period for taking an appeal or requesting a hearing. All appeals or requests for hearing must comply with applicable time periods to be considered.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.03 Hearing Requests.

A request for a hearing may be made by an aggrieved person or his representative or legal counsel. A hearing request is any clear written statement to the State Department or County Department that the aggrieved person wants the opportunity to present the case to a higher authority. An oral hearing request may be made in the Food Stamp program. The request for a hearing must be postmarked within 60 days (15 days for the Individual Family Grant program) following the action (or inaction) with which the aggrieved person is dissatisfied. In the absence of a legible postmark, the State or County Department will assume the request was mailed three days prior to its receipt. If the aggrieved person or his representative presents a written statement to the State or County Department, the date the statement is presented will be considered the filing date. (A request for a state-level administrative disqualification hearing in the Food Stamp program must be made within 15 days of the mailing of the county-level administrative disqualification decision.)

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.04 Acknowledgment Of Hearing Requests.

After receiving notice of the request for a hearing, the hearing officer will notify the aggrieved person or his representative whether or not the request is accepted and, if not, why. If accepted, the aggrieved person will be mailed the following information:

- (a) The hearing procedure;

- (b) The aggrieved person's right to present the case or be represented by legal counsel or any other person;
- (c) The aggrieved person's right to present written evidence and oral testimony and to bring to the hearing members of his family, and other persons to serve as witnesses;
- (d) The aggrieved person's and his representative's right to review in the County Department, at reasonable times prior to or during the hearing, the case file and written material which will be placed on exhibit or in evidence by the Department at the hearing;
- (e) The fact that the hearing will be held at a convenient location and that he will be notified in advance of the time, date, and place of the hearing; and
- (f) The right to request issuance of subpoenas to witnesses and the fact that the request must be received no later than 10 days prior to the hearing.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.05 Denial Or Dismissal Of Hearing Requests.

The hearing officer shall issue a final decision denying or dismissing a hearing request in writing with or without a hearing in the following situations:

- (a) If the request is not filed within the applicable time period;
- (b) If the request has been withdrawn;
- (c) If an aggrieved person, after proper proof of service, without good cause, fails to appear at the hearing;
- (d) If a person applies for a service which is not in the Title XX Plan or provided by the Department;
- (e) If a person is not entitled by law to be given an opportunity for a hearing, or fails to prosecute the hearing;
- (f) When protective or child support services are provided as required by law or by court order;

(g) When the issue involves a collateral challenge to the validity or provisions of a judicial or non-department administrative order, including issues relating to custody or support of children;

(h) If the request is submitted by or on behalf of a provider of foster care for adults or children, an adult day care provider, or potential provider of such services;

(i) When benefits or services are reduced or terminated to a class of recipients due to changes in state or federal laws or regulations or the Title XX State Plan or changes in funding; or

(j) Where the issue is moot or where the Department has cancelled the adverse action against the person requesting the hearing, or where the Department has not taken adverse action against the person requesting the hearing or where the statute of limitations applies to bar the claim;

(k) In addition to the above, requests for hearings with regard to dispositions in child abuse or neglect investigations or adult abuse, neglect, or exploitation investigations shall be denied or dismissed where the applicable two-year statute of limitations has run on the disposition. For purposes of determining the starting date of the statute of limitations, there must have been contact between personnel investigating the report and the alleged perpetrator.

Author: James E. Long

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succedent permanent amendment effective February 4, 1986. Succedent permanent amendment effective June 10, 1986. Succedent permanent amendment effective August 12, 1986. Succedent permanent amendment effective June 17, 1987. Succedent permanent amendment effective December 9, 1987. Succedent permanent amendment effective December 7, 1990. Succedent permanent amendment effective July 9, 1992. **Amended:** Filed August 5, 1997; September 9, 1997. Succedent emergency amendment effective September 19, 1997. **Amended:** Filed November 5, 1997; effective December 10, 1997.

660-1-5-.06

Withdrawal And Settlement Of Hearing Requests.

(1) Withdrawal. A hearing may not be cancelled without the written consent of the aggrieved person or his representative. The letter of withdrawal may be presented or mailed to either the County or

State Department. A verbal statement withdrawing a hearing request will be accepted if the aggrieved person refuses to write a letter of withdrawal. The request for a hearing will be considered to be withdrawn as of the postmark date on the letter, the date the aggrieved person or his representative presents the withdrawal statement to the County or State Department, or the date the aggrieved person states his wishes to withdraw his request for a hearing. Under programs administered by the Family Assistance Division, for example, the Food Stamp Program and Programs funded by Title IV-A, oral withdrawals of hearing requests are allowed if confirmed in writing by the Department.

(2) Settlement. A hearing request may be resolved by stipulation, settlement, consent default, or other agreement in writing. The agreement must be filed with the hearing officer and made a part of the hearing record.

Author: James E. Long

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27; Public Law 104-193 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. **Amended:** Filed January 3, 1997; effective February 7, 1997.

660-1-5-.07 Notice Of Hearing.

(1) Content of Notice. The notice of the hearing must include:

- (a) Date, time, place, and nature of the hearing;
- (b) Statement of legal authority and jurisdiction;
- (c) Reference to particular sections of the statutes and rules involved; and
- (d) A short, plain statement of the matters asserted or issues involved.

(2) Service of Notice. Service of notice of hearing may be:

- (a) By certified mail, return receipt requested;
- (b) By any sheriff, constable, or other officer authorized to make service of process in civil court proceedings in this state; or
- (c) By any employee, agent, or representative of the County or State Department of Human Resources; or

(d) By mailing by first-class mail, postage prepaid, to the person to be served together with an acknowledgment of service form on a postcard, or in letter form with a return envelope, postage prepaid, addressed to the sender; or

(e) By mailing by first-class mail, postage prepaid.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.08 The Hearing Officer.

(a) The hearing officer is an employee, panel of employees or designee, including a designee by contract or agreement, of the State Department of Human Resources. The hearing officer cannot conduct a hearing of any case in which he/she has taken part or assisted in the Department's action. The hearing officer exercises full control over the conduct of the hearing. The hearing officer is the hearing authority entitled to make the final administrative decision for the Department.

(b) The duties of the hearing officer include, but are not limited to, the following:

1. To direct the hearing;
2. To explain the conduct of the hearing;
3. To hear testimony;
4. To administer oaths and to examine witnesses and otherwise receive evidence having a bearing on the point or points at issue. In examining witnesses and in the general conduct of the hearing, the hearing officer must maintain an attitude of impartiality. The only objective in examining witnesses shall be to attempt to arrive at the truth concerning the issues involved;
5. To order, where relevant, necessary, and useful, an independent medical assessment or professional evaluation, at agency expense. In the Food Stamp program, the Department and the aggrieved person must agree as to the source of the assessment or evaluation;
6. To decide on the admissibility of evidence;
7. To decide on the kind of record to be made of the hearing;

8. To render a final decision;
9. To sign and issue subpoenas to witnesses or for the production of papers and writings;
10. To grant or deny and set time and place for continuances, postponements or further submissions of evidence, arguments or briefs;
11. To grant or deny petitions or motions to amend, intervene or apply for rehearing; and
12. To reprimand, exclude, or limit the presence of witnesses or other persons at the hearing because of improper conduct, space limitations or a sequestrian request by a party or on his own motion.
13. To issue discovery orders related to relevant matters as provided by these rules and protective orders in accordance with the Rules of Civil Procedure.

Author: James E. Long

Statutory Authority: Code of Ala. 1975, §§38-2-1 through -13, 38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Permanent amendment effective August 12, 1986. Succedent emergency amendment effective August 12, 1986. Succedent emergency amendment effective September 24, 1986. Succedent permanent amendment effective December 9, 1986. Succedent permanent amendment effective June 17, 1987. **Amended:** Filed February 5, 1996; effective March 11, 1996.

660-1-5-.09 Issuance Of Subpoenas.

The County or State Department, an aggrieved person, or their representatives, shall have the right to request the issuance of subpoenas to witnesses and compel their attendance and the production of papers and writings. The request for a subpoena may be made orally, must be confirmed in writing and must be accompanied by the name and address of the person to be subpoenaed. The request for a subpoena must be received no later than 10 days prior to the date of the hearing. The request must be sent to the hearing officer who shall issue the subpoena. The subpoena may be served by any of the means specified in Rule 660-1-5-.07(2) for service of the notice of hearing. A reasonable charge may be made for the processing and service of subpoenas. The Commissioner or the hearing officer may issue subpoenas.

Author:

Statutory Authority: Code of Ala. 1975, §§38-2-1 through -13, 38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective August 12, 1986. Succeedent emergency amendment effective August 12, 1986. Succeedent permanent amendment effective December 9, 1986.

660-1-5-.10 Final Decision.

The final administrative action on a hearing request shall be made within 90 days in the Aid to Families with Dependent Children program (60 days for the Food Stamp program and 45 days for the Individual and Family Grant program) of the effective date of the request and within 30 days of the hearing date unless waived by the aggrieved person and the County Department or their representatives. In all hearings, final administrative action shall be made within 30 days after the hearing is concluded, or authorized written or oral material has been received if there is no hearing; provided, however, that the 30-day period may be waived or extended with the consent of all parties or as otherwise authorized by applicable law. The final decision shall be in writing signed by the hearing officer, made a part of the hearing record, and contain findings of facts and conclusions of law separately stated. The hearing officer is the hearing authority entitled to make the final administrative decision for the Department. The hearing decision shall be served by certified mail, return receipt requested, unless waived by the aggrieved person, County Department, or their representatives. The decision is final and binding upon the aggrieved person and the Department. The Department shall take immediate steps to see that any necessary action is taken.

Author:

Statutory Authority: Code of Ala. 1975, §§38-2-1 through -13, 38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective August 12, 1986. Succeedent emergency amendment effective August 12, 1986. Succeedent emergency amendment effective September 24, 1986. Succeedent permanent amendment effective December 9, 1986. Succeedent permanent amendment effective June 17, 1987. **Amended:** Filed May 5, 1993; effective June 9, 1993.

660-1-5-.11 Group Hearing.

A group hearing for two or more aggrieved persons may be held when the factual issues involved arise out of the same or related circumstances or the cases share common legal issues. Each

aggrieved person shall be permitted to present his case or to have his case presented by his representative. The hearing officer will limit the number of cases to be heard in a single group hearing to insure an orderly process and to provide adequate opportunity for each case to be heard. All policies governing individual hearings will apply. Each aggrieved person will be given an individual decision in writing. The hearing officer may, in his discretion, grant a request by an aggrieved person, or his representative, for an individual hearing rather than participate in a group hearing.

Author: James Long

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. **Amended:** Filed November 18, 1998; effective December 23, 1998.

660-1-5-.12 Combined Hearings.

The hearing officer may combine two or more hearings or a fair hearing and a state-level administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances, or the cases share common legal issues and the aggrieved person receives prior notice that the hearings will be combined.

Author: James Long

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. **Amended:** Filed November 18, 1998; effective December 23, 1998.

660-1-5-.13 Failure To Attend Hearing.

(1) If the aggrieved person, the County Department, or their representatives fail to appear at the hearing after proper notice, the hearing officer may, if no adjournment or postponement is granted, proceed with the hearing and make a final decision in the absence of such parties. The hearing officer may also dismiss a hearing request for failure to appear without good cause. If the hearing officer proceeds with the hearing, the party failing to appear may apply for a rehearing based upon good cause within 15 days of an adverse decision. The procedures of Rule 660-1-5-.14 shall be followed in applications for rehearing based upon good cause.

(2) Adjournment, continuance or postponement, rescheduling or reopening of the hearing may be granted by the hearing officer for good cause including, but not limited to, death in the family, serious personal injury or illness, and sudden and unexpected emergencies.

Author:

Statutory Authority: Code of Ala. 1975, §§38-2-1 through -13, 38-4-5 through -6, 41-22-1 through -27.

History: Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective August 12, 1986. Succeedent emergency amendment effective August 12, 1986. Succeedent permanent amendment effective December 9, 1986. Succeedent permanent amendment effective June 17, 1987.

660-1-5-.14 Application For Rehearing.

(1) An aggrieved person, the County Department, or their representatives may file an application for a rehearing within 15 days of the final decision. The application shall specify in detail the grounds for the relief sought and authorities in support thereof. The filing of such an application shall not extend, modify, suspend or delay the effective date of the decision unless or until said decision shall be superseded, modified, or set aside in a manner provided by law. Copies are to be served on all parties who may file replies thereto within 10 days. Service may be made by any of the means specified in Rule 660-1-5-.07 for service of the notice of hearing.

(2) The application for rehearing may be granted only if the final decision is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the Department;

(c) In violation of a rule of the Department;

(d) Made upon unlawful procedure;

(e) Affected by other error of law;

(f) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(g) Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(3) Within 30 days after the filing of an application, the hearing officer may in his/her discretion enter a decision:

- (a) Setting a hearing on the application;
- (b) On the application without a hearing; or
- (c) Granting or denying the application.

(4) If no decision is entered within 30 days after the filing of the application, the application shall be deemed denied.

Author: Bill Prendergast

Statutory Authority: Code of Ala. 1975, §§38-2-1 through -13, 38-4-5 through -6, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective August 12, 1986. Succeedent emergency amendment effective August 12, 1986. Succeedent permanent amendment effective December 9, 1986. Succeedent permanent amendment effective June 17, 1987. **Amended:** Filed March 7, 1997; effective April 11, 1997. **Amended:** Filed May 5, 1999; effective June 9, 1999.

660-1-5-.15 Judicial Review.

An aggrieved person still dissatisfied after the final decision shall be entitled to file a notice of appeal and a cost bond of the decision with the State or County Department. The notice and cost bond must be received within 30 days after the receipt of the final decision or within 30 days after receipt of the decision on a request for rehearing. A petition for review must be filed with the appropriate circuit court within 30 days of the filing of the notice of appeal. The notice of appeal and petition for review must comply with all statutory requirements. The filing of the notice of appeal or petition for review will not delay enforcement of the final decision unless a court of competent jurisdiction shall enter an order to the contrary.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984. Succeedent permanent amendment effective June 9, 1988.

660-1-5-.16 Retroactive And Unentitled Benefits Or Services.

(1) Retroactive Benefits or Services. If the hearing decision states that benefits or services have been improperly withheld, reduced, denied, or terminated by incorrect action, the Department

will take appropriate corrective or compensatory action as soon as possible.

(2) Unentitled Benefits or Services. If benefits or services are continued without reduction because the aggrieved person requests a hearing prior to the effective date of the action, proposed or taken, and the action is sustained by a hearing decision or the aggrieved person withdraws his request for a hearing, the aggrieved person is responsible for the repayment of unentitled benefits or services received during the hearing period. The Department will take appropriate corrective or compensatory action as soon as possible.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.17 Records.

(1) The Hearing Record. The hearing record includes: all pleadings, motions and intermediate rulings; all evidence received or considered; a statement of all matters officially noticed; all questions and offer of proof; all objections and rulings thereon; all proposed findings and exceptions; any decision, opinion, or report by the hearing officer; any staff memoranda or data submitted; and any stenographic notes, reporter or machine recording of the oral proceedings or transcription thereof.

(2) Inspection. The hearing record shall be made available to the aggrieved person or his representative at reasonable times for copying and inspection. A reasonable charge may be made for copying, transcription and other services provided.

(3) Retention. The hearing record shall be maintained by the Department for at least five (5) years.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.18 Exceptions.

The general hearing rules contained in this chapter may not be applicable to all hearings conducted by the Department. Chapters contained in the Administrative Code of the Department relating to specific program areas may make modifications or exceptions to the rules contained in this chapter. If inconsistent, rules contained in specific program areas and the requirements of State or federal laws and regulations supersede this chapter.

(a) Food Stamp Program. The procedures contained in this chapter apply to Food Stamp fair hearings and state-level administrative disqualification hearings. The procedures contained in this chapter do not apply to county-level administrative disqualification hearings.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Emergency adoption effective October 1, 1983. Emergency adoption of October 1, 1983 superseded by Emergency adoption effective October 24, 1983. Permanent adoption effective February 21, 1984.

660-1-5-.19 Teleconference Hearing.

A teleconference hearing is a hearing conducted by the hearing officer over the telephone. A teleconference hearing may be conducted only with the consent and agreement of all parties, or their representatives, and the hearing officer. Any party or the hearing officer may request consent or agreement to conduct a teleconference hearing. All parties shall be notified at least ten (10) days in advance of the time and date scheduled for a teleconference hearing. The notice may be made a part of or sent separately from the notice of hearing and may be served by any of the methods specified in Rule 660-1-5-.07(2).

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -27.

History: Effective February 21, 1984.

660-1-5-.20 Evidence.

1. The rules of evidence as followed by the circuit courts of the State are applicable to the hearing, but strict adherence is not required. Evidence, including hearsay evidence, will be received at the discretion of the hearing officer if it is a type commonly

relied upon by reasonably prudent persons in the conduct of their affairs. Relevant and material evidence, including hearsay evidence, visual drawings, and testimony about the use of anatomically correct dolls, is admissible at the hearing.

2. All witnesses may testify at the hearing without prior qualification.
3. The hearing officer shall determine the weight and credibility to be given to the testimony of all witnesses.
4. Videotaped, deposition, or other recorded testimony of a witness may be allowed.
5. Leading questions may be allowed of a witness.
6. Testimony and evidence admissible under the following statutes are also admissible in hearings: Code of Ala. 1975, §§12-15-310, 15-25-1 through -6, and 15-25-30 through -40.
7. The standard of proof for all Department hearings is preponderance of the evidence, unless otherwise provided by law or Department rule.

Author: James Long

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -17.

History: Emergency adoption effective August 21, 1991. Succeedent permanent adoption effective November 12, 1991. **Amended:** Filed October 5, 1999; effective November 9, 1999. **Amended:** Filed February 14, 2012; effective March 20, 2012.

660-1-5-.21 Discovery.

The rules of discovery as followed by the courts of this State do not apply to the hearing. The aggrieved person has the following rights of access to information after a written request:

(a) To be provided a short and plain written statement of the matters asserted which will be presented at the hearing. The request must be received by the Department at least five (5) working days prior to the date set for the hearing to be timely. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

(b) To review and copy at cost any written or recorded statement made by the aggrieved person to Department personnel regarding the matter at issue in the hearing. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

(c) To review and copy at cost, before or during the hearing, the written material and other evidence in possession of the Department which will be placed into evidence at the hearing. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

(d) To an in camera (i.e., private) inspection by the hearing officer or an order issued to the Department by the hearing officer to review relevant Department record(s) to determine if there is any material exculpatory evidence (i.e., evidence tending to clear, support, or exonerate) in those records not available to the person through other sources which must be released as necessary to the constitutional fairness of the hearing. Such a request must be received by the hearing officer at least five (5) working days prior to the date set for the hearing to be timely. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

(e) To review and copy at cost all non-confidential Department documents. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

(f) To review and copy at cost all documents in the official hearing file maintained by the hearing officer. The granting of a recess during the hearing while materials are reviewed or copied is at the discretion of the hearing officer.

Author:

Statutory Authority: Code of Ala. 1975, §§38-4-5, 41-22-1 through -17.

History: Emergency adoption effective August 21, 1991. Succeedent permanent adoption effective November 12, 1991.

660-1-5-.22 Public Access.

Department hearings involve confidential matters and are not open to the public. However, the hearing officer may allow an attorney representing a witness as well as certain other interested persons (i.e., persons with an administrative, regulatory, or law-enforcement interest) to be present as non-participants with the consent of the Department and the aggrieved person.

Author:

Statutory Authority: Code of Ala. 1975, §§26-14-8, 38-2-6(8), 38-4-5, 38-7-13, 38-9-6, 41-22-1 through -17.

History: Emergency adoption effective August 21, 1991. Succeedent permanent adoption effective November 12, 1991.