



Title 18: Mississippi Department of Human Services

Part 23: Division of Administrative Hearings

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

200 SOUTH LAMAR STREET

JACKSON, MISSISSIPPI 39201

Telephone: (601) 359-4500

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Title 18: Human Services

Part 23: Division of Administration Hearings

Chapter 1: Overview

Rule 1.1 Purpose.

The purpose of these rules is to establish the procedures and guidelines the Mississippi Department of Human Services (“Agency”) will follow in order to effectively conduct administrative hearings and appeals pursuant to State and Federal law.

Rule 1.2 Authority.

The Agency has established an independent unit called the Division of Administrative Hearings within the Office of the Inspector General which shall be responsible for scheduling, conducting, and deciding administrative hearings as mandated by Agency policy and State and Federal law.

Rule 1.3 Non-Discrimination.

The Division of Administrative Hearings complies with all Federal and State regulations which prohibit discrimination on the basis of race, color, age, sex, gender identification, national origin, religious creed, disability, political beliefs or reprisal or retaliation for prior civil rights activity as defined through the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. All complaints of discrimination will be investigated in accordance with Federal and State laws and regulations.

Source: 45 C.F.R. § 80; 45 C.F.R. § 84; 45 C.F.R. § 85; 45 C.F.R. § 90; 45 C.F.R. § 91.

Rule 1.4 Contact Information.

Address: Mississippi Department of Human Services
Office of the Inspector General
Administrative Hearings
200 South Lamar Street
P.O. Box 352
Jackson, MS 39201

Phone: 601-359-4921
Fax: 601-359-5047
Email: Admin.Hearings@mdhs.ms.gov

Chapter 2: Definitions

Abandoned: A hearing is abandoned when the initiating party fails to appear or attend the

proceeding. Abandonment results in a hearing being vacated and may serve as a procedural bar to future appeals.

Adverse Action: An action taken by the Agency contrary to the interest of an Agency program applicant, participant, or administrator in participating in or administering Agency programs.

Appellant: An Agency program applicant, participant, or administrator who disagrees with an adverse action taken by the Agency and requests a Programmatic Quality Control Review Administrative Agency Appeal.

Burden of Proof: In a legal proceeding, one party has the responsibility of showing that they are correct, while the other party had no such responsibility and is presumed to be correct. The party carrying the burden of proof or the weight of the burden may differ depending on the nature of the proceeding.

Client: Agency program participants who receive a benefit or service from the Agency.

Entry of Appearance: A legal document stating that an attorney represents a party in a legal matter. An Entry of Appearance is required for attorneys seeking to represent a party in an Agency proceeding.

Ex Parte Communication: An improper oral or written communication to a Hearing Officer that is not on the record and is made without the knowledge of other parties.

Good Cause: A legally sufficient reason for a ruling or action by a Hearing Officer. Good cause is the burden placed on a party by a Hearing Officer to establish why a request should be granted or an action excused.

Hearing Officer: An impartial decisionmaker who oversees the administration of a hearing. The Hearing Officer may render a decision in the matter.

Informal Disposition: A manner of resolving an Agency proceeding without relying on the normal processes of a hearing and a decision.

Intentional Program Violation: An intentional violation of Agency program rules and requirements that may result in penalties for the violating Client.

Motion: A request made to the Hearing Officer asking for a desired ruling or order.

Organized Response: A Subgrantee's evidentiary submissions that must be submitted alongside its written request for an appeal. A Subgrantee shall not be allowed to submit additional evidence beyond its Organized Response.

Pre-Hearing Conference: A pre-hearing proceeding administered by a Hearing Officer to prepare the parties for the administration of the hearing.

Pre-Hearing Statement: A statement submitted on behalf of a party to identify and clarify the

factual and legal issues in advance of a hearing.

Programmatic Administrative Disqualification Action: An action initiated by the Agency whenever documented evidence exists that a Client has intentionally violated Agency program rules and requirements.

Programmatic Quality Control Review Administrative Agency Appeal: An administrative appeal heard by a Hearing Officer when an Appellant appeals an adverse action.

Questioned Cost: Funds questioned by an Agency, State, Federal, or other authorized auditor that are expended by the Subgrantee and are not in compliance with the terms and conditions of the Subgrant/Agreement or with any other compliance or Federal requirements.

Subgrant Administrative Agency Appeal: An administrative appeal where a Subgrantee can contest demands for repayment issued by the Agency.

Subgrant Administrative Hearing: The first stage of a Subgrant Administrative Agency Appeal, which occurs upon a Subgrantee's timely submission of a written request and an Organized Response. A Subgrant Administrative Hearing is a hearing during which a Subgrantee presents evidence and testimony to a Hearing Officer.

Subgrant Administrative Hearing Officer: An impartial decisionmaker assigned by the Agency to conduct the Subgrant Administrative Hearing and render a decision, if necessary.

Subgrant Administrative Hearing Review: The second and final stage of Subgrant Administrative Agency Appeal, which occurs upon the Subgrantee's timely written request. A Subgrant Administrative Hearing Review is a review of a Subgrant Administrative Hearing case record by the Subgrant Administrative Hearing Review Officer.

Subgrant Administrative Hearing Review Officer: An impartial decisionmaker assigned by the Agency to review the Subgrant Administrative Hearing case record and either adopt, modify, or overturn the Subgrant Administrative Hearing Officer's decision. The Subgrant Administrative Hearing Review Officer shall be a person different than the Subgrant Administrative Hearing Officer.

Subgrant/Agreement: An award provided through a contractual arrangement by the Agency to a Subgrantee to carry out part of a Federal award received by the Agency. It does not include payments to a contractor or payments to an individual or entity that is a beneficiary of a Federal program.

Subgrantee: A recipient of an Agency subgrant. Subgrantees are subject to specific responsibilities in exchange for funding. A Subgrantee may face adverse actions or penalties resulting from said Subgrantee's failure to meet requirements established by a Subgrant.

Waiver: A document signed by a Client waiving their right to participate in a Programmatic Administrative Disqualification Action.

Withdrawn: An action taken by the initiating party to recall or retract a request for a hearing.

Chapter 3: The Hearing Officer

Rule 3.1 Assignment of the Hearing Officer.

For all matters heard before the Division of Administrative Hearings, the Division shall assign a Hearing Officer. The Hearing Officer shall be an impartial decisionmaker who oversees the administration of the matter. Hearing Officers shall be assigned for the following matters:

1. Programmatic Administrative Disqualification Actions, discussed in Chapter 5.
2. Programmatic Quality Control Review Administrative Agency Appeals, discussed in Chapter 6.
3. Subgrant Administrative Agency Appeals, discussed in Chapter 7.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 CFR 273.15(m)(1); 7 C.F.R. § 273.16(e)(2).

Rule 3.2 Authority of the Hearing Officer.

The Hearing Officer shall have delegated powers including, but not limited to, the following:

1. To issue orders;
2. To administer oaths;
3. To call, hear, and examine witnesses;
4. To take steps necessary to conduct an orderly hearing;
5. To rule on requests and motions;
6. To dismiss cases for failure to meet deadlines and other requirements;
7. To vacate or stay a case for further action;
8. To waive or modify procedures with advance notice to parties;
9. To compile the record of the proceedings;
10. To render a decision; and,
11. To take any other actions necessary for the administration of the hearing.

The Hearing Officer shall not be required to follow the Mississippi Rules of Evidence.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(m); 7 C.F.R. § 273.15(n); 7 C.F.R. § 273.16(e)(2).

Rule 3.3 Responsibilities of the Hearing Officer.

The Hearing Officer carries the following responsibilities:

1. Adhering to the timelines imposed by Agency policy and State and Federal law;
2. Establishing the time, place, and nature of the hearing and providing reasonable notice of such to the parties;

3. Ordering and administering all pre-hearing procedures;
4. Establishing the hearing procedure to be used;
5. Managing the record and the case file; and,
6. Rendering a timely decision.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 CFR 273.15(m); 7 C.F.R. § 273.16(e).

Rule 3.4 The Hearing Officer's Conduct of a Hearing.

The Hearing Officer shall conduct a hearing by doing the following:

1. The Hearing Officer shall initiate a hearing and open the hearing record;
2. The Hearing Officer shall introduce themselves and describe the objective and structure of the hearing, including the order of the hearing and the manner of introducing evidence at the hearing;
3. The Hearing Officer shall introduce each party and all present individuals;
4. The Hearing Officer shall direct the parties in accordance with the structure of the hearing;
5. The Hearing Officer shall question the parties and any witnesses at will and shall ensure that all relevant issues have been considered;
6. The Hearing Officer shall adjourn the hearing once all argument and evidence have been presented; and,
7. If necessary, the Hearing Officer shall timely render a decision after the conclusion of the hearing.

Each party, witness, attorney, representative, or any other person shall show proper dignity, courtesy, and respect for the Hearing Officer and other participants. The Hearing Officer shall be empowered to maintain proper decorum and conduct. Remedial actions may include removing an offending participant or continuing the hearing to a later date.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(m); 7 C.F.R. 273.15(n); 7 C.F.R. 273.15(o); 7 C.F.R. 273.15(p); 7 C.F.R. § 273.15(q); 7 C.F.R. § 273.16(e)(2); 7 C.F.R. § 273.16(e)(4).

Rule 3.5 Ex Parte Communications.

No party or other person directly or indirectly involved in an Agency proceeding shall submit, to the Hearing Officer, any evidence, argument, inquiry, or advice, whether written or oral, unless such submission is made part of the record in the presence of all parties.

Ex parte communications do not include submissions concerning strictly procedural matters or Agency materials which the Hearing Officer reviews in preparation for a hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(m)(2); 7 C.F.R. § 273.16(e)(2)(ii)

Rule 3.6 Submissions to the Hearing Officer.

Any submissions to the Division of Administrative Hearings shall be sent via email to admin.hearings@mdhs.ms.gov unless otherwise directed by these rules, the Hearing Officer, or Agency policy and State and Federal law.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(p)(6); 7 C.F.R. § 273.16(e)(2)(ii).

Chapter 4: Pre-Hearing Matters

Rule 4.1 Entry of Appearance for Attorneys.

A party may be represented by an attorney in any proceeding to be heard by the Division of Administrative Hearings. If a party is to be represented by an attorney, said legal counsel must file a signed entry of appearance with the Division that contains the attorney's name, Mississippi Bar license, address, and telephone number.

Attorneys of record may withdraw representation upon the order of the Hearing Officer.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(f); 7 C.F.R. § 273.15(p)(2); 7 C.F.R. § 273.16(e)(2)(ii).

Rule 4.2 Motions.

A party requesting a ruling or order from the Hearing Officer shall submit a motion. All motions shall state the factual and legal grounds supporting the motion and the requested action.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(e); 7 C.F.R. § 273.15(j); 7 C.F.R. § 273.15(l); 7 C.F.R. § 273.16(e)(1); 7 C.F.R. § 273.16(e)(4); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.3 Time Limits for Motions.

Unless otherwise directed by the Hearing Officer or Agency policy and State and Federal law, written motions shall be submitted to the Hearing Officer at least ten (10) calendar days before a hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 18 Miss. Admin. Code Pt. 13, Ch. 13; 2 C.F.R. § 200.342; 7 C.F.R. 273.15(c)(4); 7 C.F.R. § 273.16(e)(1); 7 C.F.R. § 273.16(e)(2)(iv); 7 C.F.R. § 273.16(e)(4); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.4 Response to Motions.

A party shall submit a response objecting or responding to a motion within five (5) calendar days of receipt of a motion, or as otherwise directed by the Hearing Officer.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(e); 7 C.F.R. § 273.15(j); 7 C.F.R. § 273.15(l); 7 C.F.R. § 273.16(e)(1); 7 C.F.R. § 273.16(e)(4); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.5 Rulings on Motions.

Rulings on motions, other than those made during a prehearing conference or a hearing, shall be in writing and submitted to all parties.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(e); 7 C.F.R. § 273.15(j); 7 C.F.R. § 273.15(l); 7 C.F.R. § 273.16(e)(1); 7 C.F.R. § 273.16(e)(4); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.6 Consolidation or Severance of Matters.

A Hearing Officer may consolidate pending matters if they involve substantially similar factual or legal issues or all parties are the same. The Hearing Officer may consolidate or sever matters on their own action or upon granting a timely motion by a party. If different Hearing Officers are assigned to the matters pending consolidation, the motion shall be submitted to the Hearing Officer assigned to the matter with the earliest scheduled hearing date. The appropriate Hearing Officer shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conferences or consolidated hearings.

The Hearing Officer may sever consolidated matters to further administrative convenience or to avoid undue prejudice. The Hearing Officer may sever consolidated matters upon their own action or upon granting a timely motion by a party.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(e); 7 C.F.R. § 273.16(e)(1).

Rule 4.7 Continuing, Expediting, or Reconvening a Hearing.

A Hearing Officer may continue, expedite, or reconvene a hearing. The Hearing Officer may continue, expedite, or reconvene a hearing upon their own action or upon granting a timely motion by a party. For all non-Agency parties, the Hearing Officer shall only grant one (1) motion for a continuance. All additional motions for continuances made by non-Agency parties shall be denied. When ruling on a motion for a continuance or expedition, the Hearing Officer shall consider factors such as, but not limited to, the following:

1. The time remaining between the submission of the motion and the hearing date;
2. The position of other parties;
3. The reasons for expediting the hearing or the unavailability of the moving party on the date of the scheduled hearing;
4. Whether testimony can be taken telephonically; and,

5. The status of settlement negotiations, if permissible.

The Hearing Officer may recess a hearing and reconvene at a future date by a verbal ruling. If a hearing is continued, the time frames for rendering decisions described in *Rule 5.7 Programmatic Administrative Disqualification Action Decision* and *Rule 6.9 Programmatic Quality Control Review Administrative Agency Appeal Decision* shall be extended for as many days as the hearing is continued.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(c)(4); 7 C.F.R. § 273.16(e)(4).

Rule 4.8 Vacating a Hearing.

The Hearing Officer shall vacate a hearing if:

1. The parties agree to vacate the hearing;
2. The Agency dismisses the matter;
3. The non-Agency party withdraws their appeal; or,
4. Pursuant to *Rule 5.6 Failure to Appear at a Programmatic Administrative Disqualification Action*, the Hearing Officer determines that a Client had good cause for their failure to appear at a Programmatic Administrative Disqualification Action.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. 273.15(j); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.9 Pre-Hearing Conferences.

The Hearing Officer may hold a prehearing conference at a time and manner established by the Hearing Officer. The conference may be held telephonically. The Hearing Officer may issue a prehearing order outlining the issues to be discussed. The Hearing Officer shall oversee the discussion of topics including, but not limited to, the following:

1. Identification, simplification, and clarification of the issues underlying the hearing;
2. Explanation of procedures, establishment of dates for the hearing, and explanation of the role of the parties, representatives, and the Hearing Officer;
3. Stipulations and admissions of fact and the content and authenticity of documents;
4. Disclosure of the number and identities of witnesses;
5. Exploration of the possibility of settlement, if permissible; and,
6. Identification of other such matters that promote the orderly and prompt conduct of the hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. 273.15(j); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.10 Pre-Hearing Statements.

The Hearing Officer may require all parties to submit a pre-hearing statement at a time and

manner established by the Hearing Officer. The pre-hearing statement may discuss, but is not limited to, the following topics:

1. Issues involved in the hearing;
2. Stipulated facts, together with an acknowledgment that the parties have communicated in a good faith effort to reach said stipulations;
3. Facts in dispute;
4. Witnesses and exhibits to be presented, including any stipulations relating to the authenticity of documents and the qualifications of witnesses as experts;
5. A brief statement of applicable law;
6. The conclusions to be drawn by the Hearing Officer; and,
7. The estimated time required for the presentation of the case.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. 273.15(j); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.11 Record of Pre-Hearing Conferences.

The Hearing Officer shall record any agreements reached during a prehearing conference or confirm the agreements in a written order.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. 273.15(j); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Rule 4.12 Informal Disposition.

If permissible by Agency policy and State and Federal law, informal disposition may be made of any case by waiver, withdrawal, or abandonment.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. 273.15(j); 7 C.F.R. § 273.16(f); 7 C.F.R. § 273.16(h).

Chapter 5: Programmatic Administrative Disqualification Actions

Rule 5.1 Purpose.

The purpose of a Programmatic Administrative Disqualification Action shall be to provide due process to Clients whenever documented evidence exists of a suspected Intentional Program Violation.

Source: Miss. Code Ann. § 43-1-2(4)(b); Miss. Code. Ann. § 43-17-25; 18 Miss. Admin. Code Pt. 17, R. 9.10; 18 Miss. Admin. Code Pt. 19, R. g; 7 C.F.R. § 273.16(a); 7 C.F.R. § 273.16(c); 45 C.F.R. § 98.100(d).

Rule 5.2 Burden of Proof.

The Agency shall be required to prove all allegations of suspected Intentional Program Violations by clear and convincing evidence.

Source: 7 C.F.R. § 273.16(e)(6).

Rule 5.3 Time Limits for a Programmatic Disqualification Action Appeal.

An Appellant who wishes to appeal an adverse action shall submit a request to the Division of Administrative Hearings for a Programmatic Disqualification Action within ninety (90) calendar days following the date of an adverse action. The request shall be made via the Division of Administrative Hearings' MDHS Programmatic Appeals Request form (MDHS-OIG-200), unless otherwise directed. Completed appeal request forms shall be submitted to the Appellant's County Office or via email to admin.hearings@mdhs.ms.gov. The Division of Administrative Hearings shall assist the Appellant with submitting the request if needed.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13; 18 Miss. Admin. Code Pt. 19, R. k; 7 C.F.R. § 273.15(c); 7 C.F.R. § 273.15(g).

Rule 5.4 Notice of a Programmatic Administrative Disqualification Action.

The Division of Administrative Hearings shall provide written notice of a pending Programmatic Administrative Disqualification Action to a Client at least thirty (30) calendar days prior to the hearing. The notice shall contain:

1. The date, time, and manner of the hearing;
2. The allegation(s) against the Client;
3. A summary of the evidence, and how and where the evidence may be examined;
4. A statement informing the Client that they may waive their right to a hearing;
5. A description of the Client's rights during the hearing, including a description of the order of proof and an explanation that the burden of proof is carried by the Agency;
6. A warning, if the Client fails to appear, that a decision shall be based solely on information provided by the Agency;
7. A description of the penalties if the Client committed an intentional program violation; and,
8. A statement that the Programmatic Administrative Disqualification Action shall not preclude any state or the Federal government from prosecuting the Client for the same allegation(s) in a court of competent jurisdiction.

Source: 7 C.F.R. § 273.16(e)(3).

Rule 5.5 Location, Time, and Manner of a Programmatic Administrative Disqualification Action.

The hearing shall be held telephonically unless otherwise directed by the Hearing Officer.

Source: 7 C.F.R. § 273.16(e)(4).

Rule 5.6 Client's Rights.

A Client has the following rights during a Programmatic Administrative Disqualification Action:

1. To waive participation in the Programmatic Administrative Disqualification Action;
2. To review the evidence against them;
3. To refuse to answer any questions during the hearing;
4. To present their own case or have someone else present their case for them, such as a lawyer, friend, relative, or community worker;
5. To request to reschedule their hearing if they need more time to prepare;
6. To bring their own witnesses;
7. To cross-examine all witnesses called by the Agency;
8. To argue their case freely;
9. To question any evidence or statements made against them; and,
10. To bring any evidence they may have to support their case.

A Client shall be informed of these rights via notice and during a Programmatic Administrative Disqualification Action.

Source: 7 C.F.R. § 273.15(p); 7 C.F.R. § 273.16(e)(2)(ii); 7 C.F.R. § 273.16(e)(3)(iii)(G); 7 C.F.R. § 273.16(f).

Rule 5.7 Failure to Appear at a Programmatic Administrative Disqualification Action.

If a Client fails to appear at a Programmatic Administrative Disqualification Action, the hearing shall be conducted without the Client present. The Agency shall be required to meet its burden of proof regardless of the Client's attendance. If the Client is found to have committed an Intentional Program Violation, but the Hearing Officer later determines that the Client had good cause for their failure to appear, the previous decision shall be vacated pursuant to *Rule 4.8 Vacating a Hearing*, and the Agency shall conduct a new hearing.

If a Client's failure to appear is based upon a showing of nonreceipt of a hearing notice as described in *Rule 5.3 Notice of a Programmatic Administrative Disqualification Action*, the Client has thirty (30) calendar days after the date of the Hearing Officer's decision to establish nonreceipt. In all other instances, the Client has ten (10) calendar days from the date of the scheduled hearing to establish good cause for their failure to appear.

Source: 7 C.F.R. § 273.16(e)(4).

Rule 5.8 Programmatic Administrative Disqualification Action Decision.

The Hearing Officer shall prepare a decision that reviews the relevant evidence and applies the controlling policy, regulations, and/or State and Federal law. The Agency must present relevant evidence and policy, regulations, and/or laws clearly and convincingly demonstrating that a Client committed an intentional program violation. If the Agency has failed to do so, the Hearing Officer's decision shall explain how the Agency failed to meet its burden of proof.

An Administrative Disqualification Action shall be administered, and a decision released, within ninety (90) calendar days from the date the Client receives notice of the Programmatic

Administrative Disqualification Action, unless the time frame for a decision has been extended pursuant to *Rule 4.7 Continuing, Expediting, or Reconvening a Hearing*. The decision must include a description of any penalties to be imposed and the recoupment amount, if applicable. The Hearing Officer's decision shall constitute the final Agency action concerning the Programmatic Administrative Disqualification Action.

Source: 7 C.F.R. § 273.16(e)(6); 7 C.F.R. § 273.16(e)(7); 7 C.F.R. § 273.16(e)(8); 7 C.F.R. § 273.16(e)(9).

Chapter 6: Programmatic Quality Control Review Administrative Agency Appeals

Note: Subgrantees who receive final decision letters from the Division of Programmatic Quality Control should follow the processes outlined in this chapter.

Rule 6.1 Purpose.

The purpose of a Programmatic Quality Control Review Administrative Agency Appeal shall be to provide an opportunity for a formal review when a Subgrantee and/or provider disagrees with an adverse action taken by the Agency. A Programmatic Quality Control Review Administrative Agency Appeal shall provide an Appellant the opportunity to testify and present evidence to a Hearing Officer. The scope of a Programmatic Quality Control Review Administrative Agency Appeal shall be limited to the appealed adverse action.

Source: Miss. Code Ann. § 43-1-2(4)(b); Miss. Code Ann. § 43-17-17; 18 Miss. Admin. Code Pt. 17, R. 9.12; 18 Miss. Admin. Code Pt. 19, R. k; 45 C.F.R. § 98.1(b)(6).

Rule 6.2 Basis for a Programmatic Quality Control Administrative Agency Appeal.

Appellants shall have the right to appeal adverse actions taken by the Agency which affects the participation in or administration of the relevant Agency program.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13; 18 Miss. Admin. Code Pt. 19, R. k.

Rule 6.3 Burden of Proof.

An Appellant shall bear the burden of proof of establishing, by a preponderance of the evidence, that an adverse action was improper.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13; 18 Miss. Admin. Code Pt. 19, R. k.

Rule 6.4 Time Limits for a Programmatic Quality Control Administrative Agency Appeal.

An Appellant who wishes to appeal an adverse action shall submit a request to the Division of Administrative Hearings for a Programmatic Quality Control Administrative Agency Appeal within thirty (30) calendar days following the date of an adverse action. Appeal request shall be submitted via email to admin.hearings@mdhs.ms.gov. The Division of Administrative Hearings

shall assist the Appellant with submitting the request if needed.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13; 18 Miss. Admin. Code Pt. 19, R. k.

Rule 6.5 Notice of a Programmatic Quality Control Administrative Agency Appeal.

The Division of Administrative Hearings shall provide written notice to the Appellant at least ten (10) calendar days in advance of the date of the Administrative Agency Appeal. The notice shall contain the date, time, and location of the Administrative Agency Appeal and the Appellant's rights relating to the appeal.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13.

Rule 6.6 Location, Time, and Manner of a Programmatic Quality Control Administrative Agency Appeal.

An Administrative Agency Appeal shall be held telephonically unless otherwise directed by the Hearing Officer.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13.

Rule 6.7 Appellant's Rights and Responsibilities.

An Appellant has the following rights and responsibilities during a Programmatic Quality Control Administrative Agency Appeal:

1. An Appellant may present testimony, evidence, and argument regarding the adverse action subject to appeal;
2. An Appellant may present and question witnesses and cross-examine opposing witnesses;
3. An Appellant must have all witnesses and evidence available on the date of the hearing;
4. An Appellant must provide opposing parties a copy of evidence submitted into the record at the time of submissions, unless said evidence was provided to the opposing parties prior to the hearing; and,
5. An Appellant must comply with all orders issued by the Hearing Officer prior to and during the hearing.

Source: 7 C.F.R. § 273.15(m); 7 C.F.R. 273.15(n); 7 C.F.R. 273.15(o).

Rule 6.8 Failure to Appear at a Programmatic Quality Control Administrative Agency Appeal.

If an Appellant fails to appear at an Administrative Agency Appeal, the appeal shall be considered abandoned. If an Appellant abandons their appeal, said Appellant, upon a showing of good cause, may move for a continuance or resetting within ten (10) calendar days of their failure to appear. If an Appellant fails to move for a continuance within ten (10) calendar days or fails to establish good cause, the adverse action subject to appeal shall be final and binding.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13.

Rule 6.9 Programmatic Quality Control Administrative Agency Appeal Decision.

Unless the Programmatic Quality Control Administrative Agency Appeal is abandoned or withdrawn, the Hearing Officer shall prepare a decision that reviews the relevant evidence and applies the controlling policy, regulations and/or State and Federal law. An Appellant shall present relevant evidence and policy, regulations, and/or laws demonstrating, by a preponderance of the evidence, that MDHS's adverse action was improper. If an Appellant has failed to do so, the Hearing Officer's decision shall identify and explain how the Appellant failed to meet their burden of proof.

The Hearing Officer shall send a Programmatic Quality Control Administrative Agency Appeal decision to an Appellant within sixty (60) calendar days from the date an Appellant requested an appeal, unless the time frame for a decision has been extended pursuant to *Rule 4.7 Continuing, Expediting, or Reconvening a Hearing*. The decision shall include a grant or denial of the Appellant's appeal, the reasoning for said decision, and, if applicable, the relief granted. The Hearing Officer's decision shall constitute the final Agency action concerning the Appellant's Programmatic Quality Control Administrative Agency Appeal.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13.

Chapter 7: Subgrant Administrative Agency Appeals

Rule 7.1 Purpose.

The purpose of a Subgrant Administrative Agency Appeal shall be to provide an opportunity for a formal review when a Subgrantee disagrees with an adverse action. A Subgrant Administrative Agency Appeal shall allow a Subgrantee to present its case to a Hearing Officer. The scope of a Subgrant Administrative Agency Appeal shall be limited to the appealed adverse action. Subgrant Administrative Agency Appeals shall consist of up to two (2) stages of appeal, a Subgrant Administrative Hearing and a Subgrant Administrative Hearing Review.

Source: Miss. Code Ann. 43-1-2(4)(b); 18 Miss. Admin. Code Pt. 8, R. "Appeals"; 2 C.F.R. § 200.342.

Rule 7.2 Basis for a Subgrant Administrative Agency Appeal.

Subgrantees shall have the right to appeal adverse actions. For Subgrantees, adverse actions are demands for repayment of expenditures that have been questioned during a monitoring review of a Subgrantee.

Source: Miss. Code Ann. 43-1-2(4)(b); 18 Miss. Admin. Code Pt. 8, R. "Appeals"; 2 C.F.R. 200.1 "Questioned Cost"; 2 C.F.R. 200.1 "Improper Payment"; 2 C.F.R. § 200.342; 2 C.F.R. 200.516(a); 2 C.F.R. 200.521.

Rule 7.3 Burden of Proof.

A Subgrantee bears the burden of proof of establishing, by a preponderance of the evidence, that

an adverse action was improper. This burden of proof applies in both Subgrant Administrative Hearings and Subgrant Administrative Hearing Reviews.

Source: Miss. Code Ann. 43-1-2(4)(b); 18 Miss. Admin. Code Pt. 8, R. “Appeals”; 2 C.F.R. 200.1 “Questioned Cost”; 2 C.F.R. 200.1 “Improper Payment”; 2 C.F.R. § 200.342; 2 C.F.R. 200.516(a); 2 C.F.R. 200.521.

Rule 7.4 Time Limits for a Subgrant Administrative Hearing.

A Subgrantee has thirty (30) calendar days from the date of an adverse action to request a Subgrant Administrative Hearing. An appeal has not been timely requested until a Subgrantee has submitted both a written request for an appeal and an Organized Response. Failure to submit a timely written request for an appeal and an Organized Response shall be construed as a waiver of a Subgrantee’s right to appeal and shall serve as a procedural bar for subsequent appeals of the relevant adverse action.

Written requests for an appeal and Organized Responses shall be sent via email to subgrants.hearings@mdhs.ms.gov.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.5 Written Request and Organized Response Requirements.

A Subgrantee’s written request for an appeal shall identify the following:

1. The name of the Subgrantee;
2. The adverse action(s) the Subgrantee seeks to dispute; and,
3. A signature from the participating representative of the Subgrantee.

A Subgrantee’s Organized Response shall include the following:

1. The name, title, email address, and phone number of the participating representative of the Subgrantee;
2. A written response stating the basis for the appeal and the relevant facts and evidence supporting the appeal;
3. A table of contents with page numbers listing evidence submitted in order of presentation; and,
4. Copies of all submitted evidence following the order of the table of contents with pagination.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.6 Notice of a Subgrant Administrative Hearing.

When a Subgrantee submits a timely request for a Subgrant Administrative Hearing, the Director of the Division of Administrative Hearings shall, within ten (10) calendar days of receipt, send a notice acknowledging receipt and setting a date, time, and manner for a Subgrant Administrative

Hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.7 Location, Time, & Manner of a Subgrant Administrative Hearing.

The Subgrant Administrative Hearing shall be via video conferencing meeting software such as Zoom Meetings or Microsoft Teams unless otherwise directed by the Subgrant Administrative Hearing Officer.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.8 Subgrantee's Rights and Responsibilities During a Subgrant Administrative Hearing.

Subgrant Administrative Hearings are evidentiary proceedings administered by the Subgrant Administrative Hearing Officer. Subgrantees have the following rights and responsibilities during a Subgrant Administrative Hearing:

1. Subgrantees may present testimony, evidence, and argument regarding the adverse action subject to appeal;
2. Subgrantees may present and question witnesses and cross-examine opposing witnesses;
3. Subgrantees must have all witnesses and evidence available on the date of the hearing;
4. Subgrantees must provide opposing parties a copy of evidence submitted into the record at the time of submissions, unless said evidence was provided to the opposing parties prior to the hearing; and,
5. Subgrantees must comply with all orders issued by the Subgrant Administrative Hearing Officer prior to and during the hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.9 Failure to Appear at a Subgrant Administrative Hearing.

If a Subgrantee fails to appear at a Subgrant Administrative Hearing, the Subgrantee's Subgrant Administrative Agency Appeal shall be considered abandoned, and the appealed adverse action shall be final and binding. A Subgrantee's abandonment of a Subgrant Administrative Agency Appeal shall be construed as a waiver of a Subgrantee's right to appeal and shall serve as a procedural bar for subsequent appeals of the relevant adverse action.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.10 Subgrant Administrative Hearing Decision

The Subgrant Administrative Hearing Officer may prepare a decision that reviews the relevant evidence and applies the controlling policy, regulations and/or laws. The decision shall include grants and/or denials for each issue raised on appeal, the reasoning for said action(s), and, if applicable, the relief granted. Subgrant Administrative Hearing decisions may be an adverse action requiring the repayment of questioned costs.

If the Subgrant Administrative Hearing Officer renders a decision, the Subgrant Administrative Hearing Officer shall send the decision to the Subgrantee within thirty (30) calendar days from the date of the Subgrant Administrative Hearing.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.11 Review of a Subgrant Administrative Hearing Decision.

If a Subgrantee is dissatisfied with a Subgrant Administrative Hearing decision, the Subgrantee may request a review of the decision by submitting a written request for a Subgrant Administrative Hearing Review.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.12 Basis for a Subgrant Administrative Hearing Review.

A Subgrant Administrative Hearing Review shall be the final level of review within a Subgrant Administrative Agency Appeal. A Subgrant Administrative Hearing Review shall be a review of a Subgrant Administrative Hearing decision and case record by a Subgrant Administrative Hearing Review Officer. For a Subgrant Administrative Hearing decision to be reviewable, the Subgrant Administrative Hearing decision must be an adverse action requiring repayment of questioned costs.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.13 Time Limits for a Subgrant Administrative Hearing Review.

A Subgrantee has fourteen (14) calendar days from the date of a Subgrant Administrative Hearing decision to submit a written request for a Subgrant Administrative Hearing Review. Failure to submit a timely written request for a Subgrant Administrative Hearing Review shall be construed as a waiver of a Subgrantee's right to appeal and shall serve as a procedural bar for subsequent reviews of the relevant Subgrant Administrative Hearing decision.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.14 Written Request for a Subgrant Administrative Hearing Review.

A Subgrantee's written request for a Subgrant Administrative Hearing Review shall include the following:

1. The name of the Subgrantee;
2. The adverse action the Subgrantee seeks to dispute; and
3. A signature from a representative of the Subgrantee.

Written requests for a Subgrant Administrative Hearing Review shall be sent via email to subgrants.hearings@mdhs.ms.gov.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.15 No Additional Submissions During a Subgrant Administrative Hearing Review.

Subgrantees shall be prohibited from submitting additional evidence beyond the evidence included in a Subgrantee's Organized Response. A Subgrant Administrative Hearing Review shall be a review of Subgrant Administrative Hearing decision and corresponding case record. A Subgrant Administrative Hearing Review shall not be an opportunity for a Subgrantee to supplement the Subgrant Administrative Hearing case record.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.16 Notice of a Subgrant Administrative Hearing Review.

When a Subgrantee makes a timely request for a Subgrant Administrative Hearing Review, the Director of the Division of Administrative Hearings shall, within ten (10) calendar days of receipt, send a notice acknowledging receipt and setting the date and time by which a Subgrant Administrative Hearing Review shall be released.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Rule 7.17 Subgrant Administrative Hearing Review.

The Subgrant Administrative Hearing Review Officer shall draft a final decision that reviews the Subgrant Administrative Hearing decision and corresponding case record and applies the controlling policy, regulations and/or laws. The final decision shall either adopt, modify, or overturn the Subgrant Administrative Hearing decision.

The Subgrant Administrative Hearing Review Officer shall release the completed Subgrant Administrative Hearing Review within thirty (30) calendar days from the date of the written request for a Subgrant Administrative Hearing Review. The Subgrant Administrative Hearing Review shall constitute the final Agency action concerning the Subgrant Administrative Agency Appeal.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342.

Chapter 8: Post-Hearing Matters

Rule 8.1 Hearing Record.

The Division of Administrative Hearings shall maintain the official record of each matter. The hearing record will be maintained pursuant to the Agency's record retention policy and State and Federal law.

Source: Miss. Code Ann. 43-1-2(4)(b); 2 C.F.R. § 200.342; 7 C.F.R. § 272.1(f).

Rule 8.2 External Appeals.

All Division of Administrative Hearings' decisions, except for Subgrant Administrative Hearing decisions as described in *Rule 7.11 Review of a Subgrant Administrative Hearing Decision*, shall be final and binding. All Division of Administrative Hearings' decisions may be appealed to a court of competent jurisdiction.

Source: Miss. Code Ann. 43-1-2(4)(b); 18 Miss. Admin. Code Pt. 13, Ch. 13.; 2 C.F.R. § 200.342; 7 C.F.R. § 273.15(b); 7 C.F.R. § 273.15(q)(3)(i); 7 C.F.R. § 273.16(e)(8)(ii).