



Title 18: Mississippi Department of Human Services

Part 23: Division of Administrative Hearings

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

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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 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 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 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 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 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 5.4 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 5.5 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 5.6 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 5.7 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 Administrative Agency Appeals

Rule 6.1 Purpose.

The purpose of a Programmatic Administrative Agency Appeal shall be to provide an opportunity for a formal review when an Appellant disagrees with an adverse action taken by the Agency. A Programmatic Administrative Agency Appeal shall provide an Appellant the opportunity to testify and present evidence to a Hearing Officer. The scope of a Programmatic 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; 7 C.F.R. § 273.15(a); 7 C.F.R. § 273.15(m); 7 C.F.R. § 273.15(n); 7 C.F.R. § 273.15(p); 7 C.F.R. § 273.15(q); 45 C.F.R. § 98.1(b)(6).

Rule 6.2 Basis for a Programmatic 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; 7 C.F.R. § 273.15(a).

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; 7 C.F.R. § 273.15(q).

Rule 6.4 Time Limits for a Programmatic 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 Administrative Agency Appeal within ~~ninety (90)~~ thirty (30) 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 or the MDHS-EA-551 Request for a Hearing form, 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 6.5 Notice of a Programmatic 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; 7 C.F.R. 273.15(l).

Rule 6.6 Location, Time, and Manner of a Programmatic 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; 7 C.F.R. 273.15(l).

Rule 6.7 Appellant's Rights and Responsibilities.

An Appellant has the following rights and responsibilities during a Programmatic 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), 7 C.F.R. 273.15(p).

Rule 6.8 Failure to Appear at a Programmatic 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; 7 C.F.R. 273.15(o).

Rule 6.9 Programmatic Administrative Agency Appeal Decision.

Unless the Programmatic 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 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 Administrative Agency Appeal.

Source: 18 Miss. Admin. Code Pt. 13, Ch. 13; 7 C.F.R. § 273.15(c)(1); 7 C.F.R. § 273.15(q).

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).

~~ADMINISTRATIVE HEARINGS FOR
MDHS SUBGRANT MANUAL~~

~~TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES~~

~~PART 23: DIVISION OF ADMINISTRATIVE HEARINGS~~

~~PART 23 CHAPTER 1: ADMINISTRATIVE HEARINGS FOR MDHS SUBGRANT
MANUAL~~

1. GENERAL

~~An administrative hearing provides the right to a fair and impartial hearing in contested cases involving disputes that include subgrants and contracts and other appropriate issues as determined on a case-by-case basis and approved by the Executive Director of Mississippi Department of Human Services (MDHS) or an authorized executive designee. It is an informal proceeding that gives both parties their due process rights and a forum to provide evidence.~~

2. OVERVIEW

~~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. Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, age, sexual orientation, gender identity, or disability in any provision of this policy.~~

3. GLOSSARY OF TERMS

- a) ~~**Administrative Hearing Process:** the established procedure to provide a subgrantee an opportunity to appeal an adverse decision.
 - i. ~~**Agency Appeal Level One (AAL-I):** The first level of agency appeal, which occurs upon the claimant's timely written request. The AAL-I is an informal telephonic meeting between the subgrantee and an attorney in the Executive Director's office or to a designated agency attorney to attempt to resolve the issue(s). If the issue(s) is not resolved after the AAL-I to subgrantee's satisfaction, the subgrantee may request an Administrative Hearing, which is the final level of agency review.~~
 - ii. ~~**Administrative Hearing (AH):** The final level of review within MDHS, which occurs upon the subgrantee's timely written request. The AH will be held at the MDHS state office, and shall be conducted by the MDHS Executive Director or executive designated hearing officer.~~~~
- b) ~~**MDHS Subgrant Manual:** A handbook developed by MDHS that implements the agency's policies and procedures that are applicable to MDHS subgrantees and to any lower tier subrecipients.~~
- c) ~~**Prehearing Conference:** An informal conference that is scheduled at the discretion of the hearing officer to resolve issues of procedure, jurisdiction or representation, or to clarify other issues prior to the hearing.~~
- d) ~~**Subgrant:** An award provided by a pass-through entity (MDHS) to a subgrantee for the subgrantee to carry out part of a Federal award received by MDHS. It does not include~~

payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

- e) ~~**Subgrant Agreement:** Contractual arrangement that sets forth specific programs, activities, and guidelines for the use of subgrant funds which may include the following documents: MDHS Subgrantee/Agreement Manual Acceptance Form, Certificate of Adequate Fidelity Bonding Form, Certifications Regarding Unresolved Audit or Monitoring Findings or Litigation, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters, Drug-Free Workplace Requirements, Standard Assurances, Scope of Services, Subgrant/Agreement Form, Indirect Cost Rate documents (if applicable), Budget Narrative, Cost Summary Support Sheet, Budget Summary, Subgrant/Contract Signature Sheet and Subgrant/Contract Modifications (if applicable).~~
- f) ~~**Subgrant Agreement Modification:** Sets forth monitoring guidelines for use by the grantor agency when monitoring subgrantees and lower-tier subrecipients. (See Monitoring section of MDHS Subgrant Manual.)~~

4. BASIS FOR AN APPEAL

For an agency appeal to commence it must be a matter that can be reviewed as a contested case, or under a federal statute, state statute, regulation, or policy and there must be an adverse decision that affects the subgrantee.

If the agency appeal arises from monitoring findings, a subgrantee shall have fifteen (15) business days from receipt of the 'Initial Report of Findings and Recommendations' to provide an initial response or dispute the findings. If a second response to the monitoring findings is required, subgrantees may submit a dispute within ten (10) business days for secondary response if no dispute was raised in their initial response. (See Monitoring Section of MDHS Subgrant/Agreement Manual). If the subgrantee is still unsatisfied after the response, the subgrantee may start the agency appeal process.

5. TIME LIMITS FOR AGENCY APPEAL PROCESS

- a) ~~A subgrantee who seeks to dispute an appealable decision must submit a written request for an AAL I received at MDHS within thirty (30) calendar days following the notification date on the adverse act letter. Failure to submit a timely written request shall be construed as a waiver of the subgrantee's right to appeal, and shall serve as a procedural bar to appeal the agency decision.~~
- b) ~~If the subgrantee seeks to dispute the decision in the AAL I, the subgrantee must submit a written request for an Administrative Hearing within fourteen (14) calendar days of the date on the AAL I letter of decision. The subgrantee may not initiate an Administrative Hearing until the subgrantee has received an adverse decision in an AAL I. In the written request, a subgrantee must explain the reason(s) the subgrantee believes the AAL I is in~~

error, enclose a copy of all correspondence relevant to this decision, and attach a copy of the MDHS's notice of an adverse act letter.

~~6. WRITTEN REQUEST REQUIRED FOR APPEALS~~

~~In order for the subgrantee to formally initiate the agency appeals process, the subgrantee must submit a written request for the appropriate level of appeal. The written request must contain the subgrantee's name, the agency decision the subgrantee seeks to dispute, and the subgrantee's signature. A written request should be submitted to the Executive Director for AAL I. After exhausting the first level of appeal, if the subgrantee wishes to pursue an Administrative Hearing, the subgrantee must make an additional written request for a hearing to the attention of the Executive Director of MDHS. The subgrantee may be represented by anyone he/she designates; however, he/she must make the designation in writing and submit such to the Executive Director of MDHS.~~

~~7. ACKNOWLEDGEMENT OF APPEAL REQUEST~~

~~When the subgrantee makes a timely request for an AAL I, the Director of Administrative Hearings Divisions of MDHS shall send a letter acknowledging receipt of the request within ten (10) business days, and setting a date and time for an appeal conference. The letter shall state that the subgrantee has the right to reschedule the appeal conference date and time, and shall give specific instructions for doing so. The subgrantee shall have the responsibility for rescheduling the appeal conference anytime after receipt of the acknowledgement letter, and twenty four (24) hours before the scheduled appeal conference date and time.~~

~~When the subgrantee makes a timely request for an Administrative Hearing in the final appeal level, the Director of Administrative Hearings Division of MDHS shall send a letter acknowledging receipt of the request within ten (10) business days. The letter shall state a date and time for the hearing, and that the subgrantee has the right to reschedule the hearing with specific instructions for doing so. The letter shall state that the subgrantee may reschedule the hearing anytime after receiving the letter of acknowledgement and twenty four (24) hours before the hearing time and date.~~

~~8. AGENCY APPEALS PROCESS, LEVEL I (AAL-I) AND LEVEL II, ADMINISTRATIVE HEARING~~

- ~~a) **AAL-I:** The MDHS agency appeals process for subgrantees begins with the AALI. If a subgrantee seeks to dispute an appealable decision, the subgrantee must engage in the AAL-I process by submitting a written request, pursuant to subsection 6 of the Administrative Hearings Manual to the Executive Director of MDHS within thirty (30) calendar days of the notification date on the adverse act letter. The Administrative~~

~~Hearings Division will send the subgrantee a written notice acknowledging receipt of the subgrantee's request, and setting a date and time for the AAL I. The AAL I will be conducted by an attorney in the Executive Director's office or an agency attorney designated by the Executive Director, and will be conducted telephonically. All documents must be submitted prior to or during the AAL I. If the subgrantee is dissatisfied with the decision in the AAL I, the subgrantee may appeal that decision by submitting a written request within fourteen (14) calendar days of the notice of the adverse decision to MDHS to initiate an Administrative Hearing.~~

- b) ~~**ADMINISTRATIVE HEARING:** The final level of agency appeal occurs in the Administrative Hearing. The Director of Administrative Hearings will send the subgrantee a written notice acknowledging receipt of the subgrantee's request, and setting a date and time for the Administrative Hearing. The Administrative Hearing will be conducted by the Executive Director of MDHS or an executive designated hearing officer, and will be conducted at the State Office of MDHS. All documents must be submitted prior to or during the hearing.~~

9. ADMINISTRATIVE HEARING PARTICIPANTS

- a) ~~The respondent, MDHS Executive Director and/or authorized executive designee, MDHS Funding Division Director, MDHS legal representative, and any other appropriate MDHS representatives deemed necessary by the Executive Director may be present for the Administrative Hearing.~~
- b) ~~The petitioner and a legal representative, if any, must attend the hearing.~~
- c) ~~Witnesses for both the respondent and the petitioner shall also be present to testify when necessary.~~

10. REPRESENTATIVE FOR PETITIONER

~~Any petitioner may appear in person; or be represented by an officer, board member, or bona fide employee in its stead, or be represented, at the subgrantee's own expense, by a licensed attorney authorized to practice law in the State of Mississippi upon presentation of written authority to the Executive Director of MDHS. The subgrantee may be represented during any stage of the agency appellate process.~~

11. RESPONDENT'S LEGAL REPRESENTATION

~~As respondent, MDHS will be represented by an attorney with the Attorney General's office who normally provides counsel to the MDHS Executive Director or the affected programmatic division.~~

12. INDIVIDUAL'S RIGHTS AND RESPONSIBILITIES

~~The subgrantee has the following rights in the two (2) levels of the administrative hearing process:~~

- a) ~~To present facts about his/her circumstances orally or through documentation; and~~

- b) ~~To have an attorney, relative, or friend to assist him/her if he/she wishes or to present the facts on his/her behalf.~~

The subgrantee has the following responsibilities in the two (2) levels of the administrative hearing process:

- a) ~~To reschedule the Administrative Hearing if necessary, by contacting the appropriate MDHS staff at least twenty-four (24) hours before the designated start time of the hearing. Failure to be present for the hearing without having rescheduled according to policy, will result in dismissal of the appeal.~~
- b) ~~To provide the Executive Director of MDHS with a written designation of agency twenty-four (24) hours before the start time of the hearing if a non-attorney will attend the hearing on the subgrantee's behalf.~~
- c) ~~To provide or ensure that subgrantee's attorney provides the Executive Director of MDHS with an 'Entry of Appearance' if the subgrantee will be represented by a licensed attorney.~~

13. PREHEARING PROCEDURE

~~On the motion of the petitioner, the respondent, or the hearing officer, 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 hearing officer may direct that other certain information be submitted, as specified in MDHS AP-18.~~

14. PREPARATION OF CASE FILE AND WRITTEN ARGUMENTS BEFORE AN ADMINISTRATIVE HEARING

- a) ~~The petitioner should provide a thorough and detailed statement of the facts giving rise to the dispute and develop legal arguments on the issues raised by the facts. Whenever possible, the petitioner should stipulate, where appropriate, material facts and provide copies of documents that have not been submitted previously. The hearing officer can dismiss an appeal or proceed to a recommended decision if a party fails to comply with an order, deadline, or other requirement. Only the hearing officer may grant an extension of time, based upon a written request submitted prior to the established deadline.~~
- b) ~~The petitioning subgrantee, within thirty (30) calendar days after requesting an Administrative Hearing, should submit an original and one working copy to the hearing officer, with a copy to the respondent, of the following: 1) a chronological case file containing numbered, tabbed, and indexed documents supporting the petitioner's position, and 2) a written statement of the petitioner's arguments (petitioner's brief) concerning why the respondent's adverse action is considered in error.~~
- c) ~~The respondent, within thirty (30) calendar days after receiving the petitioner's submission, shall present the following to the hearing officer, 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.

- d) Within fifteen (15) calendar days after receiving the respondent's submission, the petitioner may submit a short reply.

15. FILING OF DOCUMENTS

All documents relating to any pending proceeding must be submitted to the Director of Administrative Hearings Division of MDHS. The documents are considered filed only when received.

16. TIME AND PLACE OF ADMINISTRATIVE HEARING

All acknowledgement letters and notices of hearing shall be sent via U.S. Post to the subgrantee's last reported address at least ten (10) business days before the scheduled hearing day. The Administrative Hearing shall be held at the State Office of MDHS.

17. AUTHORITY AND RESPONSIBILITY OF THE HEARING OFFICER

- a) The hearing officer has delegated powers, including, but not limited to, the following:
- i. to issue orders;
 - ii. to administer oaths;
 - iii. to call, hear and examine witnesses;
 - iv. to take steps necessary for the conduct of an orderly hearing;
 - v. to rule on requests and motions;
 - vi. to dismiss cases for failure to meet deadlines and other requirements;
 - vii. to close, suspend, or remand a case for further action;
 - viii. to waive or modify procedures with notice to parties;
 - ix. to compile the record of the proceedings;
 - x. make a recommended decision or a recommended reconsideration decision; and
 - xi. to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.
- b) The hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.

18. INFORMAL DISPOSITION

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

19. POSTPONEMENT/CONTINUANCE

The hearing officer may grant a postponement or continue the hearing based upon a written, advance request submitted to the Director of Administrative Hearings Division of MDHS.

20. MOTIONS

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.

21. ADMINISTRATIVE HEARING IN GENERAL

- a) Hearings will be ordinarily open to the general public and as informal as reasonably possible.
- b) The hearing officer 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.
- c) All participants and observers must show proper dignity, courtesy, and respect for the hearing officer and each other.
- d) The hearing is not to be conducted as a formal court hearing and the hearing officer is not required to follow the Mississippi Rules of Civil Procedure or the Mississippi Rules of Evidence.

22. CONDUCT OF ADMINISTRATIVE HEARING

- a) Subject to the hearing officer's ruling and recommended decision, opportunity must be given to all parties to respond and present evidence and argument on all issues involved and to call witnesses.
- b) A recording of each hearing should be made.
- c) If a party fails to appear, it may forfeit all rights and be assessed the court reporter fee, if present.

23. ORDER OF ADMINISTRATIVE HEARING

- a) The hearing officer 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.
- b) The hearing officer calls the hearing 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, if available; 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 hearing after all evidence has been presented.

- e) ~~During testimony, the petitioner and the respondent question witnesses, cross-examine the other party's witnesses, and redirects if necessary. The petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.~~

24. ~~RECOMMENDED DECISIONS AND FINAL DECISIONS~~

- a) ~~The hearing officer shall have the responsibility of preparing a statement summarizing the facts brought out in the hearing, indicating the policy governing the issue at hand, and making a recommended decision based on the evidence presented. The recommended decision shall be based only on evidence, testimony, and documents presented at the hearing.~~
- b) ~~Following the hearing adjournment, the hearing officer will forward both the record and recommended decision to the MDHS Executive Director for adoption, modification, or reversal. The final order of the MDHS Executive Director will be mailed via US Post to the attorney of record for the subgrantee or to the subgrantee's last known mailing address, if not represented. The MDHS Executive Director's Office will maintain an appropriate record of that mailing. The subgrantee or attorney of record, notified by mailing of a final decision, is presumed to have been notified on the date such notice is mailed. The decision of the MDHS Executive Director shall be final and binding.~~

~~PROGRAMMATIC ADMINISTRATIVE
DISQUALIFICATION HEARING POLICY~~

~~TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES~~

~~PART 23: DIVISION OF ADMINISTRATIVE HEARINGS~~

~~PART 23 CHAPTER 2: PROGRAMMATIC ADMINISTRATIVE DISQUALIFICATION
HEARING POLICY~~

1. PURPOSE

An administrative disqualification hearing will be initiated by Mississippi Department of Human Services (MDHS) whenever MDHS has documented evidence to substantiate that a claimant of a state or federal program allegedly committed one (1) or more acts of an Intentional Program Violation (IPV) of said program. The burden of proof in an administrative disqualification hearing is proof by clear and convincing evidence, in which MDHS has to prove.

Note: This policy does not relate to any alleged IPV's of the Supplemental Nutrition Assistance Program (SNAP). Alleged IPV's of SNAP have their own distinct and separate administrative disqualification hearing policy. Please see 'Volume V: SNAP Manual Chapter 10.'

2. NON-DISCRIMINATION

Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, age, sexual orientation, gender identity, or disability in any provision of this policy.

3. DEFINITIONS

- a) **Administrative Disqualification Hearing:** A hearing initiated by MDHS whenever there is documented evidence to substantiate that a claimant of a state or federal program committed an act that constitutes a violation of said regulations or any related state statute, with the exception of SNAP.
- b) **Agency Representative:** An individual from the agency or its designee who is authorized to represent the agency in an administrative disqualification hearing.
- c) **Claimant:** An applicant or recipient of a state or federal program that is accused of committing an act, in which is a violation of said program policies, regulations or any related state or federal statute, with the exception of SNAP.
- d) **Clear and Convincing:** Evidence is highly and substantially more likely to be true than untrue.
- e) **Hearing Officer:** An impartial person who conducts the administrative disqualification hearing and renders a hearing decision.
- f) **Impartial:** A hearing officer is unbiased and treats all parties equally.
- g) **Intentional Program Violation:** Claimant of a state or federal program that commits an act, in which that constitutes a violation of said program policies, regulations or any related state or federal statute, with the exception of SNAP.

4. CLAIMANT'S RIGHTS

The claimant who is the subject of the administrative disqualification hearing will be advised by an administrative hearing officer of the claimant's rights in connection with said hearing at the time the 'Disqualification Hearing Notice' is mailed. The claimant also has the right to waive the administrative disqualification hearing, in which penalties may still be imposed.

~~At the administrative disqualification hearing, the hearing officer shall advise the claimant and claimant's representative, if applicable that the claimant may refuse to answer any questions during said hearing.~~

5. RESPONSIBILITY OF MDHS

~~The administrative disqualification hearing will be initiated and conducted by an administrative hearing officer in the Administrative Hearings Division of the Office of the Inspector General (OIG) of MDHS.~~

6. ADMINISTRATIVE DISQUALIFICATION HEARING NOTICE TO THE CLAIMANT

~~An administrative hearing officer will provide written notice to the claimant suspected of an IPV at least thirty (30) calendar days in advance of the date an administrative disqualification hearing has been scheduled. The notice will contain:~~

- ~~a) The date, time and place of the administrative disqualification hearing;~~
- ~~b) The allegation(s) against the claimant;~~
- ~~c) A summary of the evidence, and how and where the evidence can be examined;~~
- ~~d) A statement concerning the claimant's right to waive the administrative disqualification hearing;~~
- ~~e) A warning that a decision will be based solely on information provided by MDHS if the claimant fails to appear at the administrative disqualification hearing; and~~
- ~~f) A statement that the administrative disqualification hearing does not preclude the State or Federal Government from prosecuting the claimant for an IPV in a civil or criminal court action, or from collecting the over issuance.~~

7. ADMINISTRATIVE DISQUALIFICATION HEARING CONTINUANCE

~~The administrative hearing officer may grant continuance(s) of an administrative disqualification hearing based upon a written, request that has to be submitted to MDHS Administrative Hearings Division at least seven (7) calendar days before the scheduled date of the hearing. Said request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.~~

8. PLACE OF ADMINISTRATIVE DISQUALIFICATION HEARING

~~The administrative disqualification hearing shall be held telephonically at the county MDHS office, in which the client lives, or at the MDHS State Office upon written request that has to be submitted to MDHS Administrative Hearings Division at least seven (7) calendar days before the scheduled date of the hearing. Said request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.~~

~~9. AUTHORITY AND RESPONSIBILITY OF AN ADMINISTRATIVE HEARING OFFICER~~

~~An administrative hearing officer has delegated powers including, but not limited to, the following:~~

- ~~a) to issue orders;~~
- ~~b) to administer oaths;~~
- ~~c) to call, hear and examine witnesses;~~
- ~~d) to take steps necessary to conduct an orderly hearing;~~
- ~~e) to rule on requests and motions;~~
- ~~f) to dismiss cases for failure to meet deadlines and other requirements;~~
- ~~g) to close, suspend, or remand a case for further action;~~
- ~~h) to waive or modify procedures with advance notice to parties;~~
- ~~i) to compile the record of the proceedings;~~
- ~~j) to render a decision; and~~
- ~~k) to take any other actions necessary to resolve disputes in accordance with the objectives of these procedures.~~

~~An administrative hearing officer conducts the administrative disqualification hearing as an informal proceeding, not as a formal court hearing, and is not required to follow the Mississippi Rules of Evidence or the Mississippi Rules of Civil Procedure. An administrative hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.~~

~~10. INFORMAL DISPOSITION~~

~~Informal disposition may be made of any case by written stipulation, agreed settlement, consent order, or default. Informal dispositions are final and binding.~~

~~11. ATTENDANCE AT THE ADMINISTRATIVE DISQUALIFICATION HEARING~~

- ~~a) The administrative disqualification hearing will be attended by an administrative hearing officer and the claimant accused of an IPV and said representative, if applicable. The claimant may also bring any witnesses to assist in presenting their case.~~
- ~~b) MDHS will have a representative who is familiar with the circumstances surrounding the allegation(s). The MDHS representative who investigated the allegations of the suspected intentional program violation may also be present. The MDHS representative and/or investigator will present the case on behalf of MDHS.~~
- ~~c) The administrative disqualification hearing may also be attended by, at the most two (2), friends or relatives of the claimant accused of an IPV. The administrative hearing officer has the authority to limit the number of persons in attendance at the hearing if either space limitations exist or local fire code regulations will be violated.~~

12. CLAIMANT'S FAILURE TO APPEAR

~~If the claimant fails to appear at an administrative disqualification hearing, the hearing will be conducted without the claimant present or represented. Even though the claimant is not present or represented, the administrative hearing officer is required to carefully consider the evidence and testimony presented by MDHS. The administrative hearing officer will then determine if an IPV was committed based on clear and convincing evidence.~~

13. HOLDING THE ADMINISTRATIVE DISQUALIFICATION HEARING

~~The responsibility for conducting an administrative disqualification hearing has been delegated to an administrative hearing officer who is an impartial official. The duties of an administrative hearing officer during an administrative disqualification hearing include, but are not limited to:~~

- ~~a) The administrative hearing officer may confer with the parties prior to the administrative disqualification hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters;~~
- ~~b) the administrative hearing officer calls the administrative disqualification hearing to order;~~
- ~~c) introduces himself/herself and gives a brief statement of the nature of the proceeding;~~
- ~~d) calls upon claimant and claimant's representative, if any and MDHS' representative to introduce themselves;~~
- ~~e) ensures that all relevant issues are considered;~~
- ~~f) questions witnesses at will;~~
- ~~g) adjourns the administrative disqualification hearing after all evidence has been presented; and~~
- ~~h) renders a final administrative disqualification hearing decision.~~

~~During testimony, the claimant and MDHS are allowed to question witnesses, cross-examine the other party's witnesses, and redirect. The claimant and MDHS are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.~~

~~At the administrative disqualification hearing, each party, witness, attorney, representative, or any other person must show proper dignity, courtesy, and respect for the administrative hearing officer and others participating and observing the hearing. The administrative hearing officer will act as s/he deems necessary to maintain proper decorum and conduct. Actions may include, but are not limited to, recessing the administrative disqualification hearing to be reconvened at another time or excluding any party from the administrative disqualification hearing under conditions that the administrative hearing officer considers fair and just.~~

14. ADMINISTRATIVE DISQUALIFICATION HEARING DECISION

~~The administrative hearing officer will have the responsibility for preparing a decision that summarizes the facts and identifies the supporting evidence brought out in the administrative disqualification hearing, indicating the policy, regulations and/or laws governing the issue at hand and rendering a decision based exclusively on the testimony and documents presented at the administrative disqualification hearing. The determination of an IPV will be based on clear and~~

~~convincing evidence, which demonstrates that the claimant committed the act and intended to commit the act.~~

~~The administrative hearing officer will notify the claimant of the final decision by sending an ‘Administrative Disqualification Hearing Decision’ within thirty (30) calendar days from the date of the administrative disqualification hearing, specifying the reasons for the decision and identifying the supporting evidence and the pertinent federal law, regulations or policies. Additionally, the decision will include the applicable recoupment amount, disqualification length, suspension length and/or any other punishment identified within said programmatic policy. The appropriate programmatic division will also be provided a copy of the ‘Administrative Disqualification Hearing Decision.’~~

~~The decision must not be in conflict with federal law, regulations, or policies. The ‘Administrative Disqualification Hearing Decision’ will be accessible to the claimant and said representative for inspection or copying at any reasonable time by contacting the Administrative Hearings Division of MDHS.~~

~~15. ADMINISTRATIVE DISQUALIFICATION HEARING APPEAL~~

~~The only level of an administrative disqualification hearing appeal occurs to the Senior Attorney of the Administrative Hearings Division of OIG of MDHS or said designee. If the claimant seeks to dispute the ‘Administrative Disqualification Hearing Decision’, the claimant must submit a written request to the Administrative Hearings Division of MDHS within fourteen (14) calendar days of the date of the ‘Administrative Disqualification Hearing Decision.’~~

~~After an appeal is requested, an administrative hearing officer will forward both the record and the adverse ‘Administrative Disqualification Hearing Decision’ to the Senior Attorney of Administrative Hearings Division or said designee within fourteen (14) calendar days of receipt of appeal request from the claimant. The Senior Attorney or designee at that time will review the record in its entirety and decide whether said adverse decision should be adopted, modified or reversed. Said decision will be memorialized and the claimant will be notified of the ‘Administrative Disqualification Hearing Appeal Decision’ within thirty (30) calendar days from the date the Senior Attorney or designee received the appeal. The ‘Administrative Disqualification Hearing Appeal Decision’ from the Senior Attorney or designee shall be final and binding.~~

~~The claimant may appeal and seek relief in a court having appropriate jurisdiction after the ‘Administrative Disqualification Hearing Appeal Decision’ is rendered.~~

~~PROGRAMMATIC ADMINISTRATIVE
AGENCY APPEAL HEARING POLICY~~

~~TITLE 18: MISSISSIPPI DEPARTMENT OF HUMAN SERVICES~~

~~PART 23: DIVISION OF ADMINISTRATIVE HEARINGS~~

~~PART 23 CHAPTER 3: PROGRAMMATIC ADMINISTRATIVE AGENCY APPEAL
HEARING POLICY~~

1. PURPOSE

An administrative agency appeal hearing is available for any applicant or recipient upon written request to the Administrative Hearings Division of the Office of the Inspector General of Mississippi Department of Human Services (MDHS). Said hearing provides an opportunity for a more formal review when the applicant or recipient disagrees with an adverse action that has been taken by MDHS or on behalf of MDHS. Specifically, the administrative agency appeal hearing affords the applicant or recipient the opportunity to fully describe the circumstances, present evidence and have an impartial hearing officer review and render a decision. Evidence presented in the administrative agency appeal hearing is limited to circumstances known at the time the agency decision was made. The applicant or the recipient, who has initiated the proceeding by requesting an administrative agency appeal hearing, bears the ultimate burden of proof to overturn the adverse agency decision. Said burden is proof by the preponderance of the evidence standard. An administrative agency appeal hearing is also commonly referred to as a fair hearing.

Note: This policy does not relate to any adverse agency actions made concerning the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) programs. Administrative agency appeal hearings for SNAP and TANF have their own distinct and separate hearing policies. Please see Volume V: SNAP Manual Chapter 10 and Volume III: TANF Manual Chapter 13.

2. NON-DISCRIMINATION

Individuals shall not be discriminated against on the basis of race, color, national origin, religion, sex, age, sexual orientation, gender identity, or disability in any provision of this policy.

3. DEFINITIONS

- a) **Administrative Agency Appeal Hearing:** An informal proceeding held before an impartial MDHS administrative hearing officer, in which an applicant or recipient appeals an adverse agency action.
- b) **Adverse Agency Action:** The negative action taken by the agency on an applicant or recipient's request for programmatic services MDHS provides or services performed on behalf of MDHS.
- c) **Agency Representative:** An individual from MDHS or its designee who is authorized to represent MDHS in an administrative agency appeal hearing.
- d) **Appellant:** An applicant or recipient who requests the administrative agency appeal hearing.
- e) **Authorized Representative:** A person designated by the applicant or recipient requesting the administrative agency appeal hearing in writing or designated by statute, regulation or rule who may act on behalf of the individual at the hearing.
- f) **Good Cause:** The failure to appear for an administrative agency appeal hearing as a result of circumstances the applicant or recipient could not control.
- g) **Hearing Officer:** An impartial person who conducts the administrative agency appeal hearing and renders a hearing decision.

- ~~h) **Impartial:** A hearing officer is unbiased and treats all parties equally.~~
- ~~i) **Preponderance of Evidence:** The greater weight of the evidence required in a civil trial for the trier of fact to decide in favor of one side or the other. This burden is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.~~
- ~~j) **Programmatic Eligibility Assistance:** All eligibility programs MDHS oversees and provides with exception to SNAP and TANF.~~

~~4. BASIS FOR AN ADMINISTRATIVE AGENCY APPEAL HEARING~~

~~An appellant of a programmatic eligibility assistance provided by MDHS has a right to appeal concerning adverse agency actions, after all programmatic appeal avenues have been exhausted, in which includes the following:~~

- ~~a) Decisions concerning eligibility for an amount from programmatic eligibility assistance;~~
- ~~b) Denial of opportunity to submit an application or reapplication for programmatic eligibility assistance;~~
- ~~c) Undue delay in determining programmatic eligibility and/or making said benefits available; or~~
- ~~d) Any other adverse action that detrimentally affects the applicant or recipient concerning programmatic eligibility assistance conducted by MDHS.~~

~~Some issues are not subject to the administrative agency appeal hearing policy, in which includes but not limited, to policies or agency actions that comply with federal regulations or state statutes.~~

~~5. TIME LIMITS FOR AN ADMINISTRATIVE AGENCY APPEAL HEARING~~

~~An appellant who seeks to dispute an adverse agency action performed by MDHS must submit a written request for an administrative agency appeal hearing within thirty (30) calendar days following the notice of said adverse agency action to the Administrative Hearings Division of MDHS. The written request must contain the appellant's name, the adverse agency decision that is disputed, and the appellant's signature. Said request can be sent via email to Admin.Hearings@mdhs.ms.gov or by mail to Administrative Hearings Division, Post Office Box 352, Jackson, MS 39205.~~

~~If a request for an administrative agency appeal hearing is not received within the required period and the administrative hearing officer determines good cause was not established for the failure to file timely, the individual has forfeited the right to an administrative agency appeal hearing and the agency action becomes final.~~

~~6. ADMINISTRATIVE AGENCY APPEAL HEARING NOTICE~~

~~An administrative hearing officer will provide written notice to the appellant at least fourteen (14) calendar days in advance of the date an administrative agency appeal hearing has been scheduled.~~

The notice will contain the date, time, and location of the administrative agency appeal hearing and the appellant's rights in connection with said hearing.

~~7. ADMINISTRATIVE AGENCY APPEAL HEARING CONTINUANCE~~

The administrative hearing officer may grant continuance(s) of an administrative agency appeal hearing based upon a written request that has to be submitted to the Administrative Hearings Division of MDHS at least seven (7) calendar days before the scheduled hearing date.

~~8. PLACE OF ADMINISTRATIVE AGENCY APPEAL HEARING~~

The administrative agency appeal hearing shall be held telephonically at the MDHS county office, in which where the appellant lives, or at the MDHS State Office upon written request that has to be submitted to the Administrative Hearings Division of MDHS not later than seven (7) calendar days before the scheduled hearing date.

~~9. AUTHORITY AND RESPONSIBILITY OF AN ADMINISTRATIVE HEARING OFFICER~~

An administrative hearing officer has delegated powers including, but not limited to, the following:

- a) ~~to issue orders;~~
- b) ~~to administer oaths;~~
- e) ~~to call, hear and examine witnesses;~~
- d) ~~to take steps necessary to conduct an orderly administrative agency appeal hearing;~~
- e) ~~to rule on requests and motions;~~
- f) ~~to dismiss cases for failure to meet deadlines and other requirements;~~
- g) ~~to close, suspend, or remand a case for further action;~~
- h) ~~to waive or modify procedures with advance notice to parties;~~
- i) ~~to compile the record of the proceedings;~~
- j) ~~to render an administrative agency appeal decision; and~~
- k) ~~to take any other actions necessary to resolve disputes in accordance with the objectives of these procedures.~~

An administrative hearing officer conducts the administrative agency appeal hearing as an informal proceeding, not as a formal court hearing, and is not required to follow the Mississippi Rules of Evidence or the Mississippi Rules of Civil Procedure. An administrative hearing officer shall enjoy absolute immunity from all liability and shall have decisional independence throughout this process and under these administrative proceedings.

~~10. INFORMAL DISPOSITION~~

Informal disposition may be made of any case by written stipulation, agreed settlement, consent order, or default. Informal dispositions are final and binding.

~~11. ATTENDANCE AT THE ADMINISTRATIVE AGENCY APPEAL HEARING~~

- ~~a) The administrative agency appeal hearing will be attended by an administrative hearing officer and the appellant and appellant's representative, if applicable. The appellant may also bring any witnesses to assist in presenting their case.~~
- ~~b) MDHS will have a representative who is familiar with the circumstances surrounding the adverse agency action. The agency representative will be prepared to explain and defend the decision on the adverse agency action.~~
- ~~c) The administrative agency appeal hearing may also be attended by, at the most two (2) friends or relatives of the appellant. The administrative hearing officer has the authority to limit the number of persons in attendance at the hearing if either space limitations exist or local fire code regulations will be violated.~~

~~12. APPELLANT'S FAILURE TO APPEAR~~

~~If the appellant fails to appear at an administrative agency appeal hearing, the hearing will be considered abandoned. Abandonment occurs when the appellant or appellant's representative fails to appear at the hearing. The hearing will only be rescheduled if the appellant can show good cause for the abandonment. If the administrative agency appeal hearing is abandoned, the agency action shall be final and binding.~~

~~13. HOLDING THE ADMINISTRATIVE AGENCY APPEAL HEARING~~

~~The responsibility for conducting an administrative agency appeal hearing has been delegated to an administrative hearing officer who is an impartial official. The duties of an administrative hearing officer during an administrative agency appeal hearing include, but are not limited to:~~

- ~~a) The administrative hearing officer may confer with the parties prior to the administrative agency appeal hearing to explain the order of the proceeding, admissibility of evidence, to discuss the number of witnesses and other matters;~~
- ~~b) the administrative hearing officer calls the administrative agency appeal hearing to order;~~
- ~~c) introduces himself/herself and gives a brief statement of the nature of the proceeding;~~
- ~~d) calls upon the appellant and the appellant's representative, if any and MDHS' representative to introduce themselves;~~
- ~~e) ensures that all relevant issues are considered;~~
- ~~f) questions witnesses at will;~~
- ~~g) adjourns the administrative agency appeal hearing after all evidence has been presented;
and~~
- ~~h) renders a final administrative agency appeal hearing decision.~~

~~During testimony, the appellant and MDHS are allowed to question witnesses, cross-examine the other party's witnesses, and redirect. The appellant and MDHS are allowed to call appropriate rebuttal and rejoinder witnesses within the established proceeding format.~~

~~At the administrative agency appeal hearing, each party, witness, attorney, representative, or any other person must show proper dignity, courtesy, and respect for the administrative hearing officer and others participating and observing the hearing. The administrative hearing officer will act as s/he deems necessary to maintain proper decorum and conduct. Actions may include, but are not limited to, recessing the administrative agency appeal hearing to be reconvened at another time or excluding any party from the administrative agency appeal hearing under conditions that the administrative hearing officer considers fair and just.~~

~~14. ADMINISTRATIVE AGENCY APPEAL HEARING DECISION~~

~~The administrative hearing officer will have the responsibility for preparing a decision that summarizes the facts and identifies the supporting evidence brought out in the administrative agency appeal hearing, indicating the policy, regulations and/or laws governing the issue at hand and rendering a decision based exclusively on the testimony and documents presented at the administrative agency appeal hearing.~~

~~The administrative hearing officer will notify the claimant of the final decision by sending an 'Administrative Agency Appeal Hearing Decision' within fourteen (14) calendar days from the date of the hearing, specifying the reasons for the decision and identifying the supporting evidence and the pertinent federal law, regulations or programmatic policies. The appropriate programmatic division will also be provided a copy of the 'Administrative Agency Appeal Hearing Decision.'~~

~~Said decision must not be in conflict with federal law, regulations, or programmatic policies. The 'Administrative Agency Appeal Hearing Decision' will be accessible to the appellant and appellant's representative, if applicable for inspection or copying at any reasonable time by contacting the Administrative Hearings Division of MDHS.~~

~~15. ADMINISTRATIVE AGENCY APPEAL HEARING REVIEW~~

~~The only level of administrative agency appeal hearing review occurs to the Senior Attorney of the Administrative Hearings Division of MDHS or said designee. If the appellant seeks to dispute the 'Administrative Agency Appeal Hearing Decision', the appellant must submit a written request to the Administrative Hearings Division of MDHS within seven (7) calendar days of the date of the 'Administrative Agency Appeal Hearing Decision.'~~

~~After a review is requested, an administrative hearing officer will forward both the record and the adverse 'Administrative Agency Appeal Hearing Decision' to the Senior Attorney of Administrative Hearings Division or said designee within seven (7) calendar days of receipt of appeal request from the appellant. The Senior Attorney or designee at that time will review the record in its entirety and decide whether said adverse decision should be adopted, modified or~~

~~reversed. Said decision will be memorialized and the claimant will be notified of the ‘Administrative Agency Appeal Hearing Review Decision’ within fourteen (14) calendar days from the date the Senior Attorney or designee received the review. The ‘Administrative Agency Appeal Hearing Review Decision’ from the Senior Attorney or designee shall be final and binding.~~

~~The claimant may appeal and seek relief in a court having appropriate jurisdiction after the “Administrative Agency Appeal Hearing Review Decision.”~~

Note: ~~If at any point during the administrative agency appeal hearing decision process, the original adverse agency action is overturned, the designated programmatic division will take proper and appropriate measures.~~