

**Item 07-02-01A**

**New Division 22 Regulation Package**

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State hearing regulations found in division 22 of the Manual of Policies and Procedures (MPP) have been revised effective January 24, 2007. The following is a summary of many of the changes to those regulations.

**Definitions (22-001)**

(a)(3) The definition of "aid" has been modified to add programs such as CAPI, Stage One Child Care, PCSP, AFDC-Foster Care, and Kin-GAP. Transitional Child Care (TCC) has been deleted since that program no longer exists.

(a)(5) A definition of "attorney" has been added. This definition was added because there are regulation changes in §22-085 regarding authorized representatives that apply specifically to attorneys.

(c)(3) A definition of "compliance issue" has been added. This definition was added to contrast to the definition of "compliance related issue." There is no right to a state hearing on a compliance issue (§22-078.31), while there is a right to a state hearing on a compliance related issue (§22-078.5)

(l)(1) A definition of "language-compliant notice" has been added. This is one of the most significant changes. If a notice of action (NOA) is not language-compliant, the effect is the same as an inadequate notice. The definition of language-compliant notice is as follows:

**For notices of action provided by CDSS in the claimant's primary language** - a written notice that complies with the requirements of Section 21-115.2 for a claimant who chose to receive written communications offered in his/her primary language pursuant to Section 21-116.2.1. There is a rebuttable presumption that a claimant chose to receive written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

**If the department does not provide the notice of action in the claimant's primary language** under Section 21-115.2, the county must offer and provide interpretive services for that notice of action if either of the following applies: if the claimant contacts the county about the notice prior to the deadline for a timely request for hearing and indicates a need for interpretive services or the claimant has previously identified a primary language other than English and contacts the county about the notice prior to the deadline for a timely request for hearing.

(p)(1) The definition of "preliminary hearing" has been repealed because the preliminary hearing process has been repealed.

A new (p)(1) has been added to define "precedent decision" as a decision or part of a decision that is designated as a precedent if it contains a significant legal or policy determination of general application that is likely to recur.

## Hearing Rights (22-003)

.13 This section states that complaints of discourteous treatment by a county employee shall not be subject to the state hearing process. The language regarding remanding the discourteous treatment issue to the county has been deleted because there is no reason for a judge to write an order remanding this issue.

.14 This section has been added and states that there is no jurisdiction through the state hearing process in matters involving child custody and child welfare service issues while the child is under the jurisdiction of the juvenile court, including but not limited to those issues left to the discretion of the welfare department by the juvenile court.

## Request for State Hearing (22-004)

.22 This section has been modified to provide authority for the county to directly enter the hearing request into the state hearing computer system online.

## Time Limit for Request for State Hearing (22-009)

.1 This section now specifies that if the NOA is not adequate and/or language compliant, an otherwise untimely hearing request will be deemed timely.

.2 This section renumbered from 22-009.12 states more clearly the rule regarding jurisdiction when the current amount of aid is at issue. The claimant has the right request a hearing to review the current amount of aid and this review will extend back 90 days from the date of the request for hearing and will include the entire first month in the 90-day period. **The review will only apply to facts that occurred during the review period.** There are two examples set forth in handbook in the new regulations.

## General Rules and Procedures (22-049)

.52 This section extends remedies, including the right to a postponement, and the right to aid paid pending, to limited-English-proficient claimants who receive notices of action which do not meet the definition of language-compliant notice. Previously the regulations only applied these remedies to claimants who did not receive adequate notice.

.53 Current regulations provide that if the parties agree or if the ALJ determines on his/her own motion, the hearing will proceed only on the jurisdictional issue. These amendments provide authority for our current bifurcation process and indicate that prior to the hearing, a party may request in writing to the regional Presiding Judge that the hearing be limited to the issue of jurisdiction. A copy of the request shall be sent to the other party.

.61 This section was modified to add a provision that the Administrative Law Judge shall examine an interpreter with regard to any personal or economic interest in the matter and shall disqualify an interpreter with any such interest.

## Postponements and Continuances (22-053)

The section on postponements has been reorganized for clarification and amendments specify that the good cause reasons for postponing a hearing include, but are not limited to, the criteria set forth in Section 22-053. The sections are now divided into claimant requests (22-053.11),

county requests (22-053.12), Administrative Law Judge postponements (22-053.13), and hearing notice not received (for purposes of establishing good cause for a claimant non-appearance) (22-053.14). Also a new subsection 22-053.4 has been added to address aid paid pending in postponement situations.

### **Dismissals (22-054)**

.22 The reopening process has been modified by eliminating the 10-day reopening period following a nonappearance and allowing for the immediate issuance of a dismissal decision. The claimant may request that the dismissal decision be set aside and a **new hearing** scheduled if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received by the claimant. If a new hearing is granted the decision dismissing the claim is set aside. If a new hearing is not granted, the claimant shall be notified in writing as to the reasons the decision was not set aside and the right to appeal such dismissal in Superior Court.

This process replaces the **rehearing** process in cases where a claimant fails to attend a hearing and a nonappearance decision is issued.

### **Rehearings (22-065)**

.6 These provisions amend the rehearing regulations to clarify that a party can have a rehearing on a rehearing decision on an issue that was decided for the first time on the merits in the rehearing decision. The amendments also provide that a hearing request that has been dismissed pursuant to section 22-054.4 shall not be subject to a rehearing.

### **Preliminary Hearings (22-074-22-076)**

The current provisions dealing with Preliminary Hearings were deleted.

### **Hearing Not Held in County Responsible for Aid (22-077)**

.2 This section has been added to clarify that for out of county hearings, the responsible county shall be authorized to participate in the hearing by telephone, but must still send the position statement to the hearing location.

### **Authorized Representatives (22-085)**

.21 and .22 These sections have been modified to clarify when a person may be recognized as the authorized representative in situations where the claimant has not authorized the person in writing and the claimant is not present at the hearing.

**If the person is an attorney** and he/she states on the record that the claimant is mentally competent and has authorized him/her to act as the authorized representative regarding the issue to be addressed at the hearing, the attorney shall be recognized as an authorized representative **without being required to submit an AR form.**

**If the person is not an attorney** but swears or affirms or states under penalty of perjury that the claimant is mentally competent and has authorized him/her to act as the claimant's AR, the hearing may also proceed if the judge determines the person is so authorized and **a written authorized representative form is submitted within 10 days of the hearing.**

.24 This section establishes that if the person, whether an attorney or non-attorney, does not state on the record that the claimant is mentally competent and has authorized him/her to act as authorized representative, the person shall not be recognized as authorized representative and the hearing shall not proceed and the request shall be dismissed unless Section 22-085.23 (regarding mentally incompetent persons) applies.

.4 and .41 These sections add that the duty of the county to send copies of correspondence to the authorized representative applies to notices including notices related to a conditional withdrawal or compliance with a state hearing decision.

### **Implementation of State Hearing Revisions (22-901)**

The amendments regarding language-complaint notices of action shall be implemented only as to notices of action issued after the amended regulations are filed with the Secretary of State.