

STATE HEARINGS

A decorative architectural frame in a light gray color. It features a horizontal top bar with a row of small semi-circular indentations along its bottom edge. The bar is supported by two vertical columns on either side, each with a spiral capital at the top and three vertical flutes. The frame encloses the text below.

Preparing and Presenting

Foundation of What You Need

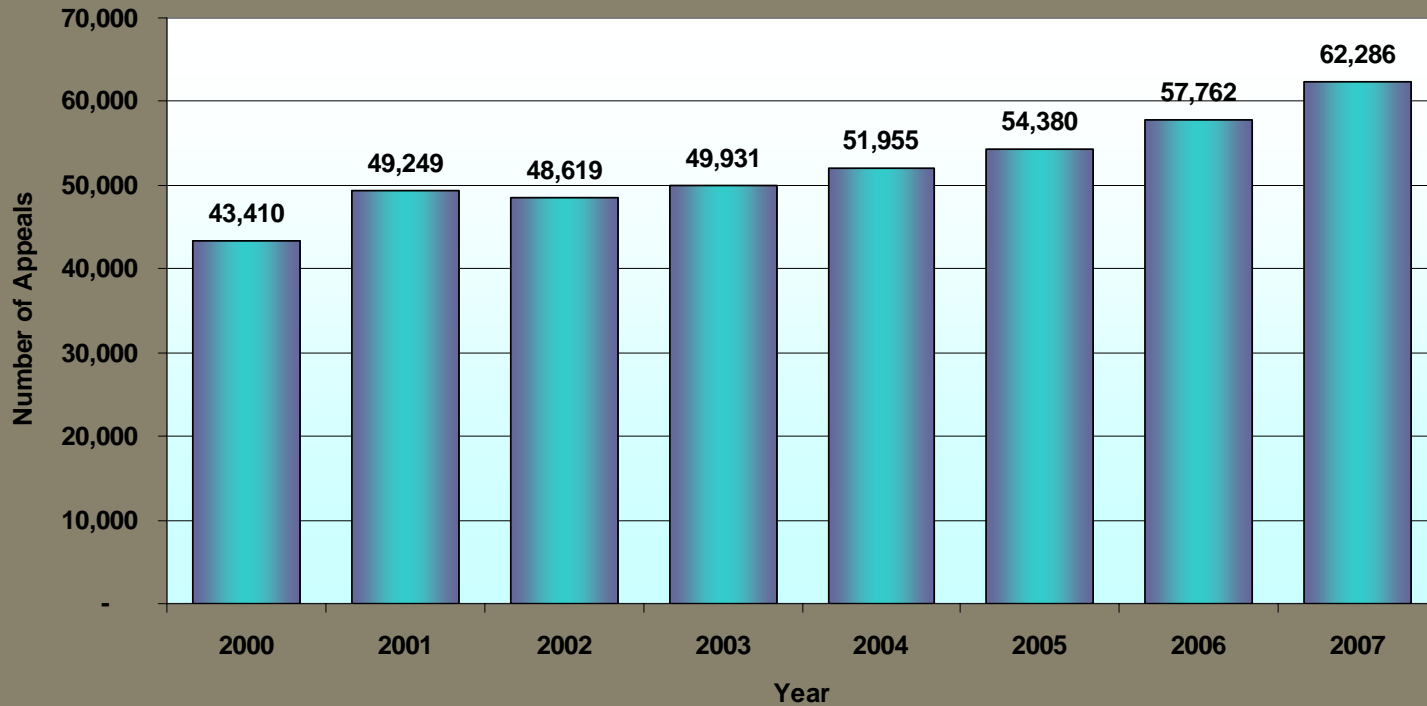
- ◆ Understand Due Process
- ◆ Understand the rights and responsibilities of the participants at the hearing
- ◆ Understand how the testimony and evidence will be viewed and weighed
- ◆ Understand how to identify and provide all documentation to support the agency's action
- ◆ Expect testimony/evidence to be disputed

Due Process

- ◆ Protects individual rights and liberties
- ◆ The Fifth and Fourteenth Amendments prohibit the deprivation of Liberty and property without due process
- ◆ Goldberg v. Kelly, 397 U.S. 254 (1970)
- ◆ Ohio received over 62,000 hearing appeal requests per year

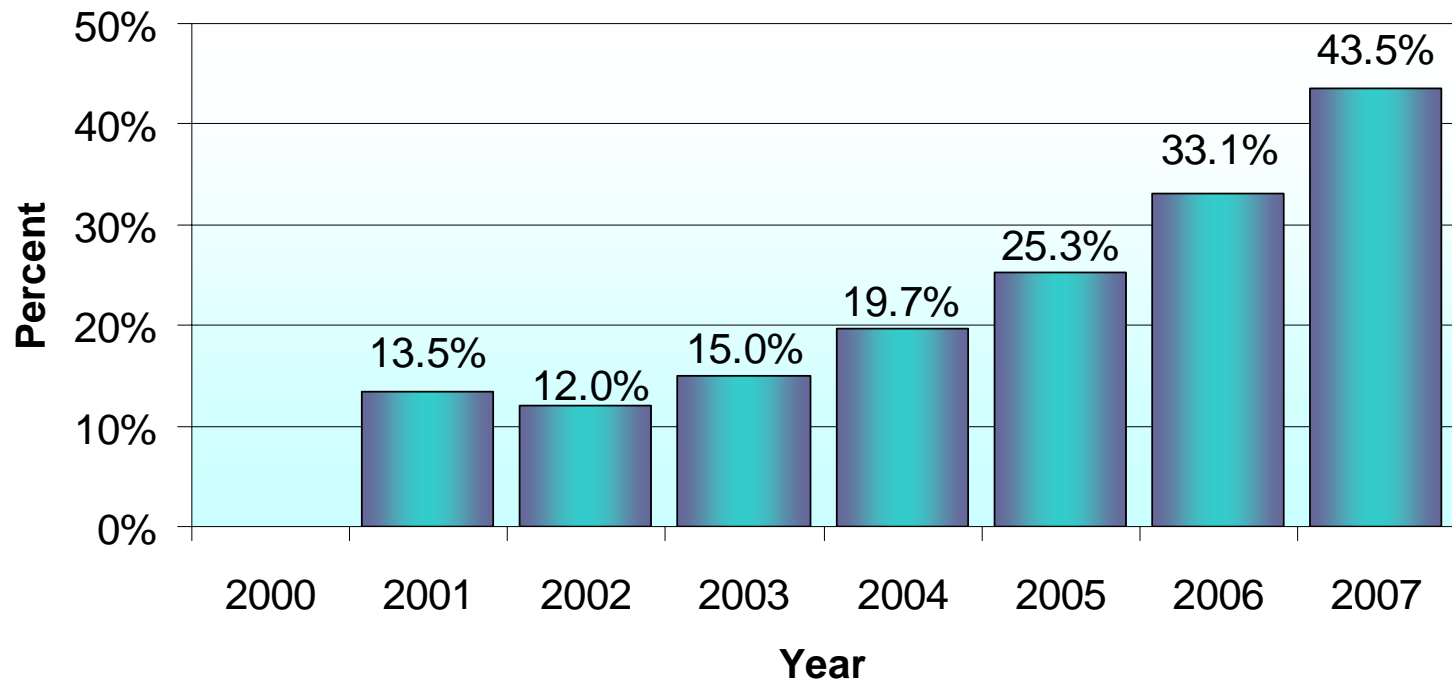
By the Numbers

Total Number of Appeals for 2000 - YTD 2007



By the Numbers

Percentage Change in Appeals from 2000 to YTD 2007

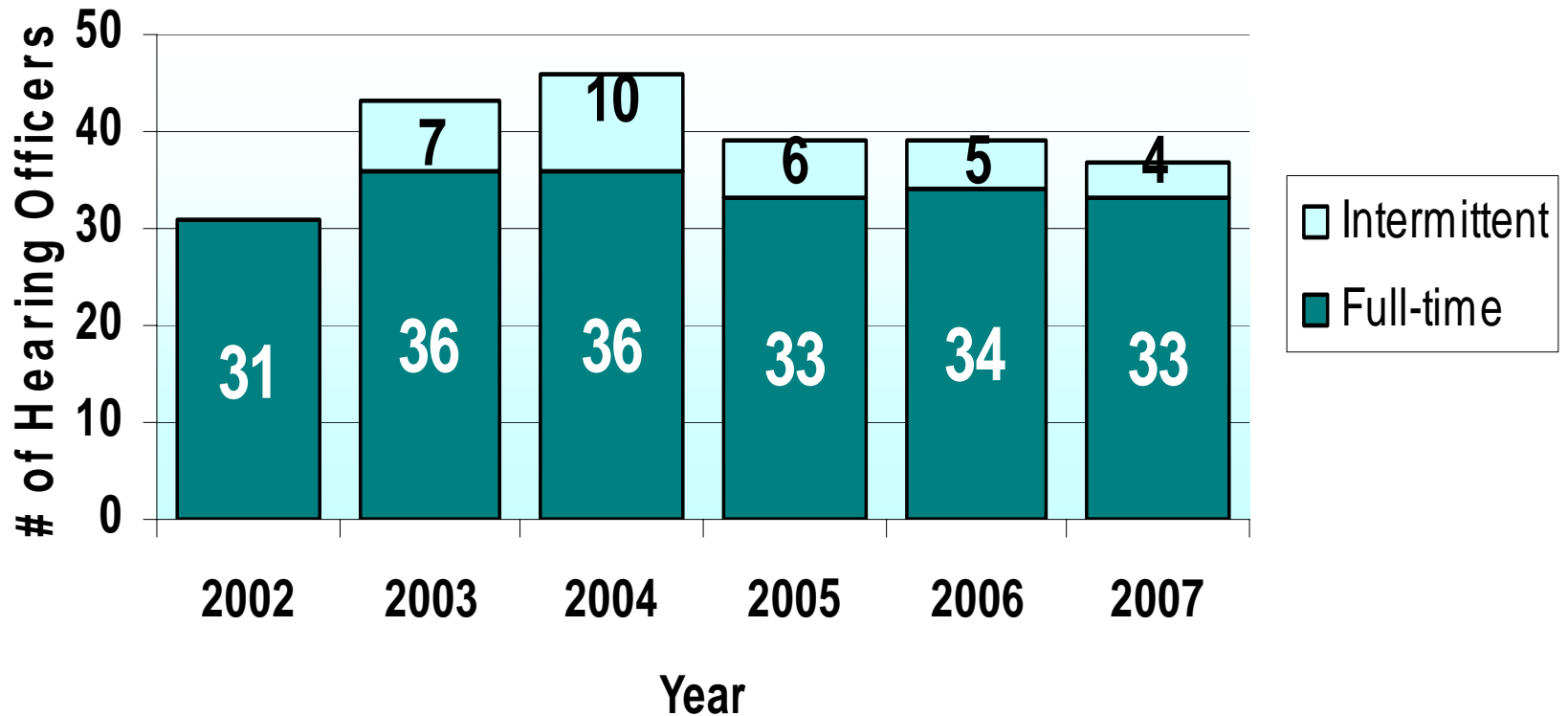


By Program

Calendar Year	Food Stamps		OWF		Medicaid		Total Appeals per Year
	Assistant Group	Appeals	Assistant Group	Appeals	Enrollees/Eligibles	Appeals	
2000	280,036	11,064	97,189	7,839	1,163,758	18,359	37,262
2001	300,662	12,612	85,801	7,824	1,365,642	21,244	41,680
2002	341,929	12,700	86,016	7,352	1,494,257	21,184	41,236
2003	390,281	13,132	86,737	6,734	1,597,178	20,688	40,554
2004	427,616	13,637	87,033	6,802	1,680,714	20,187	40,626
2005	455,964	14,557	84,472	7,193	1,739,587	22,117	43,867
2006	484,134	16,671	81,190	8,115	1,755,093	23,151	47,937
2007*		17,559		8,020	1,740,107	26,817	52,396

Staffing

Hearing Officers for 2002 - 2007



Court Decisions/State Hearings

- ◆ Peppers v. Barry, C75-329 (1977) - In 1977, Peppers v. Barry (originally Peppers v. McKenna), found our department had failed to issue state hearing decisions within the federally mandated 90-day (public assistance) and 60-day (food stamp) time limits.

Grounds for Requesting a State Hearing-Ohio Admin. Code § 5101:6-3-01

- ◆ The agency has proposed or acted to reduce, suspend, terminate, or withhold benefits, or the assistance group believes that the level of benefits is not correct.
- ◆ The application has not been acted upon timely, the agency has determined that an overpayment occurred, or the assistance group believes that the amount of the overpayment is not correct.

State Hearing Request-Ohio Admin. Code § 5101:6-3-02

- ◆ A clear expression, by the individual or authorized representative, to the effect that he or she wishes to appeal a decision or wants the opportunity to present his or her case to a higher authority.
- ◆ Ninety days from the date notice.

Hearing Requests

- ◆ Is the request within ninety days of the date notice was issued?;
- ◆ If untimely, provide verification of date notice was mailed/received
- ◆ If timely hearing request, benefits should continue pending the outcome of the hearing decision

Court Decisions

- ◆ Tompkins v Cuddy, C-1-83-829 (1984)
Plaintiffs sued to increase the prior notice period, adducing examples of inadequacy of the 10-day period to fully protect in the face of mail and agency processing delays. In a consent judgment, the court directed that the timely notice period be increased from 10 to 15 days.

Ohio Admin. Code § 5101:6-5-01/Procedures Prior to a State Hearing

- ◆ Agency received request-date stamp and forward to BSH within one workday.
- ◆ BSH received request-date stamp and forward to the local CDJFS within one workday
- ◆ Agency is required to complete an Appeal Summary, attach all facts and documents relevant to issue under appeal Send to assigned hearing section within five workdays from the date the request is received.

Procedures Prior to a State Hearing/OAC 5101:6-5-01

- ◆ County Conference-if resolved/ withdrawn, the withdraw is to be forwarded to the assigned hearing section within (2) workdays.
- ◆ Agency is to provide access to case documents unless confidential and protected from release.
- ◆ At request, provide one copy of each document at no cost
- ◆ Agency-current program manuals available
- ◆ Failure to provide access can result in postponement

Procedures Prior to a State Hearing/OAC 5101:6-5-01

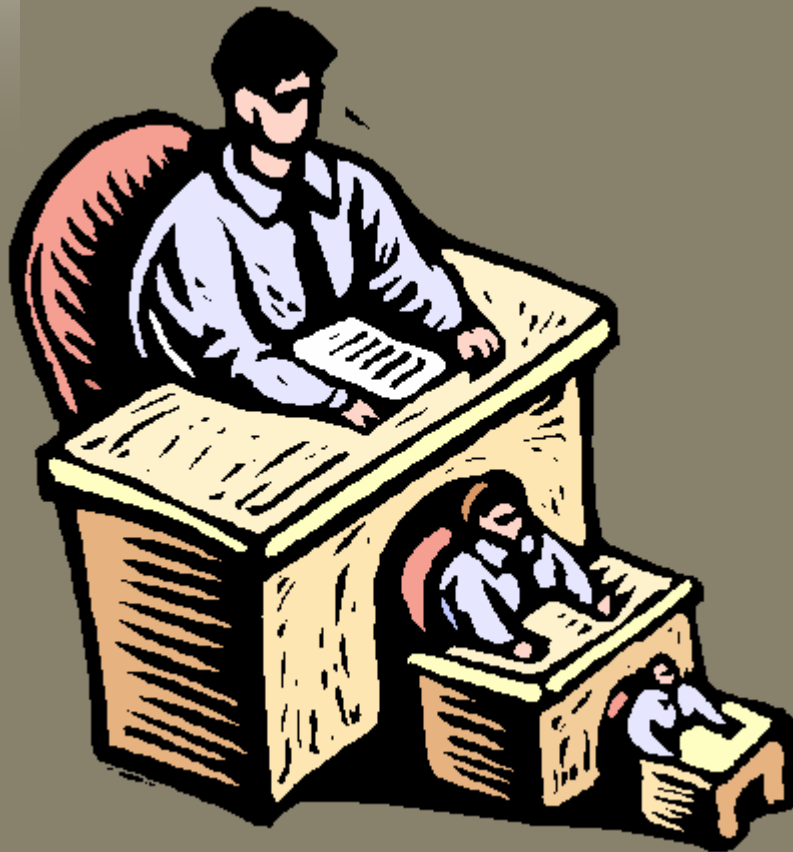
- ◆ Subpoena requests- 5 days prior to the date of the hearing.
- ◆ Must show that documents or witnesses would not otherwise be available and how they are essential to the case.
- ◆ Agency may provide transportation to the hearing if there is a valid need

Ohio Admin. Code § 5101: 6-5-02

Postponement

- ◆ Agency may request one postponement.
- ◆ The request must be made (7) days prior to the scheduled hearing.
- ◆ Will not be granted if the postponement will prevent the Bureau of State Hearings from issuing the decision within the applicable time limits.

Agency Responsibility-Ohio Admin. Code § 6-6-02(A)



- ◆ Presents and is the advocate for the agency's case
- ◆ Explain the reasons for the action

Ohio Administrative Code 5101:6-6-02(A)

- ◆ Cite the regulations upon which the action was based
- ◆ Provide relevant case information and documents
- ◆ Answer relevant questions from the individual and the hearing officer
- ◆ Confront and cross-examine during the hearing

Burden of Proof-

- ◆ Ohio Admin. Code § 5101:6-7-01-It shall be the responsibility of the agency to show, by the preponderance of the evidence that its action or inaction was in accordance with JFS rules.

Burden of Proof- Administrative Disqualification Hearings

- ◆ Ohio Admin. Code § 5101:6-20-16-It shall be the responsibility of the agency to show, by clear and convincing evidence, that the accused individual committed an intentional program violation.

The Individual Making The Request

- ◆ Ohio Admin. Code § 5101:6-6-02 (B)
- ◆ Opportunity to present
- ◆ Representative
- ◆ Examine contents of file

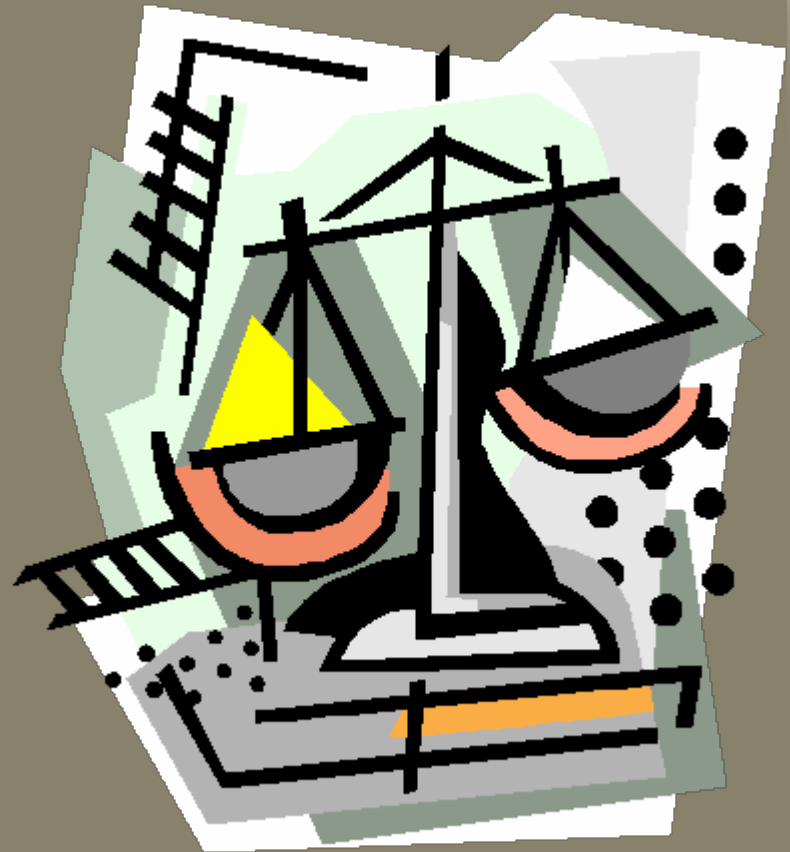


Ohio Administrative Code § 5101:6-6-02 (B)

- ◆ Bring witnesses
- ◆ Submit evidence
- ◆ Advance arguments
- ◆ Question or refute testimony or evidence
- ◆ Confront and cross-examine adverse witnesses

Role of the Hearing Officer

- ◆ Ohio Administrative Code § 5101:6-6-02 (C)
- ◆ Impartial ODJFS hearing officer
- ◆ No personal stake or involvement



Role of the Hearing Officer

- ◆ Cannot consult with either party prior to hearing concerning the substance of the case.
- ◆ Can only review the hearing request/appeal summary prior to the hearing
- ◆ Develop the fullest record upon which to base necessary findings of fact
- ◆ Assist unrepresented individuals; and

Role of the Hearing Officer

- ◆ Once the hearing closes the record, the hearing officer shall not discuss the substance of the case with either party, unless at a supplemental hearing at which both parties are present



Ex parte communication

- ◆ Ex parte - On or from one party only without notice or argument from adverse party
- ◆ Prohibited
- ◆ Ex parte communication can lead to discipline of hearing officer

State Hearing Decisions

Ohio Admin. Code § 5101:6-7-01

- ◆ The Hearing Officer's Finding of Fact must be based exclusively on evidence introduced at the hearing/after subject to examination by parties.
- ◆ Hearsay/Direct evidence
- ◆ Avoid basing a finding on hearsay

State Hearing Decisions

Ohio Admin. Code § 5101:6-7-01

- ◆ Conclusions of policy and recommendations shall be based solely on published JFS regulations, or local agency policy adopted in state law
- ◆ When policies are silent, Ohio Revised Code other statutory source is referenced to resolve the issue
- ◆ Binding effect

Implementation of State Hearing Decision-Ohio Admin. Code § 5101:6-7-03

- ◆ Agency responsibility for implementing
- ◆ BSH responsibility to monitor
- ◆ Prompt reporting to the Bureau of State hearings
- ◆ Compliance Form/documentation to show compliance has been achieved

Date Compliance is Achieved

Ohio Admin. Code § 5101:6-7-03

- ◆ PA/SS/CS/achieved the date benefits are issued or the action ordered by the hearing is taken
- ◆ FS/Date the action is reflected in the AG allotment

Implementation of Administrative Disqualification Hearing Decisions Ohio Admin. Code § 5101: 6-20-17

- ◆ Agency responsibility to implement
- ◆ BSH responsibility to monitor
- ◆ Prompt reporting to the Bureau of State Hearings
- ◆ JFS 4068, attach Notice of Disqualification/4062, BVFV

ADH Compliance Achieved

Ohio Admin. Code 5101:6-20-17

- ◆ Achieved the date the disqualification is reflected in the AG benefits
- ◆ If not eligible, report on the 4068 and compliance will be considered achieved.

County Reviews-Ohio Admin. Code §5101:6-8-02

- ◆ As of 3/98-County can request review of hearing decision
- ◆ Objections must be in writing from Agency Director
- ◆ Time frame for submitting County Review request and issuance of review decision

Court Decisions

- ◆ Stephenson V. Creasy, C-2-77-680 (1982) Plaintiffs sued to eliminate the reconsideration of hearings. The court held that it deprived claimants of due process protections and postponed final administrative action beyond the mandatory time limits.

Preparing

- ◆ Appeal Summary
- ◆ If the issue is unclear, call the individual to clarify the issue
- ◆ Contact can result in resolving the issue
- ◆ Fact Sheet with dates and information in chronological order
- ◆ All documents that support the action taken

Administrative Disqualification Referral-Ohio Admin. Code § 5101:6-20-10

- ◆ Complete a Referral-JFS 4060
- ◆ Separate referral for each individual/program
- ◆ Attach the Waiver of Administrative Disqualification sent 15 days prior to the referral
- ◆ Attach all information and documentation relied upon in determining IPV

You Should Not Refer for ADH

- ◆ The case is currently being referred for prosecution
- ◆ Subsequent to any action taken against the accused by the prosecutor or the court, if the factual issues of the case arise out of the same or related circumstances
- ◆ A previous ADH on the same or related was decided in favor of the accused.

Definition of IPV

Ohio Admin. § 5101:6-20-02

- ◆ OWF- An action by an individual, for the purpose of establishing or maintaining the family's eligibility for OWF or for increasing or preventing a reduction in the amount of the grant, which is intentionally: (1) a false or misleading statement or misrepresentation, concealment, or withholding of facts' or (2) any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

Definition of IPV

Ohio Admin. § 5101:6-20-02

- ◆ Food stamps- an action by an individual, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing food stamp benefits, which is intentionally: (1) a false or misleading statement, or a misrepresentation, concealment or withholding of facts; or (2) any act that constitutes a violation of the Food Stamp Act, the food stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp benefits.

Definition of IPV

Ohio Admin. § 5101:6-20-02

- ◆ PRC- an action by an individual, for the purpose of establishing eligibility for PRC benefits which is intentionally: (1) a false or misleading statement or misrepresentation, concealment, or withholding of facts' or (2) any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

ADH Scheduling by the Bureau of State Hearings- Ohio Admin. Code § 5101:6-20-12

- ◆ 30-day notice (unless individual waives 30-day notice)
- ◆ Waiver of Administrative Disqualification Hearing, Explanation of ADH Procedures/JFS4058
- ◆ Regular mail/Certified mail
- ◆ AHD can be combined with an overpayment issue if the individual requests it-Ohio Admin. Code 5101:6-20-11

Dismissals of ADH's

- ◆ Signed waiver prior to the ADH
- ◆ Certified mail and regular mail returned as undeliverable
- ◆ The agency can submit a new referral when an updated or current address is obtained

Presenting

- ◆ Present facts in chronological order
- ◆ Avoid acronyms
- ◆ Provide and identify all documents used in determining action taken
- ◆ Provide regulations used to support the action

Definitions

- ◆ Evidence - Something (including testimony, documents and tangible object) that tends to prove or disprove the existence of an alleged fact.
- ◆ Direct Evidence – Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. Also termed positive evidence.

Definitions

- ◆ Hearsay – Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said and that is therefore dependent on the credibility of someone other than the witness. Also termed hearsay evidence; secondhand evidence

Definitions

- ◆ Preponderance of the Evidence – The greater weight of the evidence, superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other

Definitions

- ◆ Clear and Convincing Evidence – Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence (which is used in most civil trials and regular state hearings) but less than evidence beyond a reasonable doubt (used in criminal trials)

Definitions

- ◆ Probability – Likelihood; appearance of reality or truth; reasonable ground of presumption, the appearance of being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor. A condition or state created when there is more evidence in favor of the existence of a given proposition than there is against it.

Definitions

- ◆ Possibility – An event that may or may not happen
- ◆ Intent – The state of mind accompanying an act. While motive is the inducement to do some act, intent is the mental resolution or determination to do it.

Summary

- ◆ Due Process/Fair Hearing Rights
- ◆ Agency Responsibility
- ◆ Individual Responsibility
- ◆ Hearing Officer Responsibility