

5101:6-1-01 State hearings - general.

- (A) Chapters 5101:6-1 to 5101:6-9 of the Administrative Code describe the hearing rights and procedures applicable to public assistance, food stamps, and social services, pursuant to section 5101.35 of the Revised Code, and to child support services, pursuant to section 2301.35 of the Revised Code.
- (B) All rules contained in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code shall be interpreted in a manner consistent with section 1.11 of the Revised Code, which requires that they be liberally construed in order to promote their objective and assist the individual in obtaining justice. All rules relating to the right to a hearing and limitations on that right shall be interpreted in favor of the right to a hearing.
- (C) When it appears that an individual may not be able to understand or exercise the right to a state hearing due to factors such as limited mental capability or language barriers, the local agency shall assist the individual in naming a responsible party (guardian, relative, legal aid attorney, etc.) to act as authorized representative and receive a copy of notice in addition to the original to the individual. This requirement applies to notice at the time of application and to all subsequent hearing notices. A referral to social services for assistance in naming a responsible party may be appropriate.
- (D) In counting the days contained in timely appeal and other time periods specified in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, the date on which notice was mailed or otherwise provided is not counted.

If the last day of the time period falls on a Saturday, Sunday, or state or federal legal holiday, then the time period is extended to include the next workday.

As an example, if a prior notice is mailed October tenth, the fifteen-day prior notice period extends from October eleventh through October twenty-fifth. If October twenty-fifth falls on a Sunday, the prior notice period is extended to include the next workday, Monday, October twenty-sixth.

- (E) Local agencies may modify the format, but not the content, of state hearing notices mandated in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code to accommodate computer generation of the notice. All such modifications must be prior approved by the office of legal services, ODHS.
- (F) Definitions

As used in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, the following terms shall have the following meanings unless otherwise specified.

- (1) "Local agency" shall refer to any or all of the following:
 - (a) The county department of human services, pursuant to section 5101.35 of the Revised Code.
 - (b) The county public children services agency, pursuant to section 5101.35 of the Revised Code.
 - (c) The county child support enforcement agency, pursuant to section 2301.35 of the Revised Code.
- (2) "Agency" shall refer to either the local agency or to the Ohio department of human services (ODHS).

- (3) "Social services" shall refer to any or all of the following:
- (a) ~~JOBS and LEAP~~ supportive services, AND SUPPORT SERVICES provided TO PARTICIPANTS IN A WORK ACTIVITY ~~pursuant to rule 5101:1-47-26 of the Administrative Code~~ UNDER THE OHIO WORKS FIRST (OWF) PROGRAM OR THE FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM.
 - (b) Publicly funded child care services provided pursuant to Chapter 5101:2-16 of the Administrative Code.
 - (c) Title XX services provided pursuant to Chapter 5101:2-29 of the Administrative Code.
- (4) "Benefits" shall refer to benefits under any or all of the following programs:
- (a) Public assistance
 - (i) REFUGEE RESETTLEMENT PROGRAM
 - (ii) DISABILITY ASSISTANCE
 - (iii) OWF CASH ASSISTANCE
 - (iv) PREVENTION, RETENTION AND CONTINGENCY PROGRAM
 - (v) MEDICAID
 - (b) Food stamps
 - (c) Social services

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 10-1-78, 12-1-79, 4-1-80, 6-2-80, 10-1-81, 5-1-82, 10-1-82, 4-1-83, 7-1-83, 11-1-83(Temp.), 12-1-83, 3-1-84(Temp.), 6-1-84, 10-3-84(Emer.), 12-22-84, 7-1-85(Emer.), 9-29-85, 4-1-86, 4-1-87, 12-1-87, 5-1-88, 11-1-88, 11-1-89(Emer.), 1-29-90, 10-1-91, 6-1-93, 10-1-97(Emer.)

5101:6-2-01 NOTICE AT THE TIME OF APPLICATION.

- (A) AT THE TIME OF APPLICATION FOR BENEFITS, THE ASSISTANCE GROUP SHALL BE INFORMED, IN WRITING, OF THE RIGHT TO A STATE HEARING, OF THE METHOD BY WHICH A STATE HEARING MAY BE REQUESTED, AND THAT THE CASE MAY BE PRESENTED BY THE ASSISTANCE GROUP OR BY AN AUTHORIZED REPRESENTATIVE, SUCH AS LEGAL COUNSEL, RELATIVE, FRIEND, OR OTHER SPOKESPERSON.
- (B) "EXPLANATION OF STATE HEARING PROCEDURES," ODHS 4059, OR ITS CRIS-E EQUIVALENT, SHALL BE USED TO PROVIDE THIS NOTICE. THE ASSISTANCE GROUP SHALL ALSO BE GIVEN A COPY OF THE PAMPHLET, "YOU HAVE A RIGHT TO A HEARING," ODHS 8007.
- (C) IN THE FOOD STAMP PROGRAM, IF THE ASSISTANCE GROUP MAKING APPLICATION SPEAKS A LANGUAGE OTHER THAN ENGLISH, AND IF THE LOCAL AGENCY IS REQUIRED BY RULE 5101:4-1-07 OF THE ADMINISTRATIVE CODE TO PROVIDE BILINGUAL STAFF OR INTERPRETERS WHO SPEAK THE APPROPRIATE LANGUAGE, THE LOCAL AGENCY SHALL ENSURE THAT THE HEARING PROCEDURES ARE EXPLAINED VERBALLY IN THAT LANGUAGE.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 6-2-80, 9-19-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 4-1-83, 11-1-83(Temp.), 1-1-84, 3-1-84(Temp.), 6-1-84, 10-3-84(Temp.), 12-22-84, 4-1-87

5101:6-2-02 NOTICE OF APPROVAL OF AN APPLICATION FOR BENEFITS.

(A) WHEN THE AGENCY APPROVES AN APPLICATION FOR PUBLIC ASSISTANCE OR SOCIAL SERVICES, THE ASSISTANCE GROUP SHALL BE PROVIDED PROMPT WRITTEN NOTICE OF THE DECISION.

(1) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION THE AGENCY HAS TAKEN AND THE REASONS FOR IT, INCLUDING THE BEGINNING DATE OF AID AND THE AMOUNT OF ALL BENEFITS AUTHORIZED, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

(2) "NOTICE OF APPROVAL OF YOUR APPLICATION FOR ASSISTANCE," ODHS 4074, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

(B) WHEN THE AGENCY APPROVES AN APPLICATION OR REAPPLICATION FOR FOOD STAMP BENEFITS, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF THE DECISION.

(1) TIMING OF THE NOTICE SHALL BE IN ACCORDANCE WITH RULES 5101:4-5-07 AND 5101:4-5-13 OF THE ADMINISTRATIVE CODE.

(2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION THE AGENCY HAS TAKEN, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

THE NOTICE SHALL INCLUDE THE AMOUNT OF THE ALLOTMENT, THE BEGINNING AND ENDING DATES OF THE CERTIFICATION PERIOD, AND ANY VARIATIONS IN THE BENEFIT LEVEL BASED ON CHANGES ANTICIPATED AT THE TIME OF CERTIFICATION.

IF THE INITIAL ALLOTMENT CONTAINS BOTH BENEFITS FOR THE MONTH OF APPLICATION AND THE CURRENT MONTH'S BENEFITS, THE NOTICE SHALL EXPLAIN THAT THE INITIAL ALLOTMENT INCLUDES MORE THAN ONE MONTH'S BENEFITS, AND SHALL INDICATE THE MONTHLY ALLOTMENT FOR THE REMAINDER OF THE CERTIFICATION PERIOD.

(3) THE AGENCY MAY INCLUDE WITH THE NOTICE A REMINDER OF THE ASSISTANCE GROUP'S OBLIGATION TO REPORT CHANGES IN CIRCUMSTANCES AND THE NEED TO REAPPLY FOR CONTINUED PARTICIPATION AT THE END OF THE CERTIFICATION PERIOD. OTHER INFORMATION WHICH MAY BE USEFUL TO THE ASSISTANCE GROUP ALSO MAY BE INCLUDED.

(4) WHEN AN ASSISTANCE GROUP'S APPLICATION IS APPROVED ON AN EXPEDITED BASIS WITHOUT VERIFICATION, AS PROVIDED IN RULE 5101:4-6-09 OF THE ADMINISTRATIVE CODE, THE NOTICE SHALL BE ACCOMPANIED BY AN EXPLANATION THAT THE ASSISTANCE GROUP MUST PROVIDE THE VERIFICATION THAT WAS WAIVED.

- (5) IF THE AGENCY HAS ELECTED TO ASSIGN A LONGER CERTIFICATION PERIOD TO AN ASSISTANCE GROUP CERTIFIED ON AN EXPEDITED BASIS, THE NOTICE SHALL ALSO BE ACCOMPANIED BY AN EXPLANATION OF THE SPECIAL CONDITIONS OF THE LONGER CERTIFICATION PERIOD, AS SPECIFIED IN RULE 5101:4-6-09 OF THE ADMINISTRATIVE CODE.
- (6) FOR ASSISTANCE GROUPS PROVIDED A NOTICE OF EXPIRATION AT THE TIME OF CERTIFICATION, AS REQUIRED BY RULE 5101:4-7-07 OF THE ADMINISTRATIVE CODE, THE NOTICE OF ELIGIBILITY SHALL BE ACCOMPANIED BY A NOTICE OF EXPIRATION.
- (7) "NOTICE OF ELIGIBILITY, DENIAL, PENDING STATUS, OR CHANGE," ODHS 7401, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-2-80, 4-1-87, 4-1-89, 6-1-93

5101:6-2-03 NOTICE OF DENIAL OF AN APPLICATION FOR BENEFITS.

- (A) WHEN THE AGENCY DENIES AN APPLICATION FOR OR A REQUESTED CHANGE IN PUBLIC ASSISTANCE OR SOCIAL SERVICES, THE ASSISTANCE GROUP SHALL BE PROVIDED PROMPT WRITTEN NOTICE OF THE DECISION.
- (1) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION THE AGENCY HAS TAKEN AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
 - (2) "NOTICE OF DENIAL OF YOUR APPLICATION FOR ASSISTANCE," ODHS 7334, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.
- (B) WHEN THE AGENCY DENIES AN APPLICATION OR REAPPLICATION FOR OR A REQUESTED CHANGE IN FOOD STAMP BENEFITS, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF THE DECISION.
- (1) TIMING OF THE NOTICE SHALL BE IN ACCORDANCE WITH RULES 5101:4-5-11 AND 5101:4-5-13 OF THE ADMINISTRATIVE CODE.
 - (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION THE AGENCY HAS TAKEN AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
 - (3) WHEN THE DENIAL IS CAUSED BY THE ASSISTANCE GROUP'S FAILURE TO TAKE ACTION TO COMPLETE THE APPLICATION PROCESS, AS DESCRIBED IN RULE 5101:4-5-13 OF THE ADMINISTRATIVE CODE, THE NOTICE SHALL ALSO EXPLAIN WHAT ACTION THE ASSISTANCE GROUP MUST TAKE TO REACTIVATE THE APPLICATION, THAT THE CASE WILL BE REOPENED WITHOUT A NEW APPLICATION IF ACTION IS TAKEN WITHIN THIRTY DAYS OF THE MAILING DATE OF THE DENIAL NOTICE, AND THAT THE ASSISTANCE GROUP MUST SUBMIT A NEW APPLICATION IF, AT THE END OF THE THIRTY-DAY PERIOD, THE ASSISTANCE GROUP HAS NOT TAKEN THE NEEDED ACTION AND WISHES TO PARTICIPATE IN THE PROGRAM.
 - (4) WHEN THE AGENCY IS AT FAULT FOR NOT COMPLETING THE APPLICATION PROCESS BY THE END OF THE SECOND THIRTY-DAY PERIOD, BUT THE CASE FILE IS NOT COMPLETE ENOUGH TO REACH AN ELIGIBILITY DETERMINATION, IF THE AGENCY CHOOSES TO DENY THE CASE, THE NOTICE OF DENIAL SHALL BE ACCOMPANIED BY NOTIFICATION TO THE ASSISTANCE GROUP TO FILE A NEW APPLICATION AND OF ITS POSSIBLE ENTITLEMENT TO BENEFITS LOST AS A RESULT OF AGENCY DELAY.
 - (5) SEE RULE 5101:4-2-02 OF THE ADMINISTRATIVE CODE FOR ADDITIONAL INFORMATION WHICH MUST ACCOMPANY NOTICE OF DENIAL FOR ASSISTANCE GROUPS WITH ACTUAL OR POTENTIAL CATEGORICAL ELIGIBILITY.

(6) "NOTICE OF ELIGIBILITY, DENIAL, PENDING STATUS, OR CHANGE," ODHS 7401, OR ITS CRIS-E EQUIVALENT, SHALL BE USED FOR DENIAL OF NA FOOD STAMP APPLICATIONS.

"NOTICE OF DENIAL OF YOUR APPLICATION FOR ASSISTANCE," ODHS 7334, OR ITS CRIS-E EQUIVALENT, SHALL BE USED TO DENY PA FOOD STAMP APPLICATIONS.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-2-80, 4-1-87, 4-1-89

5101:6-2-04 PRIOR NOTICE OF ADVERSE ACTION.

WHEN THE AGENCY INTENDS TO WITHHOLD, REDUCE, SUSPEND, OR TERMINATE PUBLIC ASSISTANCE, SOCIAL SERVICES, OR FOOD STAMPS WITHIN THE CERTIFICATION PERIOD, OR TO CHANGE THE MANNER OR FORM OF ASSISTANCE TO PROTECTIVE, VENDOR, OR TWO-PARTY PAYMENT, THE ASSISTANCE GROUP SHALL BE PROVIDED PRIOR WRITTEN NOTICE OF THE ACTION.

- (A) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED NO LESS THAN FIFTEEN CALENDAR DAYS PRIOR TO THE PROCESSING OF THE PROPOSED ACTION.
- (B) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE PROPOSED ACTION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, EXPLAIN THE CIRCUMSTANCES UNDER WHICH A TIMELY HEARING REQUEST WILL RESULT IN CONTINUED BENEFITS, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (C) "PRIOR NOTICE OF RIGHT TO A STATE HEARING," ODHS 4065, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.
- (D) IF A CHANGE IN THE ASSISTANCE GROUP'S CIRCUMSTANCES REQUIRES REDUCTION OR TERMINATION OF BOTH PA AND FOOD STAMP BENEFITS, THE AGENCY SHALL ISSUE A SINGLE ODHS 4065 FOR BOTH PA AND FOOD STAMP ACTIONS.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 6-2-80, 12-1-80, 10-1-81, 1-18-82, 5-1-82, 7-1-82, 10-1-82, 1-1-83, 4-1-83, 8-1-83, 11-1-83(Temp.), 1-1-84, 3-1-84(Temp.), 6-1-84, 10-1-84(Temp.), 10-3-84(Emer.), 12-22-84, 8-20-86(Emer.), 11-15-86, 1-16-87(Emer.), 4-1-87, 4-6-87, 7-1-87(Emer.), 9-28-87, 4-1-89, 11-1-90

5101:6-2-05 EXCEPTIONS TO PRIOR NOTICE.

(A) PUBLIC ASSISTANCE AND SOCIAL SERVICES

(1) UNDER THE FOLLOWING CIRCUMSTANCES, PRIOR NOTICE OF ADVERSE ACTION IS NOT REQUIRED, BUT THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE ON OR BEFORE THE EFFECTIVE DATE OF THE ACTION.

(a) THE AGENCY HAS FACTUAL INFORMATION CONFIRMING THE DEATH OF AN INDIVIDUAL, OR OF THE PAYEE WHEN THERE IS NO RELATIVE AVAILABLE TO SERVE AS A NEW PAYEE.

(b) THE AGENCY RECEIVES A CLEAR, WRITTEN STATEMENT, SIGNED BY THE INDIVIDUAL, THAT HE OR SHE NO LONGER WISHES TO RECEIVE BENEFITS, OR THAT GIVES INFORMATION WHICH REQUIRES REDUCTION OR TERMINATION, AND INDICATES THAT THE INDIVIDUAL UNDERSTANDS THAT THIS MUST BE THE CONSEQUENCE OF SUPPLYING THE INFORMATION.

IN NO WAY DOES THIS EXCEPTION PERMIT THE PREPARATION OF ANY TYPE OF BLANKET STATEMENT TO BE SIGNED AT THE TIME OF APPLICATION OR AT ANY OTHER TIME WHICH WOULD ALLOW THE AGENCY TO TAKE ACTION AT SOME FUTURE DATE WITHOUT PROVIDING PRIOR NOTICE.

(c) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT THE INDIVIDUAL HAS BEEN ADMITTED OR COMMITTED TO AN INSTITUTION WHERE HE OR SHE IS INELIGIBLE FOR FURTHER BENEFITS.

(d) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT THE INDIVIDUAL HAS BEEN PLACED IN SKILLED NURSING CARE, INTERMEDIATE CARE, OR LONG-TERM HOSPITALIZATION WHERE HE OR SHE IS INELIGIBLE FOR FURTHER BENEFITS.

(e) THE ASSISTANCE GROUP'S WHEREABOUTS ARE UNKNOWN AND AGENCY MAIL DIRECTED TO THE ASSISTANCE GROUP HAS BEEN RETURNED BY THE POST OFFICE INDICATING NO KNOWN FORWARDING ADDRESS.

HOWEVER, THE ASSISTANCE GROUP'S BENEFIT MUST BE MADE AVAILABLE IF THE ASSISTANCE GROUP'S WHEREABOUTS BECOME KNOWN DURING THE PERIOD COVERED BY THE RETURNED BENEFIT.

(f) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT THE ASSISTANCE GROUP HAS BEEN ACCEPTED FOR BENEFITS IN A NEW STATE.

(g) A CHILD IS REMOVED FROM THE HOME AS A RESULT OF A JUDICIAL DETERMINATION OR IS VOLUNTARILY PLACED IN FOSTER CARE BY THE CHILD'S LEGAL GUARDIAN.

(h) A SPECIAL ALLOWANCE GRANTED FOR A SPECIFIC PERIOD IS TERMINATED AT THE END OF THE SPECIFIED PERIOD. THE ASSISTANCE GROUP MUST BE INFORMED, IN WRITING, WHEN THE ALLOWANCE IS INITIATED, OF THE EXACT DATE UPON WHICH THE ALLOWANCE WILL AUTOMATICALLY TERMINATE.

- (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION BEING TAKEN AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, EXPLAIN THE CIRCUMSTANCES UNDER WHICH A TIMELY HEARING REQUEST WILL RESULT IN REINSTATED BENEFITS, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (3) "NOTICE OF RIGHT TO A STATE HEARING," ODHS 4085, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

(B) FOOD STAMPS

UNDER THE FOLLOWING CIRCUMSTANCES, INDIVIDUAL NOTICES OF ADVERSE ACTION SHALL NOT BE PROVIDED.

- (1) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT ALL MEMBERS OF THE ASSISTANCE GROUP HAVE DIED.
- (2) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT THE ASSISTANCE GROUP HAS MOVED FROM THE COUNTY.
- (3) THE ASSISTANCE GROUP HAS BEEN RECEIVING AN INCREASED ALLOTMENT TO RESTORE LOST BENEFITS, THE RESTORATION IS COMPLETE, AND THE ASSISTANCE GROUP WAS PREVIOUSLY NOTIFIED IN WRITING OF WHEN THE INCREASED ALLOTMENT WOULD TERMINATE.
- (4) THE ASSISTANCE GROUP JOINTLY APPLIED FOR PA AND FOOD STAMP BENEFITS, HAS BEEN RECEIVING FOOD STAMP BENEFITS PENDING THE APPROVAL OF THE PA GRANT, AND WAS NOTIFIED IN WRITING AT THE TIME OF CERTIFICATION THAT FOOD STAMP BENEFITS WOULD BE REDUCED UPON APPROVAL OF THE PA GRANT.
- (5) AN ASSISTANCE GROUP MEMBER IS DISQUALIFIED FOR INTENTIONAL PROGRAM VIOLATION IN ACCORDANCE WITH RULE 5101:4-9-15 OF THE ADMINISTRATIVE CODE, OR THE BENEFITS OF THE REMAINING ASSISTANCE GROUP MEMBERS ARE REDUCED OR TERMINATED TO REFLECT THE DISQUALIFICATION OF THAT ASSISTANCE GROUP MEMBER.
- (6) THE AGENCY HAS ELECTED TO ASSIGN A LONGER CERTIFICATION PERIOD TO AN ASSISTANCE GROUP WHICH WAS CERTIFIED ON AN EXPEDITED BASIS AND FOR WHOM VERIFICATION WAS POSTPONED, UNDER THE PROVISIONS OF RULE 5101:4-6-09 OF THE ADMINISTRATIVE CODE.

THE ASSISTANCE GROUP MUST HAVE RECEIVED WRITTEN NOTICE THAT THE RECEIPT OF FUTURE BENEFITS IS CONTINGENT ON ITS PROVIDING THE VERIFICATION WHICH WAS INITIALLY POSTPONED AND THAT THE AGENCY MAY ACT ON THE VERIFIED INFORMATION WITHOUT FURTHER NOTICE.

- (7) THE ASSISTANCE GROUP IS CONVERTED FROM CASH AND/OR FOOD STAMP COUPON REPAYMENT TO BENEFIT REDUCTION AS A RESULT OF FAILURE TO MAKE AGREED UPON REPAYMENT OF AN OVERISSUANCE.

- (8) THE AGENCY IS TERMINATING THE ELIGIBILITY OF A RESIDENT OF A DRUG OR ALCOHOL TREATMENT CENTER OR A GROUP LIVING ARRANGEMENT IF THE FACILITY LOSES EITHER ITS CERTIFICATION FROM THE APPROPRIATE AGENCY OR AGENCIES OF THE STATE OF OHIO, AS DEFINED IN RULE 5101:4-6-01 OF THE ADMINISTRATIVE CODE, OR HAS ITS STATUS AS AN AUTHORIZED REPRESENTATIVE SUSPENDED DUE TO FNS DISQUALIFYING IT AS A RETAILER.

- (9) THE ASSISTANCE GROUP VOLUNTARILY REQUESTS, IN WRITING OR IN THE PRESENCE OF A CASEWORKER, THAT ITS PARTICIPATION BE TERMINATED. IF THE ASSISTANCE GROUP DOES NOT PROVIDE A WRITTEN REQUEST, THE AGENCY SHALL SEND THE ASSISTANCE GROUP A LETTER CONFIRMING THE VOLUNTARY WITHDRAWAL. WRITTEN CONFIRMATION DOES NOT ENTAIL THE SAME RIGHTS AS A NOTICE OF ADVERSE ACTION EXCEPT THAT THE ASSISTANCE GROUP MAY REQUEST A STATE HEARING.

- (10) THE AGENCY DETERMINES, BASED ON RELIABLE INFORMATION, THAT THE ASSISTANCE GROUP WILL NOT BE RESIDING IN THE COUNTY AND, THEREFORE, WILL BE UNABLE TO OBTAIN ITS NEXT ALLOTMENT. THE AGENCY SHALL INFORM THE ASSISTANCE GROUP OF ITS TERMINATION NO LATER THAN ITS NEXT SCHEDULED ISSUANCE DATE. WHILE THE AGENCY MAY INFORM THE ASSISTANCE GROUP BEFORE ITS NEXT ISSUANCE DATE, THE AGENCY SHALL NOT DELAY TERMINATING THE ASSISTANCE GROUP'S PARTICIPATION IN ORDER TO PROVIDE ADVANCE NOTICE.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 6-2-80, 12-1-80, 10-1-81, 1-18-82, 5-1-82, 7-1-82, 10-1-82, 1-1-83, 4-1-83, 8-1-83, 11-1-83(Temp.), 1-1-84, 3-1-84(Temp.), 6-1-84, 10-1-84(Emer.), 10-3-84(Emer.), 12-22-84, 8-20-86(Emer.), 11-15-86, 4-1-87, 1-16-87(Emer.), 4-6-87, 7-1-87(Emer.), 9-28-87, 11-1-87, 4-1-89, 11-1-90

5101:6-2-06 NOTICE OF CHANGE IN LAW OR POLICY, AUTOMATIC BENEFIT ADJUSTMENT, OR FOOD STAMP MASS CHANGE.

- (A) WHEN A CHANGE IN STATE OR FEDERAL LAW, OR LOCAL AGENCY POLICY ADOPTED PURSUANT TO OPTIONS AUTHORIZED IN STATE LAW, REQUIRES AUTOMATIC ADJUSTMENT OF PUBLIC ASSISTANCE OR SOCIAL SERVICES FOR CLASSES OF RECIPIENTS, THE ASSISTANCE GROUP SHALL BE PROVIDED PRIOR WRITTEN NOTICE OF THE ACTION.
- (1) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED NO LESS THAN FIFTEEN CALENDAR DAYS PRIOR TO THE PROCESSING OF THE ACTION.
 - (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE PROPOSED ACTION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, EXPLAIN THE CIRCUMSTANCES UNDER WHICH A TIMELY HEARING REQUEST WILL RESULT IN CONTINUED BENEFITS, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
 - (3) WHEN A CHANGE IN STATE OR FEDERAL LAW REQUIRES SUCH AN ADJUSTMENT STATEWIDE, THE "PRIOR NOTICE OF RIGHT TO A STATE HEARING - CHANGE IN LAW OR POLICY," ODHS 4025, ITS CRIS-E EQUIVALENT, OR OTHER NOTICE SPECIFICALLY DEVELOPED AND DESIGNATED BY THE OHIO DEPARTMENT OF HUMAN SERVICES, SHALL BE USED. LOCAL AGENCIES SHALL RECEIVE INSTRUCTIONS CONCERNING NOTICE PRIOR TO IMPLEMENTATION OF THE CHANGE.
 - (4) WHEN A CHANGE IN LOCAL AGENCY POLICY REQUIRES SUCH AN ADJUSTMENT, THE LOCAL AGENCY IS RESPONSIBLE FOR DEVELOPING THE CONTENT OF THE NOTICE, IN ACCORDANCE WITH PARAGRAPH (A)(2) OF THIS RULE. THE LANGUAGE UNDER "YOUR RIGHT TO A STATE HEARING" CONTAINED ON THE ODHS 4025 MUST BE DUPLICATED EXACTLY ON ANY SUCH LOCAL AGENCY NOTICE.
- (B) WHEN A CHANGE IN STATE OR FEDERAL LAW OR POLICY REQUIRES A MASS CHANGE IN THE FOOD STAMP PROGRAM, AS DESCRIBED IN RULE 5101:4-7-03 OF THE ADMINISTRATIVE CODE, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF THE ACTION.
- (1) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED TO THE ASSISTANCE GROUP AS MUCH BEFORE THE SCHEDULED ISSUANCE DATE AS REASONABLY POSSIBLE, BUT NOT LATER THAN THE DATE THE ASSISTANCE GROUP IS SCHEDULED TO RECEIVE THE ALLOTMENT WHICH HAS BEEN CHANGED.
 - (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE PROPOSED ACTION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, EXPLAIN THE CIRCUMSTANCES UNDER WHICH A TIMELY HEARING REQUEST WILL RESULT IN REINSTATEMENT OF BENEFITS AND THE ASSISTANCE GROUP'S LIABILITY FOR ANY OVERISSUANCE IF THE HEARING DECISION IS ADVERSE, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

- (3) THE LOCAL AGENCY IS RESPONSIBLE FOR DEVELOPING THE CONTENT OF THE MASS CHANGE NOTICE IN ACCORDANCE WITH PARAGRAPH (B)(2) OF THIS RULE. A MODEL NOTICE OF FOOD STAMP MASS CHANGE HAS BEEN DEVELOPED BY ODHS. THE LANGUAGE UNDER "YOUR RIGHT TO A STATE HEARING" CONTAINED ON THE MODEL NOTICE MUST BE DUPLICATED EXACTLY ON THE NOTICE DEVELOPED BY THE LOCAL AGENCY.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 6-2-80, 4-1-81, 10-1-81, 5-1-82, 10-1-82, 4-1-83, 9-24-83, 11-1-83(Temp.), 1-1-84, 3-1-84(Temp.), 10-3-84(Emer.), 12-22-84, 8-16-85(Emer.), 11-1-85(Emer.), 1-1-86, 8-20-86(Emer.), 11-15-86, 4-1-87, 4-10-87(Emer.), 6-22-87, 4-1-89, 11-1-90, 2-1-92

5101:6-2-07 NOTICE OF THE RIGHT TO A STATE HEARING - CHILD SUPPORT SERVICES.

(A) NOTICE AT THE TIME OF APPLICATION.

- (1) PUBLIC ASSISTANCE RECIPIENTS SHALL BE INFORMED, IN WRITING, OF THE RIGHT TO A STATE HEARING. NOTIFICATION SHALL BE MAILED OR PERSONALLY DELIVERED WITHIN FIVE WORKDAYS OF THE DATE OF RECEIPT OF A REFERRAL TO THE CSEA.
- (2) INDIVIDUALS WHO ARE NOT PUBLIC ASSISTANCE RECIPIENTS WHO REQUEST CHILD SUPPORT SERVICES SHALL BE INFORMED, IN WRITING, OF THE RIGHT TO A STATE HEARING. NOTIFICATION SHALL BE MAILED OR PERSONALLY DELIVERED AT THE TIME AN APPLICATION IS PROVIDED TO THE INDIVIDUAL.
- (3) "EXPLANATION OF STATE HEARING PROCEDURES," ODHS 4059, SHALL BE USED.

(B) NOTICE OF ACCEPTANCE OR DENIAL.

- (1) WITHIN TWENTY CALENDAR DAYS OF RECEIPT OF A NON-PUBLIC ASSISTANCE APPLICATION FOR CHILD SUPPORT SERVICES, THE CSEA SHALL NOTIFY THE APPLICANT OF ACCEPTANCE OR DENIAL OF THE APPLICATION.
- (2) "NOTICE OF CASE STATUS," ODHS 7046, SHALL BE USED.

(C) NOTICE OF TERMINATION OF A SUPPORT ORDER.

- (1) WHEN THE CSEA HAS DETERMINED, AFTER NOTIFICATION BY ONE OF THE PARTIES, THAT REASON EXISTS TO TERMINATE A SUPPORT ORDER, THE CSEA SHALL NOTIFY THE OTHER PARTY OF THAT DETERMINATION.
- (2) WHEN THE CSEA ALONE HAS DETERMINED THAT REASON EXISTS TO TERMINATE A SUPPORT ORDER, THE CSEA SHALL NOTIFY BOTH PARTIES OF THAT DETERMINATION.
- (3) THE NOTIFICATION SHALL INCLUDE THE DATE AND REASON FOR THE TERMINATION AND SHALL BE ACCOMPANIED BY "EXPLANATION OF STATE HEARING PROCEDURES," ODHS 4059.

(D) NOTICE OF CASE CLOSURE.

- (1) THE CSEA SHALL NOTIFY THE RECIPIENT OF CHILD SUPPORT SERVICES IN WRITING AT LEAST SIXTY CALENDAR DAYS PRIOR TO TAKING ADMINISTRATIVE ACTION TO CLOSE THE CHILD SUPPORT CASE.
- (2) "NOTICE OF CASE STATUS," ODHS 7046, SHALL BE USED TO PROVIDE NOTIFICATION OF CASE CLOSURE.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 2301.35

Rule Amplifies: Revised Code Section 2301.35

Review Date: 12-30-02

Prior Effective Dates: 10-1-91

5101:6-2-08 NOTICE WHENEVER DISAGREEMENT WITH AN ACTION OR INACTION IS EXPRESSED.

- (A) WHENEVER AN ASSISTANCE GROUP EXPRESSES DISAGREEMENT WITH AN AGENCY ACTION OR LACK OF ACTION, THE ASSISTANCE GROUP SHALL BE REMINDED OF THE RIGHT TO REQUEST A STATE HEARING VIA "EXPLANATION OF HEARING PROCEDURES," ODHS 4059. THE PUBLISHED HEARING RULES SHALL ALSO BE MADE AVAILABLE UPON REQUEST.
- (B) WHEN DENIAL OR TERMINATION OF BENEFITS IS THE ACTION WITH WHICH THE ASSISTANCE GROUP HAS EXPRESSED DISAGREEMENT, A REAPPLICATION FOR BENEFITS AS WELL AS A HEARING REQUEST MAY BE APPROPRIATE.
- (C) THE PROVISIONS OF THIS RULE DO NOT APPLY TO COUNTY PUBLIC CHILDREN SERVICES AGENCIES (PCSAS) EXCEPT INsofar AS THE ACTION OR INACTION COMPLAINED OF INVOLVES PROGRAMS TO WHICH STATE HEARING RIGHTS APPLY, IN ACCORDANCE WITH RULES 5101:6-1-01 AND 5101:6-3-01.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 4-1-87

5101:6-2-09 SUPPLEMENTAL SANCTION NOTICE.

- (A) A “SUPPLEMENTAL SANCTION NOTICE”, ODHS 4066, MUST BE SENT IN THE FOLLOWING SITUATIONS:
- (1) WHEN AN APPROVAL, DENIAL, REDUCTION OR TERMINATION NOTICE HAS BEEN MAILED OR PERSONALLY DELIVERED TO AN OHIO WORKS FIRST (OWF) AND/OR FOOD STAMP PROGRAM PARTICIPANT, PROPOSING THE APPLICATION OF AN OWF OR FOOD STAMP SANCTION, PURSUANT TO SECTION 5107.16 OF THE REVISED CODE, OR RULES 5101:4-3-09, 5101:4-3-11 AND/OR 5101:4-3-19 OF THE ADMINISTRATIVE CODE; OR
 - (2) WHEN A COUNTY DEPARTMENT OF HUMAN SERVICES (CDHS) IS INFORMED THAT AN OWF PARTICIPANT AND/OR FOOD STAMP PARTICIPANT CURRENTLY UNDER SANCTION, OR WHO HAS PREVIOUSLY BEEN INFORMED OF HIS OR HER SANCTION BUT THE ACTION HAS YET TO BE TAKEN, FAILED IN SOME ADDITIONAL MANNER TO COOPERATE WITH THE SELF-SUFFICIENCY CONTRACT AND/OR FOOD STAMP WORK REQUIREMENT.
- (B) THE SUPPLEMENTAL SANCTION NOTICE MUST BE MAILED OR PERSONALLY DELIVERED WITHIN THE FOLLOWING TIME FRAMES:
- (1) WITHIN THREE WORKING DAYS OF THE MAILING, OR PERSONAL DELIVERY DATE OF THE SANCTION NOTICE; OR
 - (2) IF THE INFORMATION IS LEARNED AFTER A SANCTION HAS BEEN PROPOSED, AND A SUPPLEMENTAL SANCTION NOTICE HAS ALREADY BEEN ISSUED, SUBSEQUENT SUPPLEMENTAL SANCTION NOTICES MUST BE SENT WITHIN THREE WORKING DAYS OF THE DATE THE CDHS BECOMES AWARE OF THE SANCTIONABLE FAILURE TO COMPLY WITH THE SELF SUFFICIENCY CONTRACT AND/OR FOOD STAMP WORK REQUIREMENT.
- (C) PROVISIONS FOR CONTINUING BENEFITS, PURSUANT TO RULE 5101:6-4-01 OF THE ADMINISTRATIVE CODE, SHALL APPLY TO BOTH THE FIRST SUPPLEMENTAL SANCTION NOTICE AND THE PRIOR NOTICE FOR REDUCTION AND TERMINATION OF ASSISTANCE. PROVISIONS FOR CONTINUING BENEFITS DO NOT APPLY FOR SUBSEQUENT SUPPLEMENTAL SANCTION NOTICE ISSUANCES, OR WHEN THE NOTICE IS PART OF AN APPROVAL OR DENIAL OF BENEFITS.
- (D) THE SUPPLEMENTAL SANCTION NOTICE SHALL CONTAIN ALL OF THE FOLLOWING:
- (1) A CLEAR AND UNDERSTANDABLE STATEMENT OF THE REASON FOR THE IMPOSITION OF THE SANCTION.
 - (2) A CLEAR AND UNDERSTANDABLE STATEMENT OF ACTIONS NECESSARY TO END THE PERIOD OF INELIGIBILITY.
 - (3) A REFERENCE TO THE MAILING DATE OF THE NOTICE PROPOSING THE SANCTION AND EXPLAINING THE EFFECT THE SANCTION HAS ON THE BENEFITS.
 - (4) AN INDICATION OF WHETHER THE CONTINUING BENEFITS PROVISIONS APPLY.

(5) THE APPLICABLE REGULATIONS.

5101:6-2-09

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(6) AN EXPLANATION OF THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING.

(7) A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

(E) THE SENDING OF A SUPPLEMENTAL SANCTION NOTICE IS IN NO WAY TO BE CONSIDERED ANNOUNCEMENT OF A SUBSEQUENT SANCTION, OR LEVEL/TIER, FOR THE OWF OR FOOD STAMP PROGRAMS. SUBSEQUENT SANCTIONS ARE TO BE PROPOSED USING THE ODHS 4065, ODHS 4085, ODHS 4074, ODHS 7334, OR THEIR CRIS-E EQUIVALENTS, AND AN ODHS 4066, AS REQUIRED BY CHAPTER 5101:6-2 OF THE ADMINISTRATIVE CODE.

Effective date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated under: revised code chapter 119.

Statutory authority: revised code section 5101.35

Rule amplifies: revised code section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 10-1-97(Emer.)

5101:6-2-20 Notice of overpayment/overissuance.

- (A) When the local agency has determined that ~~an~~ A CASH BENEFIT ~~ADC~~ overpayment has occurred, responsible parties from whom repayment is being sought shall be provided written notice of the overpayment determination.

Notice is also required whenever a previous overpayment determination is revised to change the amount or period of the overpayment.

Notice is not required when the overpayment involves possible fraud and has been referred to the county prosecutor, or when recovery has been waived under the provisions of rule 5101:1-25-32 of the Administrative Code.

- (1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overpayment and any offsetting done to reduce it, cite the applicable regulations, explain the available methods of repayment and the individual's right to and the method of obtaining a county conference and a state hearing, unless there has already been a state hearing on the issue, and contain a telephone number to call about free legal services.
- (2) ~~"Notice of ADC Overpayment,"~~ ODHS 7345, or its CRIS-E equivalent, shall be used.

- (B) When the agency has determined that a food stamp overissuance has occurred, assistance groups from which repayment is being sought shall be provided written notice of the overissuance determination.

Notice is also required whenever a previous overissuance determination is revised to change the amount or period of the overissuance or to change the claim type from administrative error (AE) to inadvertent household error (IHE).

Notice is not required when the overissuance involves possible fraud and has been referred to the county prosecutor, or when recovery has been waived under the provisions of rule 5101:4-8-17 of the Administrative Code.

- (1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overissuance and any offsetting done to reduce it, cite the applicable regulations, explain the available methods of repayment and the assistance group's right to and the method of obtaining a county conference and a state hearing, unless there has already been a state hearing on the issue, and contain the name and telephone number of the person to contact for more information and a telephone number to call about free legal services.
- (2) For inadvertent household error and intentional program violation claims, the assistance group shall also be informed of the length of time it has to choose a method of repayment and notify the agency of its decision, and that its allotment will be reduced if it fails to agree to make restitution.

For administrative error claims, the assistance group shall also be informed of the availability of allotment reduction as a method of repayment if the assistance group prefers to use this method.

- (3) The notice shall provide space for the assistance group to indicate the method of repayment, a signature block, and an explanation of the assistance group's right to request renegotiation of any repayment schedule to which it has agreed should its economic circumstances change.
- (4) "Food Stamp Repayment Agreement," ODHS 7442, or its CRIS-E equivalent, shall be used.

~~(C) When the agency has determined that a work allowance overpayment has occurred, the assistance group shall be provided written notice of the overpayment determination.~~

~~Notice is not required when recovery has been waived under the provisions of rule 5101:1-47-20 or rule 5101:4-8-26 of the Administrative Code.~~

~~(1) The notice shall contain a clear and understandable statement of the determination and the reasons for it, including the amount and period of the overpayment, cite the applicable regulations, explain the available methods of repayment and the assistance group's right to and the method of obtaining a county conference and a state hearing, unless there has already been a hearing on the issue, and contain the name and telephone number of the person to contact for more information and a telephone number to call about free legal services.~~

~~(2) The notice shall provide space for the assistance group to indicate the method of repayment, a signature block, and an explanation of the assistance group's right to request renegotiation of any repayment schedule to which it has agreed should its economic circumstances change.~~

~~(3) "Notice of Work Allowance Overpayment," ODHS 7303, or its CRIS-E equivalent, shall be used.~~

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 6-2-80, 10-1-81, 5-1-82, 7-1-82, 3-20-83, 4-1-83, 7-1-83(Temp.), 8-1-83, 8-19-83, 9-24-83, 11-1-83(Temp.), 12-1-83, 1-1-84, 3-1-84(Temp.), 6-1-84, 10-3-84(Emer.), 12-22-84, 4-1-86, 1-16-87(Emer.), 4-1-87, 4-6-87, 9-1-87, 7-1-88(Emer.), 9-25-88, 4-1-89, 2-1-90, 10-1-90, 6-1-93, 9-1-94, 10-1-96,

5101:6-2-25 NOTICE OF ELIGIBILITY FOR LOST FOOD STAMP BENEFITS.

- (A) IF THE AGENCY DETERMINES THAT A LOSS OF FOOD STAMP BENEFITS HAS OCCURRED AND THAT THE ASSISTANCE GROUP IS ENTITLED TO RESTORATION OF THOSE BENEFITS, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF ITS ENTITLEMENT.

THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE AMOUNT AND PERIOD OF THE UNDERISSUANCE, ANY OFFSETTING THAT WAS DONE AND THE METHOD OF RESTORATION, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

- (B) IF THE ASSISTANCE GROUP CLAIMS THAT IT IS ENTITLED TO RESTORATION OF LOST BENEFITS BUT THE AGENCY, AFTER REVIEWING THE CASE FILE, DOES NOT AGREE, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF THE DENIAL OF ITS REQUEST.

THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DENIAL AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

- (C) "FOOD STAMP NOTICE OF ELIGIBILITY FOR LOST BENEFITS," (MODEL), OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-2-80, 10-1-81, 3-20-83, 7-1-83(Temp.), 8-1-83, 8-19-83, 4-1-84(Temp.), 6-1-84, 1-16-87(Emer.), 4-6-87, 4-1-89, 10-1-90

5101:6-2-26 NOTICE OF APPROVAL, DENIAL OR DELAY OF REPLACEMENT FOOD STAMP BENEFITS.

WHEN THE AGENCY APPROVES, DENIES OR DELAYS AN ASSISTANCE GROUP'S REQUEST FOR REPLACEMENT FOOD STAMP BENEFITS, THE ASSISTANCE GROUP SHALL BE PROVIDED WRITTEN NOTICE OF THE ACTION.

- (A) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED NO LESS THAN TEN CALENDAR DAYS FROM THE DATE THE LOSS WAS REPORTED, FIFTEEN DAYS IF THE ISSUANCE WAS MADE BY CERTIFIED OR REGISTERED MAIL, OR WITHIN TWO WORKING DAYS AFTER THE AGENCY RECEIVES THE SIGNED ODHS 7222, "STATEMENT REQUESTING REPLACEMENT OF FOOD STAMP BENEFITS," WHICHEVER IS LATER.

IF A NOTICE OF DELAY WAS ISSUED, THE AGENCY SHALL ISSUE AN APPROVAL OR DENIAL NOTICE WITHIN TWO WORKING DAYS FROM THE DATE IT RECEIVES THE INFORMATION WHICH CAUSED THE DELAY.

- (B) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DECISION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (C) "ACTION TAKEN ON YOUR REQUEST FOR REPLACEMENT OF FOOD STAMP BENEFITS," ODHS 7235, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

Effective Date: February 1, 1995

Certification: Arnold R. Tompkins

January 20, 1995
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

5101:6-2-30 Notice of medical determination.

(A) "Notice of Medical Determination and Right to a State Hearing," ODHS 4022, shall be mailed or personally delivered to the individual in the following situations:

~~(1) When a request for prior authorization for a medical or dental service is denied, the appropriate prior authorization unit shall send the notice to the individual, with a copy to the local agency.~~

(1) ~~(2)~~ When, as the result of a preadmission review for long-term care, the local agency receives a "Level of Care Authorization," ODHS 3670, which assigns a noninstitutional level of care, or a level of care that is different from the specific level of care certified by the individual's physician, the local agency shall send the notice to the individual, with a copy to the individual's case record.

Notice is not required when the assigned level of care is different from the level of care certified by the individual's physician, but the individual is or will be placed in a facility with dual certification to provide the assigned level of care.

~~(2)~~ ~~(3)~~ When a request for prior authorization for additional hospital stays, visits, or therapeutic leave days beyond thirty days for a medicaid individual with an MR/DD level of care is denied, the local agency shall send the notice to the individual, with a copy to the individual's case record.

(3) ~~(4)~~ When a review agency denies or modifies a request for precertification of a hospital admission or medical procedure, the review agency shall send the notice to the individual, with a copy to the local agency.

(B) The notice shall contain a clear and understandable statement of the decision and the reasons for it, cite the applicable regulations, explain the individual's right to and the method of obtaining a state hearing, and contain a telephone number to call about free legal services.

Effective Date: November 1, 1994

Certification: Arnold R. Tompkins

October 21, 1994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 10-1-81, 5-1-82, 7-1-82, 4-1-83, 9-24-83, 11-1-83(Temp.), 12-1-83, 1-1-84, 3-1-84(Temp.), 6-1-84, 10-3-84(Emer.), 12-22-84, 4-1-86, 4-1-87, 9-1-87, 7-1-88(Emer.), 9-25-88, 10-1-89, 2-1-90, 4-1-91, 6-1-93

5101:6-2-31 NOTICE OF DENIAL OF PRIOR AUTHORIZATION FOR MEDICAL OR DENTAL SERVICES.

WHEN A REQUEST FOR PRIOR AUTHORIZATION FOR A MEDICAL OR DENTAL SERVICE IS DENIED, THE ASSISTANCE GROUP SHALL BE PROVIDED PROMPT WRITTEN NOTICE OF THE DECISION. COPIES SHALL ALSO BE SENT TO THE PROVIDER AND TO THE LOCAL AGENCY.

(A) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE ACTION TAKEN AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE ASSISTANCE GROUP'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.

(B) "NOTICE OF DENIAL OF AUTHORIZATION FOR MEDICAL SERVICES," ODHS 4044, SHALL BE USED.

Effective Date: November 1, 1994

Certification: Arnold R. Tompkins

October 21, 1994

Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 10-1-81, 5-1-82, 7-1-82, 4-1-83, 9-24-83, 11-1-83(Temp.), 12-1-83, 1-1-84, 3-1-84(Temp.), 6-1-84, 10-3-84(Emer.), 12-22-84, 4-1-86, 4-1-87, 9-1-87, 7-1-88(Emer.), 9-25-88, 10-1-89, 2-1-90, 4-1-91, 6-1-93

5101:6-2-32 NOTICE OF ADVERSE PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR) DETERMINATIONS.

(A) NOTICE OF ADVERSE PREADMISSION SCREENING DETERMINATION

WHEN AN APPLICANT FOR ADMISSION TO A NURSING FACILITY, OR THE PASSPORT WAIVER, RECEIVES AN ADVERSE DETERMINATION AS THE RESULT OF A PREADMISSION SCREENING PERFORMED BY THE OHIO DEPARTMENT OF MENTAL HEALTH (ODMH) OR THE OHIO DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (ODMR/DD), ODMH OR ODMR/DD SHALL PROVIDE THE AFFECTED INDIVIDUAL WITH WRITTEN NOTICE OF THE DETERMINATION IN ACCORDANCE WITH RULES 5122-21-03 AND 5123:2-14-01 OF THE ADMINISTRATIVE CODE.

- (1) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED AT THE TIME THE ADVERSE DETERMINATION IS MADE.
- (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DETERMINATION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, OUTLINE THE IMPLICATIONS OF THE DECISION FOR ADMISSION TO THE FACILITY OR THE PASSPORT WAIVER, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (3) COPIES OF THE NOTICE SHALL BE SENT TO THE NURSING FACILITY; TO THE INDIVIDUAL'S ATTENDING PHYSICIAN; TO THE DISCHARGING HOSPITAL; TO THE BUREAU OF COMMUNITY SERVICES, ODHS (OR DESIGNEE); AND, IF THE INDIVIDUAL IS A MEDICAID APPLICANT OR RECIPIENT, TO THE COUNTY DEPARTMENT OF HUMAN SERVICES (CDHS).

(B) NOTICE OF ADVERSE RESIDENT REVIEW DETERMINATION

WHEN A RESIDENT OF A NURSING FACILITY RECEIVES AN ADVERSE DETERMINATION AS THE RESULT OF A RESIDENT REVIEW PERFORMED BY ODMH OR ODMR/DD, THE DETERMINING AGENCY SHALL PROVIDE THE AFFECTED INDIVIDUAL WITH WRITTEN NOTICE OF THE DETERMINATION.

- (1) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED AT THE TIME THE ADVERSE DETERMINATION IS MADE.
- (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DETERMINATION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, OUTLINE THE IMPLICATIONS OF THE DECISION FOR CONTINUED RESIDENCE IN THE FACILITY, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (3) COPIES OF THE NOTICE SHALL BE SENT TO THE NURSING FACILITY; TO THE INDIVIDUAL'S ATTENDING PHYSICIAN; TO THE DISCHARGING HOSPITAL; TO THE BUREAU OF COMMUNITY SERVICES, ODHS (OR DESIGNEE); AND, IF THE INDIVIDUAL IS A MEDICAID APPLICANT OR RECIPIENT, TO THE CDHS.

EFFECTIVE DATE: JUNE 1, 1997

CERTIFICATION: ARNOLD R. TOMPKINS

 May 21, 1997
DATE

PROMULGATED UNDER: REVISED CODE CHAPTER 119.

STATUTORY AUTHORITY: REVISED CODE SECTION 5101.35

RULE AMPLIFIES: REVISED CODE SECTION 5101.35

REVIEW DATE: 6-1-02

5101:6-2-35 Notice of a managed care plan's denial, reduction or termination of a medicaid-covered service.

The affected individual shall be provided notice of a managed care plan's denial, reduction or termination of a medicaid-covered service, as described in this rule. ~~Copies~~ A COPY shall also be sent to the county department of human services and to the office of medicaid, ODHS.

(A) Timing of notice

- (1) The managed care plan shall mail or personally deliver notice of denial at the time the decision to deny the service is made.
- (2) Managed care plans shall require all subcontracting providers to mail or personally deliver notice of denial of payment whenever the provider bills an enrollee for a service due to denial of payment by the managed care plan.:

If the enrollee contacts the managed care plan and indicates that he or she has received a bill, and if the managed care plan determines that notice, as required by this rule, was not issued, the managed care plan shall mail or personally deliver notice at that time.

- (3) The managed care plan shall mail or personally deliver notice of reduction or termination no later than fifteen calendar days prior to the effective date of the proposed action.
- (4) If the decision to deny, deny payment for, reduce or terminate service is the result of a managed care plan grievance, notice of that decision shall be mailed or personally delivered at the time the grievance is decided.

(B) "Reduction or termination" of a service means that the service is being reduced from the level authorized, or terminated, prior to the expiration of the prescribed period.

If, upon the expiration of a period of authorized service, the enrollee requests further services, denial of that request shall be considered a denial, rather than a reduction or termination, of service.

(C) The notice shall contain a clear and understandable statement of the action and the reasons for it, cite the applicable regulations, explain the individual's right to and the method of obtaining a state hearing, explain the circumstances under which a timely hearing request will result in continued services, and contain a telephone number to call about free legal services.

(D) For denial, reduction or termination of service, the "Notice of Denial, Reduction or Termination of Medical Services By Your Managed Care Plan," ODHS 4043, shall be used.

For denial of payment, the "Notice of Denial of Payment By Your Managed Care Plan," ODHS 4046, shall be used.

5101:6-2-35

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Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: June 1, 2002

Prior Effective Dates: 11-1-89(Emer.), 1-29-90, 10-1-90, 6-1-93, 6-1-97, 10-1-97(Emer.)

5101:6-2-40 PACT NOTICES.

(A) PRIOR NOTICE OF ENROLLMENT

- (1) WHEN THE RECIPIENT MONITORING AND REVIEW SECTION, ODHS, INTENDS TO ENROLL AN INDIVIDUAL IN THE PRIMARY ALTERNATIVE CARE AND TREATMENT (PACT) PROGRAM, THE INDIVIDUAL SHALL BE PROVIDED PRIOR WRITTEN NOTICE OF THE PROPOSED ENROLLMENT, WITH A COPY TO THE LOCAL AGENCY.
- (2) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED NO LESS THAN FIFTEEN CALENDAR DAYS PRIOR TO THE EFFECTIVE DATE OF ENROLLMENT.
- (3) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE PROPOSED ACTION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, EXPLAIN THE CIRCUMSTANCES UNDER WHICH A TIMELY HEARING REQUEST WILL RESULT IN CONTINUED UNRESTRICTED BENEFITS, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (4) THE NOTICE SHALL EXPLAIN THE METHOD OF AND THE DEADLINE FOR SELECTING A DESIGNATED PHYSICIAN AND/OR PHARMACY, AND THAT THE RECIPIENT MONITORING AND REVIEW SECTION WILL SELECT A PHYSICIAN AND/OR PHARMACY IF A SELECTION IS NOT RECEIVED BY THE DEADLINE.
- (5) THE "PRIOR NOTICE OF PACT PROGRAM ENROLLMENT," ODHS 4028, SHALL BE USED.

(B) NOTICE OF CONTINUED ENROLLMENT

- (1) WHEN THE RECIPIENT MONITORING AND REVIEW SECTION DETERMINES, AT THE END OF THE INDIVIDUAL'S PACT PROGRAM ENROLLMENT PERIOD, THAT THE ENROLLMENT SHOULD BE CONTINUED, THE INDIVIDUAL SHALL BE PROVIDED WRITTEN NOTICE OF THAT DETERMINATION, WITH A COPY TO THE LOCAL AGENCY.
- (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DETERMINATION AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (3) "NOTICE OF CONTINUED ENROLLMENT IN THE PACT PROGRAM," ODHS 4030, SHALL BE USED.

(C) NOTICE OF DENIAL OF A DESIGNATED PROVIDER CHANGE.

- (1) WHEN THE RECIPIENT MONITORING AND REVIEW SECTION DENIES A PACT INDIVIDUAL'S REQUEST FOR A CHANGE OF DESIGNATED MEDICAL ASSISTANCE PROVIDER, THE INDIVIDUAL SHALL BE PROVIDED WRITTEN NOTICE OF THE

DENIAL, WITH A COPY TO THE LOCAL AGENCY.

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- (2) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE DENIAL AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A STATE HEARING, AND CONTAIN THE NAME AND TELEPHONE NUMBER OF THE PERSON TO CONTACT FOR MORE INFORMATION AND A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (3) "NOTICE OF DENIAL OF DESIGNATED PROVIDER CHANGE," ODHS 4029, SHALL BE USED.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 4-1-80, 10-1-81, 5-1-82, 7-1-82, 4-1-83, 9-24-83, 11-1-83(Temp.), 12-1-83, 1-1-84, 3-1-84(Temp.), 6-1-84, 10-3-84(Emer.), 12-22-84, 4-1-86, 4-1-87, 9-1-87, 7-1-88(Emer.), 9-25-88, 2-1-90,

5101:6-2-50 Notice of determinations concerning spouses separated by institutionalization.

- (A) At the time of the determination of eligibility of the institutionalized spouse for medicaid, both the institutionalized spouse and the community spouse shall be provided with the following written notices, or their CRIS-E equivalents, along with the notice of approval or denial: NOTWITHSTANDING RULE 5101:6-2-03 OF THE ADMINISTRATIVE CODE, AN ODHS 7332, "NOTICE OF DENIAL OF YOUR APPLICATION FOR MEDICAID: IN CASES INVOLVING COMMUNITY SPOUSES" MUST BE USED IN LIEU OF AN ODHS 7334 TO DENY APPLICATIONS INVOLVING AN INSTITUTIONALIZED SPOUSE WITH A COMMUNITY SPOUSE.
 - (1) "Resource Assessment Worksheet," ODHS 4076.
 - (2) "Resource Transfer Worksheet," ODHS 4077.
 - (3) "Monthly Income Allowance Computation Worksheet," ODHS 4078.
 - (4) "REALLOCATION OF RESOURCES HEARING REQUEST," ODHS 4079.
- (B) Subsequently, upon a request by the institutionalized spouse, the community spouse, or an authorized representative acting on behalf of either spouse, copies of the notices shall be provided to the individual making the request.
- (C) The notices shall demonstrate the method by which the respective determinations were made, inform the individual of the right to and the method of obtaining a county conference and a state hearing, and contain a telephone number to call about free legal services.

Effective Date: January 1, 1996

Certification: Arnold R. Tompkins

December 21, 1995
Date

Promulgates under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 12-29-92 (Emer.), 3-22-90, 6-1-93

5101:6-2-51 NOTICE OF INTERIM ASSISTANCE REIMBURSEMENT.

WHEN, AS THE RESULT OF AN INTERIM ASSISTANCE AGREEMENT, THE LOCAL AGENCY RECEIVES AN INDIVIDUAL'S RETROACTIVE SSI PAYMENT FOR INITIAL OR INITIAL POST-ELIGIBILITY SSI BENEFITS, THE INDIVIDUAL SHALL BE PROVIDED WRITTEN NOTICE.

- (A) THE NOTICE SHALL BE MAILED OR PERSONALLY DELIVERED NO LATER THAN TEN WORKING DAYS FOLLOWING THE LOCAL AGENCY'S RECEIPT OF THE SSI PAYMENT.
- (B) THE NOTICE SHALL CONTAIN A CLEAR AND UNDERSTANDABLE STATEMENT OF THE APPORTIONMENT OF THE SSI PAYMENT AND THE REASONS FOR IT, CITE THE APPLICABLE REGULATIONS, EXPLAIN THE INDIVIDUAL'S RIGHT TO AND THE METHOD OF OBTAINING A COUNTY CONFERENCE AND A STATE HEARING, AND CONTAIN A TELEPHONE NUMBER TO CALL ABOUT FREE LEGAL SERVICES.
- (C) "NOTICE OF INTERIM ASSISTANCE REIMBURSEMENT," ODHS 7107, OR ITS CRIS-E EQUIVALENT, SHALL BE USED.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 10-1-90

5101:6-3-01 Grounds for requesting a state hearing.

(A) The grounds for requesting a state hearing in the public assistance, food stamp, and social services programs are as follows:

- (1) An application for benefits has been denied, acted upon erroneously, or not acted upon with reasonable promptness.
- (2) 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.
- (3) A request for an adjustment in benefits has been denied, not acted upon, acted upon erroneously, or not acted upon with reasonable promptness.
- ~~(4) The assistance group believes that the manner or form of assistance payment, including vendor, restricted, or protective payment, or of social service delivery, is not correct.~~

~~However, the placement of a food stamp assistance group on an alternate issuance system and the length of time the assistance group is on this system are not subject to the state hearing process.~~

- ~~(5)~~ (4) The agency has determined that an overpayment or overissuance has occurred, or the assistance group believes that the amount of the overpayment or overissuance is not correct.
- ~~(6)~~ (5) The individual disagrees with any decision, action, or lack of action involving work registration exemption status or requirements, or work activity exemption status or participation.
- (6) AN APPLICANT FOR, OR PARTICIPANT OR FORMER PARTICIPANT IN, THE OHIO WORKS FIRST PROGRAM OR THE PREVENTION, RETENTION, AND CONTINGENCY PROGRAM IS AGGRIEVED BY A DECISION REGARDING EITHER PROGRAM.
- (7) A request for prior authorization of a medical service or additional therapeutic leave days has been denied.
- (8) The individual or provider of long-term care believes that the level of care assigned to the individual is not correct.
- (9) The individual disagrees with a preadmission screening or resident review determination made by the Ohio department of mental health or the Ohio department of mental retardation and developmental disabilities.
- (10) The agency has proposed or acted to enroll the individual in the PACT program.
- (11) The agency has acted to continue the individual's enrollment in the PACT program.
- (12) The agency has denied a request, by an individual enrolled in the PACT program, to change a designated medical assistance provider.
- (13) The agency has denied payment for a medical service provided to an individual enrolled in the PACT program by a nondesignated provider.

(14) The individual believes that the review agency's decision on a request for precertification of a hospital admission or medical procedure is not correct.

~~(15) The agency has denied or delayed authorizing a child support disregard payment, or the assistance group believes the amount authorized is not correct.~~

(16) (15) A managed care plan has denied, proposed to reduce or terminate, or denied payment for a medicaid-covered service or the individual believes that the managed care plan has failed to act upon a request for such service with reasonable promptness.

The right to a state hearing applies only to action or lack of action by the managed care plan. If the action or lack of action with which the individual disagrees is by the individual's physician or another sub-contracting provider, the individual must first pursue the issue through the managed care plan's grievance process. Notice of the grievance decision, if adverse, shall be provided as required by rule 5101:6-2-35 of the Administrative Code. If the individual disagrees with the managed care plan's response to the grievance, the individual may then request a state hearing to appeal that decision.

(17) (16) The individual disagrees with any decision, action, or lack of action involving assistance under the SSI case management program.

(18) (17) A regular employee believes that the assignment of a JOBS participant violates the prohibition against displacement.

~~(19) The individual has been excluded from a social service program, the agency has failed to take into account the individual's choice of service, or the individual disagrees with the agency's determination that participation in a social service is mandatory.~~

(20) (18) The agency has determined that the assistance group has failed, ~~without good cause,~~ to submit a timely application for recertification for food stamps or to appear for an interview scheduled after the assistance group timely filed its application for recertification.

~~(21)~~ (19) The agency has denied or delayed replacement of food stamp benefits.

~~(22)~~ (20) In the medicaid program, either the institutionalized spouse or the community spouse may request a hearing concerning the following determinations:

(a) Community spouse monthly income allowance.

(b) Community spouse's minimum monthly maintenance needs allowance.

(c) Family allowance.

(d) Community spouse total gross income.

(e) Spousal share of assessed resources.

(f) Current countable resources.

(g) Community spouse resource allowance.

(B) The grounds for requesting a state hearing in the child support (IV-D) program, by an applicant, recipient, or

custodial parent are as follows:

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- (1) An application for child support services has been denied, acted upon erroneously, or not acted upon with reasonable promptness.
 - (2) A recipient of child support services ~~has not received a specific service~~, believes the case has been acted upon erroneously, or not acted upon with reasonable promptness.
 - (3) The recipient believes that the CSEA has failed to use appropriate establishment or enforcement techniques.
 - (4) The custodial parent believes that child support collections have not been distributed or disbursed correctly or questions the accuracy of the arrears owed to ODHS at termination of CASH BENEFITS ~~ADC~~.
 - (5) The custodial parent believes that child support payments, including payments owed to the custodial parent due to agency error, are not being issued with reasonable promptness.
 - (6) The custodial parent believes that the CSEA has failed to take action against an employer for failure to promptly forward payments withheld from the absent parent's wages.
 - (7) The custodial parent disagrees with the results of an investigation concerning termination of a support order.
 - (8) The custodial parent disagrees with the CSEA's decision to close the child support case.
- (C) The grounds for requesting a state hearing in the child support program by the noncustodial parent are as follows:
- (1) Services for establishing paternity have been denied.
 - (2) The CSEA has refused to review the noncustodial parent's support order for modification.
 - (3) The noncustodial parent disagrees with the results of an investigation concerning termination of a support order.
- (D) A hearing will not be granted when the sole issue is a determination of medically necessary inpatient hospital days by a medical review organization or a hospital in-house utilization review (UR) committee.
- (1) When a hospital has contracted with a medical review organization to provide inpatient hospital utilization review for medicaid recipients, appeals of utilization review determinations are under the jurisdiction of the medical review organization.
 - (2) When utilization review of medicaid recipient inpatient hospital stays is conducted by a hospital in-house UR committee, appeals of the UR committee's determinations should be addressed by the hospital UR committee.
 - (3) If an appeal is requested on an adverse determination by a hospital-contracted medical review organization or a hospital in-house UR committee, the local agency shall assist the individual in preparing the appeal request and forwarding the request to the medical review organization or UR committee that made the adverse determination.

- (E) In the public assistance and social services programs, a hearing need not be granted when a change in state or federal law, or local agency policy adopted pursuant to options authorized in state law, requires automatic adjustments of benefits for classes of recipients, unless the reason for the request is the misapplication of the change to the appellant's individual circumstances.
- (F) Except as noted in paragraph (A)(15) of this rule, the right to a state hearing is limited to actions by ODHS or the local agency.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35 and 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-28-76, 9-1-76, 10-1-78, 12-1-79, 6-1-80, 6-2-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 1-1-83(Temp.), 1-1-83, 1-17-83, 4-1-83, 7-3-83, 12-1-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-1-85(Emer.), 7-30-85, 9-29-85, 4-1-86, 4-1-87, 8-20-87, 7-1-88(Emer.), 9-25-88, 7-1-89, 10-1-89, 11-1-89(Emer.), 12-1-89(Emer.), 12-29-89(Emer.), 2-10-90, 3-22-90, 10-1-90, 7-1-91, 10-1-91, 2-1-92, 6-1-93, 2-1-95, 6-1-97, 12-30-97

5101:6-3-02 State hearing requests.

(A) Definition

- (1) A "request for a state hearing" is defined as 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. The request may be either oral or written.

A STATE HEARING MAY ONLY BE REQUESTED BY OR ON BEHALF OF AN INDIVIDUAL APPLYING FOR OR RECEIVING BENEFITS. A STATE HEARING MAY NOT BE REQUESTED BY THE LOCAL AGENCY, THE STATE AGENCY OR ANOTHER ENTITY, SUCH AS A MANAGED CARE PLAN, ACTING FOR OR IN PLACE OF THE LOCAL OR STATE AGENCY.

- (2) Oral requests for a hearing shall immediately be converted to a written record by the person to whom the request is made. It is not appropriate to require the individual to submit a written request once the desire for a hearing has been expressed orally. Requests made by telephone must be made by the individual.
- (3) Written authorization must accompany all requests made on an individual's behalf by an authorized representative except:
 - (a) Upon a showing that such authorization cannot be obtained because of the individual's death or incapacity, and that the representative is, in fact, acting in the individual's best interest.

Example: A person who made initial application for the individual and whom the agency has always considered to be the individual's authorized representative.

- (b) That attorneys may make a written hearing request on an individual's behalf without written authorization.

Written authorization is still required for access to case record documents and if the attorney or representative appears for the hearing unaccompanied by the individual.

- (c) That an individual's spouse may request a hearing on behalf of the individual without written authorization.
- (d) That a provider of long-term care may request a hearing, without obtaining written authorization, to contest the level of care assigned to the individual.

(B) Time limit

- (1) The individual shall be allowed ninety calendar days to request a hearing on any action or inaction.

In the food stamp program, "action" shall include denial of a request for restoration of benefits lost more than ninety days but less than a year prior to the request for restoration.
- (2) The ninety-day period begins on the day after the date the notice of action is mailed. The date of the hearing request is the date it is received by either the state or local agency.
- (3) The ninety-day time limit does not apply unless the individual has received notice of hearing rights relative to the specific action or inaction being appealed, as specified in chapter 5101:6-2 of the Administrative Code.

- (4) Individuals who receive a resource assessment not in conjunction with a medicaid application and who later apply for medicaid must request a hearing on the assessment no later than ninety days following the mailing date of the notice of approval or denial of the medicaid application.
- (5) In the food stamp program, the assistance group may request a hearing at any time within the certification period to dispute its current level of benefits.
- (C) The freedom to request a state hearing shall not be limited, interfered with, or discouraged in any way. **THIS APPLIES NOT ONLY TO THE LOCAL AND STATE AGENCY BUT ALSO TO ENTITIES, SUCH AS MANAGED CARE PLANS, ACTING FOR OR IN PLACE OF THE LOCAL OR STATE AGENCY.** Local and state agency emphasis shall be on helping the individual to submit and process the request, and to prepare for the hearing.
- (D) In the food stamp program, if the assistance group making the hearing request speaks a language other than English, and the local agency is required by rule 5101:4-1-07 of the Administrative Code to provide bilingual staff or interpreters who speak the appropriate language, the local agency shall ensure that the hearing procedures are explained verbally in that language.
- (E) Complaints concerning discrimination because of age, race, sex, religion, national origin, political beliefs, or handicap shall be referred to the ODHS EE0 officer for investigation.

If the complaint also concerns one of the issues listed in rule 5101:6-3-01 of the Administrative Code, it shall also be considered a state hearing request.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-28-76, 9-1-76, 10-1-78, 12-1-79, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 2-1-82, 4-1-82, 5-1-82, 10-1-82, 1-1-83, 1-17-83, 4-1-83, 7-1-83, 7-3-83, 11-1-83(Temp.), 12-1-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-1-85(Emer.), 7-30-85, 9-29-85, 4-1-86, 4-1-87, 4-1-89, 12-1-89(Emer.), 3-22-90, 10-1-90, 10-1-91, 6-1-93

5101:6-4-01 Continuation of benefits when a state hearing is requested.

- (A) When a request for a state hearing is received by either the state or local agency within the prior notice period, benefits shall not be reduced, suspended or terminated until a state hearing decision is rendered unless:
- (1) A determination is made at the hearing that the sole issue is one of state or federal law, and not one of fact or judgment.
 - (2) The appeal is withdrawn or abandoned pursuant to rule 5101:6-5-03 of the Administrative Code.
 - (3) A change affecting the assistance group's eligibility or level of benefits occurs while the decision is pending and the assistance group fails to timely request a hearing upon receipt of the subsequent notice of adverse action.
 - (4) A mass change which adversely affects a food stamp assistance group's eligibility or basis of issuance occurs while the hearing decision is pending.
 - (5) The assistance group specifically waives continuation of food stamp benefits.
- The section for requesting a state hearing on the prior notice contains a space for the assistance group to indicate whether it desires to waive continued food stamp benefits. If the assistance group does not positively indicate that it waives continued benefits, the local agency shall assume that continued benefits are desired.
- (6) The assistance group's food stamp certification period expires. Further entitlement to food stamp benefits cannot be established without recertification based upon a new application as provided in rule 5101:4-7-07 of the Administrative Code.
 - (7) The assistance group's LEAP JOBS supportive services, AND SUPPORT SERVICES PROVIDED TO PARTICIPANTS IN A WORK ACTIVITY UNDER THE OHIO WORKS FIRST PROGRAM OR THE FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM ~~provided under rule 5101:1-47-26 of the Administrative Code~~, are being reduced or terminated.
- (B) When benefits are reduced, suspended or terminated in violation of the provisions of paragraph (A) of this rule, benefits shall be reinstated to the previous level.
- (C) When the request for a state hearing is received by the state or local agency within ten calendar days after the effective date of the adverse action (the ten-day time limit does not apply in the food stamp program), and when good cause is shown for the delay in making the request, benefits shall be reinstated to the previous level.
- (1) "Good cause" is defined as death in the immediate family, sudden illness or injury of the individual or a member of the individual's immediate family, or other circumstances which reasonably prevented requesting a hearing within the timely notice period.
 - (2) Food stamp benefits shall not be reinstated when the assistance group has specifically waived continuation of benefits, or when the certification period has expired.

- (D) When an adverse action was taken without prior notice, pursuant to paragraph (A) of rule 5101:6-2-05 of the Administrative Code, and when the hearing request is received by either the state or local agency within fifteen calendar days from the mailing date of the notice of adverse action, benefits shall be reinstated to the previous level.
- (E) When food stamp benefits are reduced or terminated because of a mass change, and when the assistance group's hearing request is received by either the state or local agency within fifteen calendar days from the mailing date of the mass change notice, food stamp benefits shall be reinstated to the previous level if the following conditions are met:
 - (1) The reason for the assistance group's appeal is an erroneous application of the mass change to the individual case.
 - (2) The assistance group does not specifically waive its right to continuation of benefits.
- (F) If the need for reinstatement is discovered by the local agency, the local agency shall authorize reinstatement within five workdays of the date of discovery.
- (G) If the need for reinstatement is discovered by the district hearing authority, the district hearing authority shall immediately order reinstatement.
- (H) All reinstatement orders issued by the district hearing authority shall be in writing.
- (I) The agency shall respond to reinstatement orders by authorizing benefits within five workdays of receipt of the order.
- (J) "Reinstatement of benefits to the previous level" means that benefits shall be reinstated retroactive to the date the benefits were reduced, suspended or terminated.
- (K) Benefits so reinstated shall continue until the state hearing decision is rendered unless one of the conditions in paragraph (A) of this rule is met.
- (L) Managed care issues
 - (1) When a hearing request involving a managed care plan's proposed reduction or termination of a medicaid-covered service is received by the state or local agency within the timely notice period, the managed care plan shall be responsible for assuring that assistance is continued at or reinstated to the previous level for the pendency of the appeal.
 - (2) Service shall be continued or reinstated when a timely hearing request is received unless the appellant's physician certifies, in writing to the district hearings section, ODHS, that continuation of the service would pose a substantial risk of adverse health consequences.
 - (3) Nothing in this rule shall require an individual physician to continue a service for an enrollee if that physician believes that to do so would violate the provisions of section 4731.22 of the Revised Code.
- (M) The denial or delay of replacement food stamp benefits, under the provisions of rule 5101:4-7-12 of the Administrative Code, shall remain in effect pending the state hearing decision.
- (N) When a nonadverse action is required, the agency shall proceed with that action.

- (O) In the child support program, the CSEA shall continue to provide services, as otherwise appropriate, without regard to any hearing requests that have been made.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: 12-30-02

Prior Effective Dates: 4-15-75, 6-2-80, 5-1-82, 10-1-82, 1-1-83, 4-1-83, 12-1-83, 10-3-84(Emer.), 12-22-84, 4-1-87, 4-1-89, 11-1-90, 10-1-91, 2-1-92, 6-1-93, 3-1-94(Emer.), 5-15-94, 2-1-95, 12-1-95(Emer.), 2-19-96, 6-1-97, 10-01-97 (Emer.)

5101:6-5-01 Procedures prior to the state hearing.

(A) Receipt and processing of the request

- (1) When a hearing request is made to the BUREAU OF state hearings ~~section~~, ODHS, the BUREAU OF state hearings ~~section~~ shall send the request to the district hearings section, with a copy to the local agency, within one workday from the date of receipt.
- (2) When the hearing request is made to the local agency, the local agency shall date stamp the request, retain a copy, and send the request to "ODHS, State Hearings, 30 East Broad Street, 31ST Floor, Columbus, Ohio 43266-0423," within one workday from the date of receipt.
- (3) When the hearing request ~~concerns~~ INVOLVES one of the medical determination issues listed in paragraph (C)(2) of rule ~~5101:6-6-1~~ 5101:6-6-01 of the Administrative Code, the BUREAU OF state hearings ~~section~~ shall also send a copy of the request to the medical determination unit.
- (4) WHEN A HEARING REQUEST INVOLVING ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN IS RECEIVED BY THE BUREAU OF STATE HEARINGS, THE BUREAU OF STATE HEARINGS SHALL ALSO SEND COPIES TO THE MANAGED CARE PLAN AND TO THE OFFICE OF MEDICAID, ODHS.

(B) Appeal summary

- (1) The agency shall prepare an "Appeal Summary," ODHS 4067, with appropriate attachments, and send it to the district hearings section within five workdays from the date the hearing request is received. A copy shall be placed in the individual's case record.
- (2) WHEN THE HEARING INVOLVES ONE OF THE MEDICAL DETERMINATION ISSUES LISTED IN PARAGRAPH (C)(2) OF RULE 5101:6-2-01 OF THE ADMINISTRATIVE CODE, THE MEDICAL DETERMINATION UNIT SHALL PREPARE THE APPEAL SUMMARY AND SEND IT TO THE DISTRICT HEARINGS SECTION AND TO THE LOCAL AGENCY.
- (3) WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN SHALL ASSURE THAT AN APPEAL SUMMARY IS PREPARED AND SENT TO THE DISTRICT HEARINGS SECTION, WITH COPIES TO THE COUNTY DEPARTMENT OF HUMAN SERVICES AND TO THE OFFICE OF MEDICAID, ODHS.
- (2) (4) The ODHS 4067, together with its attachments, shall provide a summary of all facts and documents relevant to the issue under appeal, and shall be sufficient to demonstrate the basis for the agency's action or determination.
- (3) (5) Agency failure to prepare an appeal summary, or to make it available to the individual or authorized representative for a reasonable period before the hearing, may be considered good cause for postponing or continuing the hearing if the individual has been materially disadvantaged by the failure.
- ~~(4) When the hearing concerns one of the medical determination issues listed in paragraph (C)(2) of rule 5101:6-6-1 of the Administrative Code, the medical determination unit shall prepare the appeal summary and send it to the district Hearings section and to the local agency.~~

(C) County conferences

- (1) In order to avoid unnecessary state hearings, the local agency shall provide an opportunity for the individual to discuss and/or resolve disagreements with local agency actions or inaction.
- (2) When an individual requests a county conference, the local agency shall convene a conference presided over by the director or a designee. Both the local agency and the individual may bring whomever each reasonably wants to be at the conference. The issue to be decided by the presiding person shall be whether the agency can show, by a preponderance of the evidence, that its action or inaction was in accordance with ODHS rules. If not, the presiding person shall retract the notice of adverse action and/or decide the question of the individual's entitlement to benefits, or arrange to make that determination as quickly as possible. The outcome of the county conference shall be recorded, in writing, in the case record.
- (3) The individual need not have a county conference in order to have a state hearing, nor does the holding of a county conference, or the individual's failure to appear for one, diminish the right to a state hearing. A state hearing must still be held unless a resolution is reached at the county conference and the individual withdraws the hearing request in writing. Any such withdrawal shall be signed and dated by both the individual and the local agency representative, shall clearly set forth the resolution upon which the withdrawal is based, and shall be forwarded to the district hearings section within two workdays. One copy shall be given to the individual and one copy shall be retained in the case file.
- (4) A county conference for assistance groups contesting a denial of expedited food stamps shall be scheduled within two workdays, unless the assistance group requests that it be scheduled later or states that it does not wish to have a county conference.

(D) Legal representation

- (1) Both the individual and the agency have the right to be represented by legal counsel at the state hearing. The agency shall provide the individual with information regarding free legal services in the community, as specified elsewhere in ~~chapters~~ CHAPTERS 5101:6-1 to 5101:6-9 of the Administrative Code and upon request from the appellant, via ODHS 4059. The local agency may provide legal services through a social services contract.
- (2) WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN SHALL ALSO HAVE THE RIGHT TO BE REPRESENTED BY LEGAL COUNSEL AT THE HEARING.

(E) Access to documents and regulations

- (1) The individual and authorized representative shall be provided reasonable time before the date of the hearing, as well as during the hearing, to examine the contents of the case file, as well as all records and documents to be used by the agency at the hearing, except for confidential information protected from release.
- (2) If the individual or authorized representative requests case record documents that are relevant to the issue under appeal, the agency shall provide one copy of each such document at no cost. The authorized representative must provide the individual's signed authorization prior to obtaining a copy of case record material.

- (3) Current program manuals shall be made available to the individual or authorized representative for review at the local agency.
- (4) The agency's failure to provide or allow access to the above information may be the basis for postponing or continuing the hearing.
- (5) Confidential material protected from release, and other documents or records that the individual will not have an opportunity to contest or challenge, shall not be presented at the hearing nor affect the hearing officer's decision.
- (6) When the hearing involves work registration or employment and training, the individual shall also be allowed to examine the employment and training component case file, except for confidential information (which may include test results) that the agency determines should be protected from release.
- (7) WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE PROVISIONS OF PARAGRAPHS (E)(1), (E)(2), (E)(4), AND (E)(5) OF THIS RULE SHALL APPLY TO THE MANAGED CARE PLAN, ITS SUBCONTRACTING PROVIDERS, AND ALL RELEVANT RECORDS.

(F) Subpoenas

- (1) Both the local agency and the individual or authorized representative may request, at least five calendar days prior to the date of the state hearing, that ODHS issue a subpoena to compel the presence of documents and witnesses that would not otherwise be available and that are essential to the requesting party's case.
- (2) The district hearing authority shall make the determination as to whether such subpoenas shall be issued and whether subpoenaed individuals shall participate in person or by telephone. If a subpoena request is denied, the reason for denial shall be clearly explained in the state hearing decision.
- (3) Subpoenas shall be served by mail. The payment of witness fees for attendance and travel is not required.
- (4) WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN SHALL HAVE THE SAME SUBPOENA RIGHTS AS THE COUNTY DEPARTMENT OF HUMAN SERVICES.

(G) Transportation

The local agency may provide transportation to the individual through a social services contract where a valid need for transportation exists.

(H) Group hearings

- (1) The district hearings section may respond to a series of individual state hearing requests by scheduling a single group hearing. Requests may be consolidated only when individual issues of fact are not disputed and where related issues of state or federal law are the sole issues being raised.

- (2) In all group hearings, the rules governing individual hearings must be followed. Each individual shall be permitted to present his or her own case or have his or her case presented by an authorized representative.
- (3) Individuals scheduled for a group hearing shall be notified of the group hearing procedures, via ODHS 4059, along with the scheduling notice.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 4-15-75, 6-28-76, 9-1-76, 10-1-78, 12-1-79, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 1-17-83, 4-1-83, 7-1-83, 7-3-83, 11-1-83 (Temp.), 12-1-83, 12-22-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-1-85(Emer.), 7-30-85, 9-25-85, 4-1-86, 4-1-87, 9-1-87, 10-14-88(Emer.), 12-22-88, 4-1-89, 2-1-92, 6-1-93

5101:6-5-02 Postponement of the state hearing.

- (A) Postponement rights vary depending upon the program at issue.
 - (1) Public assistance, social services and child support services
 - (a) The hearing may be postponed at the request of the individual or authorized representative when good cause, as defined in rule 5101:6-5-03 of the Administrative Code, exists.
 - (b) The request for postponement and good cause showing must be received by the district hearings section before the scheduled time of the hearing.
 - (c) The district hearing authority shall have final authority to determine whether good cause exists. Verification of good cause may be required.
 - (d) The hearing authority shall have final authority to deny repeated requests for postponement.
 - (e) Postponement shall not extend the time limit for issuing a state hearing decision.
 - (2) Food stamps
 - (a) The assistance group is entitled to postponement of its scheduled hearing date, not to exceed thirty calendar days.
 - (b) If postponement is requested, the district hearings section shall reschedule the hearing at the earliest available time and date convenient to the assistance group.
 - (c) The sixty-day time limit for issuing a decision shall be extended by as many days as the hearing is postponed.
- (B) Postponement shall not affect continuation of assistance.
- (C) When a request for postponement is denied, the individual or authorized representative must attend the scheduled hearing or be subject to dismissal as described in rule 5101:6-5-03 of the Administrative Code.
- (D) The postponement rights described in PARAGRAPHS (A), (B) AND (C) OF this rule apply only to the individual, and not to the agency.
- (E) THE LOCAL AGENCY MAY REQUEST ONE POSTPONEMENT SEVEN DAYS PRIOR TO THE HEARING. NO POSTPONEMENT WILL BE GRANTED IF IT WILL PREVENT THE DISTRICT HEARING SECTION FROM ISSUING THE DECISION WITHIN APPLICABLE TIME LIMITS.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 6-2-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 1-1-83, 4-1-83, 7-1-83, 7-3-83, 11-1-83(Temp.), 12-1-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-30-85, 4-1-87, 6-1-93

5101:6-5-03 Denial and dismissal of state hearing requests.

- (A) The local agency shall not deny or dismiss any request for a state hearing. All requests shall be sent to the BUREAU OF state hearings ~~section~~, ODHS, in accordance with rule 5101:6-5-01 of the Administrative Code. The BUREAU OF state hearings ~~section~~ shall forward the request to the appropriate district hearings section for disposition.
- (B) When the district hearings section denies or dismisses a state hearing request, the individual and authorized representative shall be provided written notice via "Denial/Dismissal Notice," ODHS 4000, with copies to the local agency and to the BUREAU OF state hearings ~~section~~.

WHEN A HEARING REQUEST INVOLVES MULTIPLE ISSUES, AND WHEN THE APPELLANT WITHDRAWS, IN WRITING, HIS OR HER REQUEST WITH REGARD TO SOME BUT NOT ALL OF THE ISSUES UNDER APPEAL, NOTICE OF DISMISSAL OF THE WITHDRAWN APPEALS MAY BE INCLUDED IN THE "STATE HEARING DECISION," ODHS 4005, RATHER THAN PROVIDED VIA ODHS 4000.

When the hearing request ~~concerns~~ INVOLVES one of the medical determination issues listed in paragraph (C)(2) of rule 5101:6-6-01 of the Administrative Code, a copy of the notice shall be sent to the appropriate medical determination unit.

WHEN THE HEARING REQUEST INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, COPIES OF THE NOTICE SHALL BE SENT TO THE MANAGED CARE PLAN AND TO THE OFFICE OF MEDICAID, ODHS.

- (C) A state hearing request may only be denied prior to the mailing of the "State Hearing Scheduling Notice," ODHS 4002, and only for the following reasons:

- (1) The request is untimely, as defined by rule 5101:6-3-02 of the Administrative Code.

If the request indicates that proper notice was not received, the request shall be accepted and the issue of timeliness shall be determined as a preliminary matter at the hearing.

- (2) The request was not made by the individual or authorized representative, or written authorization specifically designating the person making the request to act on the individual's behalf was not submitted with the request.

Such a denial must be consistent with the provisions of rule 5101:6-3-02 of the Administrative Code.

- (3) The request concerns an issue that is not appealable under the provisions of rule 5101:6-3-01 of the Administrative Code.

If the issue as stated in the request is unclear, the district hearings section shall request clarification from the individual.

- (4) The sole issue of the request is a change in state or federal law, or local agency policy adopted pursuant to options authorized in state law, which requires automatic adjustments of public assistance or social services for classes of recipients, unless the reason for the request is the misapplication of the change to the appellant's individual circumstances.

- (5) The request concerns the placement of a food stamp assistance group on an alternate issuance system or the length of time the assistance group remains on this system.
- (D) After a state hearing request is scheduled, it may no longer be denied, but must be heard, or dismissed as described in paragraphs (E)(1) and (E)(2) of this rule. Dismissal of a state hearing request constitutes a binding decision on the hearing request.
- (E) A request for a state hearing may be dismissed only for the following reasons:
 - (1) The district hearings section receives a written withdrawal of the hearing request, signed by the individual or authorized representative, before the state hearing decision is issued.
 - (2) The request is abandoned. A state hearing request is "abandoned" when the individual or authorized representative fails, without good cause, to attend the state hearing. A "state hearing" is defined as the initial state hearing, a hearing that has been rescheduled, or a hearing that has been continued.
 - (a) When the hearing has been abandoned, the individual and authorized representative shall be notified via ODHS 4000 that the hearing request will be dismissed if good cause for failing to attend is not shown within ten days of the mailing date of the ODHS 4000.
 - (b) The hearing shall be rescheduled if the individual or authorized representative contacts the district hearings section, in writing or by telephone, within the ten-day period and establishes good cause.
 - (c) The request shall be dismissed as abandoned if the hearings section does not receive a showing of good cause within the ten-day period. The date of dismissal is the day after the ten-day period ends. The local agency and the state hearings section shall then be notified, using the appropriate copies of the ODHS 4000.
 - (d) If the individual contacts the district hearings section but fails to establish good cause, the individual shall be given written notice of that determination and of the right to and the method of obtaining an administrative appeal. Copies shall be sent to the local agency and to the state hearings section.
 - (e) "Good cause" is defined as death in the immediate family, sudden illness or injury of the individual or a member of the individual's immediate family, or other circumstances which reasonably prevented attendance at the hearing.
 - (f) The district hearing authority shall have final authority to determine if good cause was timely shown. Verification of good cause may be required.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 9-1-76, 6-2-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 1-1-83, 4-1-83, 7-1-83, 7-3-83, 11-1-83(Temp.), 12-1-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-30-85, 4-1-87, 7-1-88(Emer.), 9-1-88, 4-1-89, 10-1-91, 2-1-92, 6-1-93

5101:6-6-01 Scheduling and attendance.

(A) Time and place of the hearing

- (1) The hearing shall be conducted at a reasonable time, date, and place. The hearing will usually be conducted at the local agency, since it is usually most convenient to the individual. However, there may be circumstances which warrant conducting the hearing at another time, date, or place. In these cases, efforts shall be made to schedule the hearing at a time, date, and place convenient to all parties involved.
- (2) When a hearing request can be identified as involving an emergency assistance issue or a denial of expedited food stamps, the hearing shall be scheduled and conducted more quickly than other requests, if necessary, so that the decision can be issued within the thirty-day period specified in rule 5101:6-7-01 of the Administrative Code.
- (3) The district hearings section shall expedite food stamp hearing requests from assistance groups, such as migrant farm workers, that plan to move from the county before the hearing decision would normally be issued.
 - (a) Hearing requests from these assistance groups shall be scheduled and conducted more quickly than other requests, if necessary, to enable them to receive a decision, and a restoration of benefits if appropriate, before they leave the county.
 - (b) To qualify, the assistance group must submit, in writing if possible, its planned date of move. When this information is provided in an oral request, the local agency shall put the information in writing and forward it to the district hearings section with the hearing request, if possible, or immediately upon receipt.
- (4) Hearings involving the determination of the community spouse resource allowance shall be conducted within thirty days of the date of the hearing request. This requirement shall not prevent the granting of otherwise appropriate postponements and continuances.
- (5) When the hearing is conducted at the local agency, the local agency shall provide adequate accommodations where the hearing can be conducted in privacy, with the proper decorum, and with a minimum of distractions.

(B) Scheduling notice

- (1) The district hearings section shall send written notice of the time, date, and place of the hearing to the individual and authorized representative, to the local agency, and when appropriate, to the participants identified in paragraph (C)(2) of this rule.

WHEN THE HEARING REQUEST INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE DISTRICT HEARINGS SECTION SHALL ALSO SEND COPIES OF THE SCHEDULING NOTICE TO THE MANAGED CARE PLAN AND TO THE OFFICE OF MEDICAID, ODHS.

The district hearings section shall retain a copy of the scheduling notice, to be included in the hearing record.

In all instances, the "State Hearing Scheduling Notice," ODHS 4002, shall be used.

- (2) The scheduling notice shall be mailed at least ten calendar days prior to the date of the hearing, unless the individual requests less advance notice in order to expedite scheduling.
- (3) "Explanation of State Hearing Procedures," ODHS 4059, shall be mailed to the individual and authorized representative along with the scheduling notice. The scheduling notice, in conjunction with the ODHS 4059, shall:
 - (a) Provide the name, address and telephone number of the person to notify if the individual cannot attend the hearing.
 - (b) Explain that the hearing request will be dismissed if the individual or authorized representative fails, without good cause, to appear for the hearing.
 - (c) Explain state hearing procedures and provide other information necessary for the individual's understanding of the proceedings and the effective presentation of his or her case.
 - (d) Explain that the individual or representative may examine the case file prior to the hearing.

(C) Attendance

- (1) Attendance at the hearing is limited to the following:
 - (a) The agency representative.
 - (b) The individual and/or authorized representative.
 - (c) Legal representation for the individual and for the agency.
 - (d) Witnesses called by the individual and the agency to present relevant testimony.
 - (e) Other persons, only if the individual agrees and if their attendance does not interfere with the orderly conduct of the hearing.
- (2) When the hearing ~~concerns~~ INVOLVES one of the medical determination issues listed in this paragraph, the agency representative shall be the district medical assistance supervisor, a member of the local agency staff, or an employee of the medical determination unit OR AGENCY, as determined by the medical determination unit in consultation with the district director.
 - (a) Medical determination issues include the following:
 - (i) Prior authorization for medical services.
 - (ii) Need for long-term care.
 - (iii) Determination of disability and incapacity.
 - (iv) Precertification of hospital admissions and medical procedures.
 - (v) PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR) DETERMINATIONS MADE BY THE OHIO DEPARTMENT OF MENTAL HEALTH

AND THE OHIO DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES.

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- (v) (vi) PACT issues, including enrollment, continued enrollment, denial of a requested provider change, and denial of payment for services by a nondesignated provider.
- (vi) (vii) HCBS waiver determinations.
- (b) If subpoenaed by the district hearing authority under the provisions of rule 5101:6-5-01 of the Administrative Code, the medical determination unit shall participate in the hearing, either in person or by telephone, as required by the subpoena.
- (c) If the medical determination unit is to participate in the hearing by telephone, whether by choice or in response to a subpoena, such participation shall be as described in rule 5101:6-6-04 of the Administrative Code.

(3) WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, A REPRESENTATIVE OF THE MANAGED CARE PLAN SHALL PARTICIPATE IN THE HEARING AS THE AGENCY REPRESENTATIVE.

THE MANAGED CARE PLAN REPRESENTATIVE SHALL PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY TELEPHONE.

IF THE MANAGED CARE PLAN REPRESENTATIVE IS TO PARTICIPATE IN THE HEARING BY TELEPHONE, SUCH PARTICIPATION SHALL BE AS DESCRIBED IN RULE 5101:6-6-04 OF THE ADMINISTRATIVE CODE.

- (3) (4) Any disputes regarding attendance shall be resolved by the hearing officer prior to the hearing.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 4-15-75, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 2-1-82, 5-1-82, 10-1-82, 1-1-83, 7-3-83, 11-1-83(Temp.), 12-22-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-30-85, 4-1-87, 8-20-87, 9-1-87, 9-30-88(Emer.), 12-22-88, 4-1-89, 12-29-89(Emer.), 3-22-90, 6-1-93

5101:6-6-02 Rights and responsibilities of the participants.

(A) The agency representative

The agency representative presents and is the advocate for the agency's case at the hearing. This person shall explain the reasons for the agency's action, cite the regulations upon which the action was based, provide relevant case information and documents, and answer relevant questions from the individual and the hearing officer. The agency representative has the same rights as the individual to confront and cross-examine during the hearing.

WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN REPRESENTATIVE SHALL HAVE THE SAME RIGHTS AND RESPONSIBILITIES AS THOSE OF THE AGENCY REPRESENTATIVE.

(B) The individual making the hearing request

- (1) The individual and representative shall have the opportunity to present their case in their own way. The hearing shall be conducted informally, and formal rules of evidence shall not apply.
- (2) The individual and authorized representative shall have adequate opportunity to:
 - (a) Examine, at a reasonable time before the hearing as well as during the hearing, the contents of the case file, except for confidential information protected from release, as well as all records and documents to be used by the local agency at the hearing.
 - (b) Bring witnesses.
 - (c) Submit evidence to establish all pertinent facts and circumstances.
 - (d) Advance arguments without undue interference.
 - (e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(C) The hearing officer

- (1) State hearings shall be conducted by an impartial ODHS hearing officer who has no personal stake or involvement in the case and was not directly involved in the initial determination being appealed. The hearing officer shall be under the direction and supervision of the appropriate district director.
- (2) The hearing officer shall not consult with either party concerning the substance of the case prior to the hearing, except for review of the hearing request and appeal summary.
- (3) Hearings are normally held at the local agency office. The hearing officer shall assure that the accommodations provided by the local agency for the hearing are adequate and that the hearing can be conducted in privacy, with the proper decorum, and with a minimum of distractions. Disputes concerning the adequacy of the space provided shall be referred to the district director for resolution with the director of the local agency.
- (4) The hearing officer shall regulate attendance at the hearing in accordance with rule 5101:6-6-01 of the Administrative Code. If limited space requires, witnesses may be called into the hearing room one at a

time.

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- (5) The hearing officer shall begin the hearing by starting the recording equipment and providing the following introductory information:
 - (a) The name and role of the hearing officer, the case name, and the appeal number.
 - (b) How the hearing will be conducted, including the order of presentation and questioning.
 - (c) The time frame within which a decision must be issued.
 - (d) Who will issue the decision.
 - (e) How the parties will be notified of the decision.
 - (f) Where the complete hearing record will be kept after the decision is issued.
 - (g) The available appeal rights.
- (6) After the opening remarks, the hearing officer shall state the issue to be heard, as it appears on the hearing request. The issue shall always be whether the agency's action or inaction was in accordance with ODHS rules. The hearing officer shall entertain requests from either party to amend the issue as stated. Amendment is appropriate so long as it does not substantially alter the nature of the issue or the ability of the parties to address the issue at the hearing. Any amendment of the issue as stated on the hearing request shall be formally recorded.
- (7) The hearing officer shall ask both parties for any additional issues, and shall rule on their inclusion in the hearing. An additional issue may be heard only if both parties agree, and if the hearing officer determines that both parties are prepared to address the additional issue and that there is adequate time to do so.
- (8) The hearing officer shall record the name and role of each person in attendance and shall administer an oath or affirmation to all who intend to offer testimony.
- (9) The hearing officer shall regulate the order of presentation by the parties. Normally, the agency presentation will be made first, subject to questioning by the individual and the hearing officer, followed by the individual's presentation, subject to questioning by the agency and the hearing officer. Both parties will then be allowed a brief closing statement.
- (10) In regulating the conduct of the hearing, the hearing officer is responsible for developing the fullest possible record upon which to base all necessary findings of fact. Each party shall be treated fairly and impartially and given adequate opportunity to address the issues. The hearing officer has an affirmative obligation to assist unrepresented individuals in understanding the nature of the issue and the regulations that relate to it, and in presenting testimony and evidence necessary to address all relevant factual questions. The hearing officer shall take an active part in questioning the parties and the evidence presented, insofar as that is necessary to develop the fullest possible record.
- (11) After all relevant testimony and evidence has been presented, the hearing officer shall determine whether a sufficient record has been developed upon which to make the decision. If not, the hearing officer may either order that the hearing be continued to a later date or leave the record open for the submission of additional evidence.

- (a) Where relevant and useful, the hearing officer may order an independent medical assessment or professional evaluation.

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- (b) If the hearing is to be continued to a later date, as for instance to take testimony from a witness not present at the initial hearing, the hearing officer shall schedule the continuance at the earliest possible date acceptable to all parties and shall formally record the new date and time, as well as the specific purpose of the continuance. Notification of the parties at the hearing shall be followed by written notification via ODHS 4002.
 - (c) If the record is to be left open to allow the submission of additional documentary evidence, the hearing officer shall formally record the nature and purpose of the additional evidence and shall establish the earliest possible realistic deadline for its submission to the hearing officer.
 - (d) Additional evidence submitted prior to the deadline shall be forwarded to the other party with notice of the deadline for response. Evidence submitted after the deadline may be returned to the submitting party with notice that it will not be used in reaching the decision.
 - (e) The hearing officer shall also have the authority to reconvene the hearing if the nature of the additional evidence or response requires. When the record has been left open for submission of additional evidence by the agency, the individual shall always be afforded the right to rebut such evidence in person at a reconvened hearing if he or she chooses.
 - (f) When the record has been left open, the hearing decision shall so indicate, and shall record the resulting submissions or failure to submit, as well as the substance of any rebuttal.
- (12) If assistance has been continued due to a timely appeal, the hearing officer shall determine, prior to adjourning the hearing, whether the sole issue is one of state or federal law and not one of fact or judgment. If so, the hearing officer shall direct the agency, via "Authorization to Take Proposed Action During Pendency of Hearing Decision," ODHS 4050, to take the proposed action immediately.
 - (13) The hearing officer shall close the hearing by informing the parties when they can expect the written decision, adjourning the hearing, and turning off the recording equipment.
 - (14) Following the hearing, 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.
 - (15) Finally, the hearing officer shall prepare the "State Hearing Decision," ODHS 4005, to include the issue, findings of fact, conclusions of policy, and recommendations, and submit it to the district hearing authority.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 4-15-75, 6-1-80, 6-2-80, 9-19-80, 10-1-1, 5-1-82, 10-1-82, 11-1-83(Temp.), 12-22-83, 3-1-84(Temp.), 6-1-84, 5-1-85(Emer.), 7-30-85, 4-1-87, 2-1-92, 6-1-93

5101:6-6-03 Tape recording of the hearing.

- (A) All state hearings shall be tape recorded by the hearing officer. The tape shall be started at the beginning of the hearing and shall continue until the hearing is concluded. There shall be no testimony or other proceedings off the record. The tape recording shall not be altered or edited in any manner or for any reason.
- (B) The tape recording of the hearing shall not be a part of the official hearing record. The tape shall be maintained at the appropriate district hearings section for thirty calendar days after the issuance of the hearing decision unless an administrative appeal has been requested. If an administrative appeal is requested, the tape recording shall be maintained at the district office for seven months after all administrative appeal proceedings have been completed. The tape recording may be erased after expiration of the above period.
- (C) During the fifteen-day administrative appeal period, the individual or authorized representative may request a copy of the tape recording. The district hearings section shall respond to such requests within two workdays whenever possible, and shall mail the copy to the individual or authorized representative free of any charge. Nonreceipt of a copy of a tape within the administrative appeal period shall not result in an extension of the administrative appeal period. In extraordinary circumstances, the fifteen-day limit on requests for a copy of the tape may be waived, upon written request to the office of legal services, ODHS.
- (D) The district hearings section shall respond to reasonable requests from the local agency, or other agency specifically involved in the hearing, for a copy of the tape recording of that hearing. ~~A reasonable charge, as determined by the district director, may be made for the copy.~~
- (E) Upon request by the office of legal services, the district hearings section shall send the tape recording, within two workdays, for review in administrative appeals or for judicial review.
- (F) The individual and/or the agency may tape record the hearing, at their own expense, so long as it does not seriously interfere with the orderly conduct of the hearing.
- (G) If, during the administrative appeal process, it is found that the hearing officer's tape recording is lost or unusable (for example, because it has been damaged or because material portions of the tape are inaudible), the administrative appeal hearing examiner shall remand the case to the state hearing officer for a new hearing if the following conditions are met:
 - (1) The individual takes material issue with the recitation of the testimony set forth in the hearing decision; and
 - (2) The individual and either the state hearing officer or the agency are not able to stipulate to the testimony given.

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Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective dates: 10-1-85, 4-1-87, 10-14-88(Emer.), 12-22-88, 6-1-93

5101:6-6-04 TELEPHONE HEARINGS AND HEARINGS INVOLVING PARTICIPATION BY TELEPHONE.

(A) TELEPHONE HEARINGS

AT ITS OPTION, THE DISTRICT HEARINGS SECTION MAY SCHEDULE SOME OR ALL HEARINGS AS TELEPHONE HEARINGS, FOLLOWING PROCEDURES OUTLINED IN THIS PARAGRAPH.

- (1) TELEPHONE HEARINGS SHALL NORMALLY BE CONDUCTED WITH ALL PARTICIPANTS EXCEPT THE HEARING OFFICER PRESENT AT THE LOCAL AGENCY OFFICE. THE HEARING OFFICER SHALL CONDUCT THE HEARING, AS DESCRIBED IN RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE, BY TELEPHONE FROM THE DISTRICT OFFICE OR OTHER SITE SUITABLY EQUIPPED WITH A SPEAKER TELEPHONE.

WHEN A TELEPHONE HEARING CONCERNS ONE OF THE MEDICAL DETERMINATIONS LISTED IN PARAGRAPH (C)(2) OF RULE 5101:6-6-01 OF THE ADMINISTRATIVE CODE, THE AGENCY REPRESENTATIVE SHALL PARTICIPATE IN THE HEARING AS DESCRIBED IN THAT PARAGRAPH.

- (2) SCHEDULING.

- (a) IF THE HEARING IS TO BE SCHEDULED AS A TELEPHONE HEARING, THE SCHEDULING NOTICE SHALL INFORM THE INDIVIDUAL OF THAT FACT AND THAT HE OR SHE MAY CHOOSE TO HAVE A FACE-TO-FACE HEARING INSTEAD.
- (b) THE SCHEDULING NOTICE SHALL INCLUDE A TELEPHONE NUMBER WHICH THE INDIVIDUAL CAN CALL FREE OF CHARGE TO REQUEST A FACE-TO-FACE HEARING AND SHALL EXPLAIN THAT A REQUEST FOR A FACE-TO-FACE HEARING MUST BE MADE NO LATER THAN THREE CALENDAR DAYS PRIOR TO THE DATE OF THE HEARING.
- (c) HEARINGS INITIALLY SCHEDULED AS TELEPHONE HEARINGS WHICH ARE RESCHEDULED AS FACE-TO-FACE HEARINGS AT THE INDIVIDUAL'S REQUEST SHALL BE RESCHEDULED IN ACCORDANCE WITH RULE 5101:6-6-01 OF THE ADMINISTRATIVE CODE.

- (3) DOCUMENTS.

- (a) THE AGENCY SHALL BE RESPONSIBLE FOR SUBMITTING AN APPEAL SUMMARY WITH ALL RELEVANT DOCUMENTS TO THE DISTRICT HEARINGS SECTION AS REQUIRED BY RULE 5101:6-5-01 OF THE ADMINISTRATIVE CODE.
- (b) THE INDIVIDUAL SHALL BE RESPONSIBLE FOR MAILING ANY DOCUMENTS HE OR SHE WANTS CONSIDERED TO THE DISTRICT HEARINGS SECTION PRIOR TO THE HEARING. THE LOCAL AGENCY SHALL ASSIST IN COPYING AND MAILING SUCH DOCUMENTS IF THE INDIVIDUAL REQUESTS.

- (c) IF, DURING THE HEARING, IT IS DETERMINED THAT NOT ALL NECESSARY DOCUMENTS HAVE BEEN RECEIVED BY THE HEARING OFFICER, THE AGENCY SHALL TRANSMIT THE ADDITIONAL DOCUMENTS TO THE HEARING OFFICER, BY FACSIMILE DEVICE IF POSSIBLE, SO THAT THEY MAY BE EXAMINED BY THE HEARING OFFICER BEFORE THE CONCLUSION OF THE HEARING.
- (d) IF IT IS NOT POSSIBLE TO TRANSMIT THE ADDITIONAL DOCUMENTS TO THE HEARING OFFICER BEFORE THE CONCLUSION OF THE HEARING, THE RECORD SHALL BE HELD OPEN UNTIL THEY ARE RECEIVED. THE INDIVIDUAL SHALL BE GIVEN THE OPTION OF HAVING THE HEARING RECONVENED WHEN THE ADDITIONAL DOCUMENTS ARE RECEIVED.

ONCE THE ADDITIONAL DOCUMENTS ARE RECEIVED AND REVIEWED, THE HEARING OFFICER MAY ALSO DECIDE TO RECONVENE THE HEARING TO RESOLVE QUESTIONS WHICH ARISE UPON REVIEW.

- (e) NO DOCUMENTS THAT WERE NOT AVAILABLE FOR THE INDIVIDUAL TO REVIEW DURING THE HEARING MAY BE SUBMITTED TO THE HEARING OFFICER AFTER THE HEARING, UNLESS THE INDIVIDUAL IS PROVIDED THE OPPORTUNITY FOR REBUTTAL AS REQUIRED BY RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
- (4) FOR ALL HEARINGS SCHEDULED AS TELEPHONE HEARINGS, THE LOCAL AGENCY SHALL BE RESPONSIBLE FOR PROVIDING A SUITABLE HEARING ROOM EQUIPPED WITH A SPEAKER TELEPHONE CAPABLE OF CLEAR, RECORDABLE TRANSMISSION OF THE TESTIMONY OF THE PARTICIPANTS.
 - (5) THE HEARING OFFICER IS RESPONSIBLE FOR ENSURING THAT THE HEARING IS RECORDED CLEARLY SO THAT A COMPLETE TRANSCRIPTION MAY BE MADE IF REQUIRED.
 - (6) ALL OTHER HEARING PROCEDURES CONTAINED IN CHAPTERS 5101:6-1 TO 5101:6-9 OF THE ADMINISTRATIVE CODE APPLY EQUALLY TO TELEPHONE HEARINGS.

(B) PARTICIPATION BY TELEPHONE

THE FOLLOWING PROCEDURES APPLY WHEN A MEDICAL DETERMINATION UNIT OR OTHER PARTY IS TO PARTICIPATE IN THE HEARING BY TELEPHONE.

- (1) THE DISTRICT HEARINGS SECTION SHALL BE RESPONSIBLE FOR THE FOLLOWING:
 - (a) NOTIFYING THE LOCAL AGENCY THAT THE HEARING WILL INVOLVE TELEPHONE PARTICIPATION, SO THAT A SUITABLE HEARING ROOM CAN BE PROVIDED.
 - (b) NOTIFYING THE MEDICAL DETERMINATION UNIT OR OTHER PARTY OF THE DATE AND TIME OF THE HEARING AND OBTAINING THE TELEPHONE NUMBER WHERE THE REPRESENTATIVE CAN BE REACHED ON THE DAY OF THE HEARING.
 - (c) PROVIDING THE HEARING OFFICER WITH SUITABLE SPEAKER PHONE AND TAPE

RECORDING EQUIPMENT.

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- (2) THE LOCAL AGENCY SHALL BE RESPONSIBLE FOR THE FOLLOWING:
 - (a) PROVIDING A SUITABLE HEARING ROOM.
 - (b) PROVIDING A STAFF MEMBER TO ATTEND THE HEARING AND TO BRING THE INDIVIDUAL'S CASE FILE, INCLUDING, IF APPLICABLE, THE APPEAL SUMMARY AND SUPPORTING DOCUMENTATION PROVIDED BY THE MEDICAL DETERMINATION UNIT.
- (3) WHEN THE INDIVIDUAL, LOCAL AGENCY STAFF MEMBER, AND HEARING OFFICER ARE PRESENT AND READY TO BEGIN THE HEARING, THE HEARING OFFICER SHALL CALL THE MEDICAL DETERMINATION UNIT OR OTHER PARTY, ASSURE THAT THE SPEAKER PHONE AND TAPE RECORDING EQUIPMENT ARE WORKING PROPERLY, AND BEGIN THE HEARING.
- (4) THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
- (5) THE HEARING OFFICER SHALL BE RESPONSIBLE FOR ASSURING THAT NEW, PREVIOUSLY UNAVAILABLE EVIDENCE IS DESCRIBED IN SUFFICIENT DETAIL FOR THE INDIVIDUAL PARTICIPATING BY TELEPHONE TO OFFER REBUTTAL.

Effective Date: June 1, 1993

Certification: Arnold R. Tompkins

May 18, 1993
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 6-2-80, 9-19-80, 5-1-82, 5-1-85(Emer.), 7-30-85, 4-1-87, 8-20-87, 4-1-89, 4-3-89(Emer.), 6-18-89, 10-21-91(Emer.), 12-26-91

5101:6-7-01 State hearing decisions.

(A) Hearing authority

- (1) The district office of proper jurisdiction is responsible for preparing and issuing state hearing decisions under the authority of the director of the Ohio department of human services. For this purpose, the district director shall designate a hearing authority to review the findings, conclusions, and recommendations of the district hearing officers and to issue decisions under the authority of the director, ODHS.
- (2) In the event of a temporary absence of the hearing authority, the district director shall designate another individual within the district office to assume the duties of hearing authority, so that timely issuance of decisions is not jeopardized.
- (3) No person designated as hearing authority shall have previously participated in the agency decision being appealed, nor shall the hearing authority and the hearing officer who conducted the hearing be the same person.

(B) Timely issuance

- (1) Hearing decisions involving public assistance, social services, and child support services shall be issued within seventy calendar days from the date of the hearing request. No extension of the seventy-day requirement is permitted because the individual requests a delay in the scheduling of the hearing.
- (2) Hearing decisions involving emergency assistance shall be issued within thirty calendar days from the date of the hearing request.
- (3) Hearing decisions involving food stamps shall be issued within sixty calendar days from the date of the hearing request, with the following exceptions:
 - (a) When the hearing has been postponed, as described in rule 5101:6-5-02 of the Administrative Code, the sixty day time limit shall be extended by as many days as the hearing was postponed.
 - (b) Hearing decisions involving a denial of expedited food stamps shall be issued within thirty calendar days from the date of the hearing request.
 - (c) When the hearing has been requested in response to the simultaneous proposal of PA and food stamp adverse actions, the hearing decision shall be issued according to PA timeliness standards.
- (4) The district office is responsible for the timely issuance of hearing decisions.

(C) Basis

- (1) The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties as described in rule 5101:6-6-02 of the Administrative Code.

- (a) The hearing officer may be guided, but shall not be bound, by the "Ohio rules of evidence" in conducting hearings and in making findings of fact. The hearing officer shall consider all relevant evidence offered at the hearing.
- (b) Hearsay evidence may be considered by the hearing officer in arriving at the findings of fact. However, such evidence must be critically evaluated, since it is not given under oath and cannot be cross-examined to test the perception, memory, and veracity of the declarant.

Direct evidence shall normally be given more weight than hearsay evidence when the two are in conflict. Whenever possible, the hearing officer shall avoid basing a finding of fact solely on hearsay evidence.

- (c) It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODHS rules.
- (d) The hearing officer's findings of fact shall be binding upon the hearing authority. However, the hearing authority may remand the case to the hearing officer if the hearing authority determines that additional facts not already established by the hearing officer are essential to a correct decision or if the evidence relied upon was taken in violation of rule 5101:6-6-02 of the Administrative Code.

The scope of the remand shall be limited to those additional facts that the hearing authority deems necessary. The remand shall not be the occasion for a new determination of any of the facts already established.

- (2) The hearing officer's conclusions of policy and recommendations shall be based solely on published ODHS regulations, or local agency policy adopted pursuant to options authorized in state law, except when these regulations and policies are silent and reference to the Revised Code or other statutory source is necessary to resolve the issue.

(a) WHEN A HEARING IS REGARDING THE PREVENTION, RETENTION AND CONTINGENCY PROGRAM, THE HEARING OFFICER'S CONCLUSIONS OF POLICY AND RECOMMENDATIONS SHALL BE BASED ON THE FOLLOWING:

(i) ON THE ODHS MODEL DESIGN, DEVELOPED UNDER SECTION 5101.07 OF THE REVISED CODE, IF THE CDHS INVOLVED ADOPTED IT; OR

(ii) ON THE CDHS'S WRITTEN STATEMENT OF POLICIES ADOPTED UNDER SECTION 5108.08 OF THE REVISED CODE AND ANY AMENDMENTS THE CDHS HAS ADOPTED TO THE STATEMENT.

(b) THE HEARING OFFICER'S CONCLUSIONS OF POLICY AND RECOMMENDATIONS SHALL BE BASED ON THE CDHS STANDARDS OF GOOD CAUSE WHEN A DECISION IS REGARDING AN OHIO WORKS FIRST SANCTION FOR FAILURE OR REFUSAL TO COMPLY IN FULL WITH THE PROVISIONS OF THE SELF-SUFFICIENCY CONTRACT WITHOUT GOOD CAUSE. THE HEARING OFFICER WILL ONLY USE THE COUNTY'S STANDARDS OF GOOD CAUSE IF THEY ARE PROVIDED BY THE CDHS.

(c) The hearing authority shall review conclusions and recommendations by the hearing officer, and adopt them when they constitute a correct application of the appropriate regulations.

(d) The hearing authority shall amend conclusions and recommendations that do not correctly apply the appropriate regulations, clearly explaining the reason and basis for any such amendment.

- (3) The hearing decision shall address the issues raised in the request or otherwise included upon agreement of all parties, subject to the conditions of rule 5101:6-3-01 of the Administrative Code.

If it is discovered at the hearing that the request or issue meets one of the denial criteria in rule 5101:6-5-03 of the Administrative Code, the decision shall overrule the appeal on that basis.

- (4) When a hearing request involves multiple issues, and when the appellant withdraws, in writing, his or her request with regard to some but not all of the issues under appeal, notice of dismissal of the withdrawn appeals, as required by rule 5101:6-5-03 of the Administrative Code, may be included in the hearing decision in lieu of a "Denial/Dismissal notice," ODHS 4000.

(D) Content

The hearing decision shall separately set forth the issue or issues to be decided, the hearing officer's findings of fact, conclusions of policy and recommendations, and the decision and order.

- (1) The issue section shall fully describe the action or lack of action being appealed. It shall include the date and specific nature of the action, including benefit amounts where appropriate, as well as the specific eligibility factor on which the action was based. When multiple issues are involved, they shall be set forth separately and numbered for reference in the remainder of the decision.
- (2) The findings of fact shall first address such preliminary matters as delays due to postponement, resolution of disputes as to standing, and amendments or additions to the issue or issues as stated on the agency's written notice or in the hearing request.

Preliminary matters shall be followed by a clear and orderly chronological discussion of the facts and events relevant to the issue. Facts upon which all parties agree shall normally be set forth first, followed by discussion and resolution of factual disputes. The decision shall clearly indicate the basis for each such finding, to include discussion of the relative weight given to conflicting evidence in arriving at the decision as to where the preponderance of evidence lies.

- (3) The conclusions of policy shall cite and summarize relevant portions of departmental rules or program manuals, and other applicable regulations as necessary, and shall clearly demonstrate how they apply to the facts established.

Food stamp decisions shall also cite applicable federal regulations.

Budget computations, where relevant, shall be clearly set forth.

- (4) The hearing officer's recommendations shall separately indicate the outcome of the appeal on each issue addressed, sustaining those in which the agency is found to have acted incorrectly, overruling those in which the agency's action was correct, and, if the provisions of paragraph (C)(4) of this rule apply, dismissing those that have been withdrawn in writing. Clear instructions to the parties shall be given when additional action is necessary to resolve the matter at issue.

Compliance shall be required, via "State Hearing Compliance," ODHS 4068, as necessary to assure that the individual promptly receives all benefits ordered by a favorable decision.

- (5) The decision and order, signed by the hearing authority, shall indicate adoption or amendment of the hearing officer's recommendations, whether each issue is sustained or overruled, and whether compliance is required.

(E) Notification

- (1) The individual and authorized representative shall be provided with the written state hearing decision via "State Hearing Decision," ODHS 4005. The decision shall provide notice of the right to and the method of obtaining an administrative appeal. Copies of the decision shall be sent to the local agency and to the bureau of state hearings, ODHS.
- (2) When the hearing involves one of the medical determination issues listed in paragraph (C)(2) of rule 5101:6-6-01 of the Administrative Code, a copy of the decision shall also be sent to the medical determination unit.
- (3) When the hearing involves action or lack of action by a managed care plan, copies of the decision shall also be sent to the managed care plan and to the office of medicaid, ODHS.

(F) Hearing record

The state hearing decision, together with documents introduced at the hearing and all papers and requests filed in the proceeding, shall constitute the exclusive record. The hearing record shall be compiled and certified by the hearing authority and forwarded to the local agency, where it shall be maintained in accordance with applicable record retention requirements and made available for review by the individual and authorized representative.

(G) Library of decisions

The chief of the bureau of state hearings, ODHS, shall maintain a library of all state hearing decisions. The decisions shall be available for public inspection and copying, subject to applicable disclosure safeguards.

(H) Binding effect

State hearing decisions shall be binding on the agency or managed care plan for the individual case for which the decision was rendered.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 7-1-76, 7-1-79, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 5-1-82, 5-2-82, 10-1-82, 7-1-83, 11-1-83(Temp.), 1-1-84, 10-1-84(Emer.), 10-3-84(Emer.), 11-15-84(Emer.), 12-22-84, 2-1-85(Emer.), 2-4-85, 5-2-85, 7-30-85, 4-1-87, 10-14-88(Emer.), 12-22-88, 4-1-89, 11-1-89(Emer.), 1-29-90, 10-1-91, 6-1-93, 6-1-97, 10-1-97(Emer.)

5101:6-7-02 ~~Hearings decisions - special situations~~ HEARINGS INVOLVING COUPLES SEPARATED BY INSTITUTIONALIZATION.

(A) “INCOME” AS USED IN THIS RULE WILL BE DEFINED ACCORDING TO 42 U.S.C. 1396r-5 (b)(2) WHICH IS INCLUDED IN THIS RULE AS “APPENDIX A”.

~~(A)~~ (B) ~~Hearings involving couples separated by institutionalization.~~ HEARINGS INVOLVING THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE (MMMNA).

- (1) If either the institutionalized spouse (IS) or the community spouse (CS) can document that the CS needs income above the level otherwise provided by the minimum monthly maintenance needs allowance (MMMNA) due to exceptional circumstances that cause extreme financial duress, a hearing decision may substitute a higher MMMNA to provide additional income as necessary. The hearing decision may do so by utilizing the income of the IS, less the personal needs allowance and without regard to the family allowance.
- (2) “Extreme financial duress” is defined as circumstances other than those taken into account in establishing maintenance standards for the community spouse. An example is incurment by the community spouse of expenses for medical, remedial, and other support services which contribute to the ability of the community spouse to maintain themselves in the community and in amounts that they could not be expected to pay from amounts already recognized for maintenance and/or amounts held in resources. The following are examples of exceptional circumstances which could indicate a need to increase the MMMNA. These examples are not all inclusive and are only meant to serve as circumstances in which extreme financial duress may exist.
 - (a) Significant medical expenses of the community spouse and/or applicable family member that require a financial obligation from the CS. Significant medical expenses are those that exceed normal and/or routine medical care costs such as office visits, prescriptions, and eyeglasses.
 - (b) Catastrophic events or other unexpected events which necessitate home repairs or maintenance that are the financial obligation of the CS.

This list is not all-inclusive. The hearing decision must indicate the specific circumstances on a case-by-case basis when an increase in the MMMNA is ordered.

- (3) The increase in the MMMNA can be time-limited. For example, a five hundred dollar medical expense could cause a one hundred dollar increase in the MMMNA for five months.

(C) HEARINGS INVOLVING THE COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA).

- ~~(4)~~ (1) If either the IS or the CS disagrees with the attribution of resources or believes that the income generated by the resources attributed to the CS in addition to the CS's income is not enough to meet the MMMNA, a state hearing can be requested.
- ~~(a)~~ (2) If the hearing establishes that the CS's income, and the income generated by the CS's resource allowance, is inadequate to raise the CS's income to the MMMNA, there shall be substituted a resource amount adequate, when combined with the CS's income, to provide the MMMNA. The hearing decision must specify the amount of the additional transfer authorized and must increase the CS's resource allowance by the same amount.

- (b) (3) The resources required by the CS that are necessary to increase the CS's income in order to provide the MMMNA shall be based on the MMMNA in effect at the time of the filing of the request for a state hearing.
- (c) (4) The MMMNA periodically increases, creating a need for additional income to be diverted from the IS to the CS. An additional allocation of resources shall not be made to the CS when the MMMNA increases. If the MMMNA increases, the IS can allocate a portion of the IS's income to the CS to raise the CS's income to the MMMNA.
- (d) (5) To establish that the resource allowance is inadequate and to receive a substituted allowance, the applicant must provide verification of all of the income of the CS not including the amount generated by the resource allowance. The CS's income must be established to determine the shortfall between existing income and the MMMNA. The eligibility determiner shall total all of the gross income of the CS not generated by the resources of both spouses and subtract the CS's gross income from the MMMNA. The eligibility determiner shall also note any benefits for which the CS may be eligible, but is not receiving (e.g., social security, VA pension, etc.). The amount of benefits that the CS could be receiving shall be estimated and submitted to the hearing officer with the appeal summary. The income that the CS is eligible for, but not receiving, must be considered as available income when determining a reallocation of resources and an MIA.
- (e) (6) The amount of resources adequate to increase the CS's gross income to provide the CS's MMMNA shall be based on the cost of a single premium lifetime immediate monthly payment annuity (SPLIMPA) with monthly payments equal to the difference between the MMMNA and other countable income (including income available to the CS but not being received) not generated by either spouse's countable resources.
- (f) (7) An annuity that is a delayed payment annuity, a time-period certain, an annuity with a death benefit, or an annuity that guarantees return of the principle is not a SPLIMPA and cannot be used to determine the amount of additional resources needed to generate the difference between the CS's gross income and the MMMNA.
- (g) (8) In order for the CS to receive the substituted allowance, the CS or IS shall be required to obtain three written estimates of the cost of a SPLIMPA. These amounts shall be averaged to determine the cost of a SPLIMPA.
- (h) (9) If the IS or CS is unable to obtain the three estimates of the cost of the annuity, the eligibility determiner shall offer assistance in accordance with rule 5101:1-2-212 of the Administrative Code.
- (i) (10) The averaged estimate representing the cost of a SPLIMPA shall be substituted for the amount of resources attributed to the CS when the amount of resources previously determined is less than the averaged cost of a SPLIMPA. If the amount of resources previously attributed for the CS is greater than the averaged cost of a SPLIMPA, there shall be no substitution for the cost of a SPLIMPA. The attribution shall remain as previously determined.
- (j) (11) Neither the CS nor the IS shall be required to purchase a SPLIMPA as a condition of medicaid eligibility. However, if there has been a reallocation of resources for a SPLIMPA, the income that could be received from the SPLIMPA will be used whenever a determination or redetermination of the MIA is computed.
- (k) (12) If the state hearing decision determines that a resource reallocation is not required (i.e., the original allocation is adequate), the CS can still receive a monthly income allowance (MIA) from the IS. The income that is generated from the original resource allocation must be considered as available income when determining the MIA.

- (+) (13) If the state hearing decision determines that an additional transfer should be made, but there are not sufficient resources to transfer to generate the full amount of income necessary to meet the MMMNA, an MIA can also be determined. The determination of the MIA that can be given to the CS by the IS will include as available income, the amount of income that could be generated monthly by the reallocated resources. This amount is determined by obtaining three estimates of the monthly amount that could be generated by a SPLIMPA based on the reallocated resources. The average of the three estimates is the amount of monthly income that is determined to be available to the CS. An MIA can be given to the CS by the IS to provide the amount of the MMMNA that is not generated by the CS's income and the amount that could be received by the reallocated resources SPLIMPA.
- (m) (14) If after a reallocation of resources has been determined, the IS still exceeds the resource limit, the medicaid application remains denied. If the IS reappplies for medicaid at a later date, the reallocated resources remain as the amount of the CS's share. The SPLIMPA amount that was originally determined would still be considered countable income when determining the CS's eligibility for an MIA. However, if the remaining resources at the time of the new application are less than the reallocated amount, the CS or IS can obtain three SPLIMPA estimates of the amount of monthly income that could be generated by the CS's resource allowance. This amount will be considered available income when determining whether the CS is entitled to an MIA from the IS.
- (n) (15) The CS will continue to have the option to receive an MIA from the IS in lieu of a fair hearing to determine if there should be a reallocation of resources.

~~(B) Hearings involving emergency assistance~~

- ~~— When a hearing decision orders authorization of emergency assistance, it must specify that the date of authorizations for the emergency assistance payment shall be the date the agency originally denied the request.~~
- ~~— Even though the check or voucher for the item or service may reflect the actual date of the issuance, the case record and any other record of the individual's receipt of emergency assistance must contain documentation showing the original date of denial as the effective date of receipt of emergency assistance.~~
- ~~— Thus, the individual will not be penalized for the additional time period between the date of denial and the hearing decision that would cause an extension of the usual twelve months of ineligibility.~~

“Enacted”

APPENDIX A

UNITED STATES CODE ANNOTATED
 TITLE 42. THE PUBLIC HEALTH AND WELFARE
 CHAPTER 7--SOCIAL SECURITY
 SUBCHAPTER XIX--GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS
 1396r-5

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

(2) Attribution of income

In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides--

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property

In the case of a trust--

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust--

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Review Date: December 30, 2002

Prior Effective Dates: 7-1-82, 12-1-85 (Emer.), 2-23-86, 4-1-87, 12-29-89 (Emer.), 3-22-90, 10-1-90, 6-1-93, 1-1-96, 3-1-97, 10-1-97

5101:6-7-03 Implementation of the hearing decision.

(A) Responsibility

- (1) When the hearing decision orders action to be taken by the local agency, the local agency is responsible for promptly and fully implementing the decision.
- (2) When the hearing decision orders action to be taken by an ODHS medical determination unit or other entity, that unit or entity is responsible for promptly and fully implementing the decision.
- (3) The district office of proper jurisdiction is responsible for timely compliance with decisions involving public assistance, food stamps, and social services, pursuant to section 5101.35 of the Revised Code.
- (4) The office of child support enforcement is responsible for timely compliance with decisions involving child support services, pursuant to section 2301.35 of the Revised Code.
- (5) WHEN THE HEARING DECISION ORDERS ACTION TO BE TAKEN BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN IS RESPONSIBLE FOR PROMPTLY AND FULLY IMPLEMENTING THE DECISION.

THE OFFICE OF MEDICAID, ODHS, IS RESPONSIBLE FOR TIMELY COMPLIANCE WITH DECISIONS INVOLVING COMPLIANCE BY A MANAGED CARE PLAN.

(B) Promptness

- (1) Decisions which order action favorable to the individual
 - (a) For decisions involving public assistance, social services or child support services, compliance shall be achieved within fifteen calendar days from the date the decision is issued, but in no event later than ninety calendar days from the date of the hearing request.
 - (b) For decisions involving food stamps, any increase in benefits must be reflected in the coupon allotment within ten calendar days of receipt of the decision, even if the local agency must provide a supplementary ~~ATP card or otherwise provide the assistance group with an opportunity to obtain the allotment outside the normal issuance cycle.~~

The local agency may take longer than ten days if it elects to make the decision effective in the assistance group's normal issuance cycle, provided that issuance will occur within sixty calendar days of the date of the hearing request. If the local agency elects to follow this procedure, the benefit increase may be reflected in the normal issuance cycle or with a supplementary ~~ATP card.~~

- (c) When the hearing has been requested in response to the simultaneous proposal of PA and food stamp adverse actions, compliance shall be achieved according to PA timeliness standards.
- (d) Compliance shall be promptly reported to the BUREAU OF state ~~hearing~~ HEARINGS section, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

WHEN THE HEARING DECISION ORDERS ACTION TO BE TAKEN BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN SHALL ALSO SEND A COPY OF THE ODHS 4068 TO THE OFFICE OF MEDICAID, ODHS.

(2) Decisions which authorize action adverse to the individual

(a) The agency shall implement the decision promptly, if still appropriate.

(b) When the adverse action results in a decrease in the assistance group's food stamp benefits, the decrease shall be reflected in the next issuance cycle following receipt of the hearing decision.

(C) Date compliance is achieved

(1) For decisions involving public assistance, social services or child support services, compliance shall be considered achieved on the date eligibility, payment, or services are authorized or other action ordered by the hearing decision is taken.

(2) For decisions involving food stamps, compliance shall be considered achieved on the date the action is reflected in the assistance group's coupon allotment.

(D) Underpayments/underissuances

(1) When the decision determines that the individual has been improperly denied benefits or has received fewer benefits than were due, any underpayments must be corrected in accordance with rules 5101:1-25-20 and/or 5101:4-8-03 of the Administrative Code.

(2) The local agency shall restore food stamp benefits to assistance groups which are leaving the county before the departure whenever possible. If benefits are not restored prior to departure, the local agency shall forward an authorization of the benefits to the assistance group or to the new county if this information is known.

The new county shall accept an authorization and issue the appropriate benefits whether the notice is presented by the assistance group or received directly from another county.

(E) Overpayments/overissuances

(1) Overpayments related to the appeal are subject to collection in accordance with rule 5101:1-25-30 of the Administrative Code.

(2) When the appeal involves food stamps, a claim against the assistance group for any overissuance related to the appeal must be prepared in accordance with rule 5101:4-8-15 of the Administrative Code.

(F) Prior authorization issues

(1) When a hearing decision reverses a denial of prior authorization for medical service and authorizes the service, the district hearings section shall send a copy of the decision to the appropriate prior authorization unit. That unit shall approve the prior authorization, using the normal prior authorization procedure. The approval notification sent to the provider shall be accompanied by a copy of the hearing decision.

(2) When a hearing decision reverses a denial of prior authorization for additional therapeutic leave days for a medicaid recipient with an MR/DD level of care in a long-term care facility, the district hearings section shall send a copy of the decision to the long-term care facility. The hearing decision constitutes authorization for the additional leave days.

(3) when a hearing decision reverses a denial of prior authorization for medical service by a participating health plan within the Dayton area health plan, the district hearings section shall send a copy of the decision and ODHS 4068 to the health plan. The health plan shall approve the prior authorization using the normal prior authorizations procedure, complete the ODHS 4068, and send it to the state hearings section.

(G) Precertification issues

When a hearing decision changes a review agency's decision on a request for precertification of a hospital admission or medical procedure, the district hearings section shall send a copy of the decision and an ODHS 4068 to the review agency.

The review agency shall certify those hospital days or medical procedures authorized by the decision using the normal precertification procedure, complete the ODHS 4068, and send it to the bureau of state hearings.

(H) PACT issues

When a hearing decision changes a decision by the recipient monitoring and review section concerning proposed or continued enrollment in the PACT program or denial of a request for a change of designated provider, the district hearings section shall send a copy of the decision and an ODHS 4068 to the recipient monitoring and review section. The recipient monitoring and review section shall take the actions ordered by the decision, complete the ODHS 4068, and send it to the bureau of state hearings.

(I) PASRR ISSUES

WHEN A HEARING DECISION CHANGES A PREADMISSION SCREENING (PAS) OR RESIDENT REVIEW (RR) DETERMINATION MADE BY THE OHIO DEPARTMENT OF MENTAL HEALTH OR THE OHIO DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, THE HEARING DECISION SHALL CONSTITUTE THE REVISED PAS OR RR DETERMINATION.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 7-1-76, 7-1-79, 6-1-80, 6-2-80, 10-1-81, 5-1-82, 5-2-82, 10-1-82, 7-1-83, 8-1-83, 11-1-83(Temp.), 1-1-84, 3-1-84(Temp.), 6-1-84, 10-1-84(Emer.), 10-3-84(Emer.), 12-22-84, 2-1-85(Emer.), 5-2-85, 4-1-87, 4-1-89, 10-1-89, 11-1-89(Emer.), 1-29-90, 4-1-91, 10-1-91, 6-1-93

5101:6-8-01 Administrative appeal of the state hearing decision.

- (A) An individual who disagrees with a state hearing decision, or with a decision by the district hearing authority to deny or dismiss a hearing request, has the right to request an administrative appeal.

The administrative appeal process does not apply to administrative disqualification hearing decisions.

An administrative appeal may only be requested by or on behalf of an individual applying for or receiving benefits. An administrative appeal may not be requested by the local agency, the state agency, or another entity, such as a managed care plan, acting for or in place of the local or state agency.

The administrative appeal process is the responsibility of the office of legal services, ODHS.

- (B) Notice of the right to and the method of obtaining an administrative appeal shall be included on the "Denial/Dismissal Notice," ODHS 4000, on the "State Hearing Decision," ODHS 4005, and on the notice of failure to establish good cause for abandonment required by rule 5101:6-5-03 of the Administrative Code.

(C) Administrative appeal requests

- (1) A state hearing decision, or a decision by the district hearing authority to deny or dismiss a hearing request, may be administratively appealed only for one or more of the following reasons:

(a) The decision is contrary to the weight of the evidence presented.

(b) A prejudicial error was committed in the course of the proceedings.

(c) The decision relies on an incorrect application of law or rule.

(d) WHEN A DECISION IS REGARDING THE PREVENTION, RETENTION AND CONTINGENCY PROGRAM, THE DECISION RELIES ON AN INCORRECT APPLICATION OF THE FOLLOWING:

(i) ON THE ODHS MODEL DESIGN, DEVELOPED UNDER SECTION 5101.07 OF THE REVISED CODE, IT THE CDHS INVOLVED ADOPTED IT; OR

(ii) ON THE CDHS'S WRITTEN STATEMENT OF POLICIES ADOPTED UNDER SECTION 5108.08 OF THE REVISED CODE AND ANY AMENDMENTS THE CDHS HAS ADOPTED TO THE STATEMENT.

(e) THE DECISION RELIES ON AN INCORRECT APPLICATION OF THE CDHS STANDARD OF GOOD CAUSE WHEN A DECISION IS REGARDING AN OHIO WORKS FIRST SANCTION FOR FAILURE OR REFUSAL TO COMPLY IN FULL WITH THE PROVISIONS OF THE SELF-SUFFICIENCY CONTRACT, WITHOUT GOOD CAUSE. THE ADMINISTRATIVE APPEAL HEARING EXAMINER WILL ONLY USE THE COUNTY'S STANDARDS OF GOOD CAUSE IF THEY WERE PROVIDED BY THE CDHS.

- (2) A "request for an administrative appeal" is defined as a clear expression, by the individual or authorized representative, to the effect that he or she wishes to appeal a state hearing decision or a decision of the district hearing authority to deny or dismiss a state hearing request, and which explains

the reasons why the individual believes the decision was incorrect.

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- (3) The request must be in writing and signed by the individual or authorized representative.

Written authorization must accompany all requests made on the individual's behalf by an authorized representative, unless the representative was the authorized representative of record at a previous stage in the proceedings, or unless one of the conditions described in rule 5101:6-3-02 of the Administrative Code is met.

- (4) The request must be received by the office of legal services, ODHS, within fifteen calendar days from the mailing date of the decision being appealed.

(D) Continuing assistance

The filing of an administrative appeal request will not automatically stay implementation of the initial state hearing decision, denial, or dismissal. However, the office of legal services may choose to exercise the department's inherent authority to delay implementation of a decision when an administrative appeal appears to be meritorious and when the appeal cannot be processed to completion in time to prevent loss of benefits to the individual. In these situations, the office of legal services shall issue a written directive to the local agency, with a copy to the individual and to the appropriate district office. Such an interim order, either to stay implementation or to reinstate assistance, shall not constitute a decision on the merits of the appeal, but only serves to preserve the status quo until a decision on the merits can be made.

(E) Dismissal

- (1) An administrative appeal request may be dismissed because:

- (a) It does not assert one of the grounds for administrative appeal contained in paragraph (C)(1) of this rule.
- (b) It is not made by the individual or authorized representative, as required by paragraph (C)(3) of this rule.
- (c) It is not timely, as defined by paragraph (C)(4) of this rule.

- (2) The office of legal services shall provide written notice of dismissal to the individual and authorized representative. Copies shall be provided to the local agency for inclusion in the case file, to the appropriate district office, and to the bureau of state hearings.

(F) Docketing

Once an administrative appeal request has been accepted, the office of legal services shall docket the appeal, assigning it to an administrative appeal hearing examiner.

(G) Requests for hearing record and/or tape recording.

- (1) If the administrative appeal hearing examiner determines that the original decision document and the individual's appeal request do not contain sufficient information upon which to decide the appeal, the hearing record may be requested from the local agency and/or the tape recording of the hearing may be requested from the district hearings section.

Such requests may be made in writing or by telephone, and shall be responded to within two workdays. The local agency shall respond by sending a copy of the entire hearing record (since the original must be maintained in the case file, as required by rule 5101:6-7-01 of the Administrative Code.) The district hearings section shall respond by sending the original of the tape recording, which shall be returned upon completion of the appeal process.

- (2) The hearing examiner shall not convene a new hearing. If the records described above do not contain sufficient information to decide the appeal, the remand procedure described in paragraph (I) of this rule shall be used.

(H) Administrative appeal hearing examiners

Administrative appeals shall be assigned to and decided by an impartial administrative appeal hearing examiner who has no personal stake or involvement in the case and was not directly involved in the initial decision being appealed.

This person shall be an attorney assigned to the office of legal services and delegated authority by the director, ODHS.

Decisions of the hearing examiner shall be subject to approval by the chief, office of legal services or the chief administrative hearing examiner.

(I) Administrative appeal decisions

- (1) After reviewing the initial decision, the individual's appeal request, and the hearing record and/or tape recording if appropriate, the hearing examiner, subject to review and approval in accordance with paragraph (H) of this rule, shall issue an administrative appeal decision which addresses the issues of fact and law raised in the appeal request.
- (2) Administrative appeal decisions shall be issued within fifteen calendar days from the date of the administrative appeal request. The office of legal services is responsible for timely issuance of administrative appeal decisions.
- (3) The administrative appeal decision shall affirm the initial decision when the hearing examiner determines that the initial decision contains no error affecting the outcome of the appeal (except as noted in paragraph (I)(6) of this rule).
- (4) The administrative appeal decision shall reverse the initial decision when the hearing examiner determines that the initial decision contains an error which resulted in an outcome adverse to the individual. Administrative appeal decisions which reverse the initial decision shall contain instructions concerning corrective action and shall require compliance via ODHS 4068 when appropriate.
- (5) The administrative appeal decision shall vacate the initial decision and remand the case to the original hearing officer when the hearing examiner determines that the record developed does not contain sufficient information to decide the appeal.
 - (a) If benefits were continuing due to a timely hearing request, an administrative appeal decision which vacates the original decision and remands the case to the district hearings section has the effect of preserving or reactivating the individual's procedural right to continuation of benefits.

The agency is responsible for responding immediately to a vacate and remand decision and ensuring that benefits are continued. If the original decision has been implemented, the agency shall immediately reinstate benefits to the previous level.

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- (b) If the factual determination for which the case is being remanded can be made by reviewing the existing hearing record, a supplemental hearing is not necessary. If the existing record is not sufficient, a supplemental hearing shall be convened. If the administrative appeal decision specifically requires the convening of a supplemental hearing, that order shall be followed.
- (c) Supplemental hearings shall be scheduled on a priority basis, and less than the normal ten-day advance notice may be given if both the agency and the individual agree. Written notice via ODHS 4002 shall be provided and shall be accompanied by a copy of the administrative appeal decision and any further instructions necessary to ensure that all parties understand the purpose and scope of the supplemental hearing.
- (d) If the individual or authorized representative fails, without good cause, to appear for a supplemental hearing, the hearing officer shall review the existing hearing record to determine if the facts for which the case was remanded are already established therein.
 - (i) If so, a supplemental decision shall be issued, clearly indicating that a supplemental hearing was scheduled but the individual did not appear, that the record was reviewed, and that the necessary additional facts were established from that review. This shall be followed by the appropriate conclusions of policy and recommendations based on those facts.
 - (ii) If some or all of the additional facts cannot be established from the record, a supplemental decision shall be issued, clearly indicating that the individual did not appear for the supplemental hearing and that the hearing record was reviewed but was silent as to one or more of the factual issues for which the case was remanded. This shall be followed by the appropriate conclusions of policy and recommendations based on the facts that are available.
 - (iii) If the individual does not appear for the supplemental hearing, no discussion of the merits of the appeal shall occur between the hearing officer and the agency.
- (6) In no event shall the administrative appeal process result in a determination more adverse to the individual than was contained in the initial decision being appealed.
- (7) The individual and authorized representative shall be provided with the written administrative appeal decision, which shall include notice of the right to judicial review, or other appeal rights, as appropriate. Copies of the decision shall be sent to the local agency, to the appropriate district office, and to the bureau of state hearings.

When the administrative appeal involves one of the medical determinations listed in paragraph (C)(2) of rule 5101:6-6-01 of the Administrative Code, a copy of the decision shall also be sent to the medical determination unit.

When the administrative appeal involves action or lack of action by a managed care plan, copies of the decision shall also be sent to the managed care plan and to the office of medicaid, ODHS.

(J) Administrative appeal hearing record

The administrative appeal decision, together with all requests, documents, and correspondence filed in the proceeding, shall constitute the exclusive administrative appeal hearing record. The record shall be compiled and certified by the office of legal services and forwarded to the local agency, where it shall be maintained in accordance with applicable record retention requirements and made available for review by the individual and authorized representative.

(K) Library of administrative appeal decisions

The office of legal services shall maintain a library of all administrative appeal decisions. The decisions shall be available for public inspection and copying, subject to applicable disclosure safeguards.

(L) Finality

- (1) An administrative appeal decision which affirms or reverses the initial decision being appealed shall constitute the final and binding administrative decision on the issue(s) involved.
- (2) An administrative appeal decision which vacates the original decision and remands the case to the district hearings section does not constitute a final administrative resolution, since the supplemental decision issued on remand shall be subject to further administrative appeal.

(M) Compliance

Compliance with administrative appeal decisions shall be in accordance with rule 5101:6-7-03 of the Administrative Code.

Effective Date: December 30, 1997

Certification: Arnold R. Tompkins

December 19, 1997
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Sections 2301.35, 5101.35
Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 7-1-76, 7-1-79, 6-1-80, 6-2-80, 9-19-80, 10-1-81, 5-1-82, 5-2-82, 10-1-82, 7-1-83, 11-1-83(Temp.), 1-1-84, 10-1-84(Emer.), 10-3-84(Emer.), 12-22-84, 2-1-85(Emer.), 5-2-85, 10-1-85, 4-1-87, 7-1-88(Emer.), 9-1-88, 10-14-88(Emer.), 12-22-88, 7-1-91, 10-1-91, 6-1-93, 6-1-97, 10-1-97(Emer.)

5101:6-9-01 Further appeal rights.

(A) Judicial review

- (1) Individuals who disagree with an administrative appeal decision have the right to appeal that decision to the court of common pleas, with the following exceptions:
 - (a) Judicial review does not apply to administrative appeals subject to the appeal process described in paragraph (B) of this rule.
 - (b) Judicial review does not apply to appeals involving the child support program, except for appeals which involve the child support disregard payment.
- (2) Residents of the state of Ohio shall appeal to the court of common pleas in the county in which they reside. Individuals who do not reside in the state of Ohio shall appeal to the court of common pleas in Franklin county, Ohio.
- (3) Judicial review is available only to the individual, and not to the local agency.
- (4) Notice of appeal
 - (a) The individual shall mail a notice of appeal to the "~~Ohio department of human services, office of legal services, 30 east broad street, 31st floor, Columbus, Ohio~~ DEPARTMENT OF HUMAN SERVICES, OFFICE OF LEGAL SERVICES, 30 EAST BROAD STREET, COLUMBUS, OHIO 43266-0423." The individual shall also file notice of appeal with the appropriate court of common pleas.
 - (b) In accordance with section 5101.35 of the Revised Code, the mailing and filing of notice of appeal shall be no later than thirty calendar days after the date the office of legal service mails the administrative appeal decision. However, the court may extend the time for mailing and filing notice when good cause is shown. The extension shall not exceed six months from the date the office of legal services mails the administrative appeal decision.
 - (c) The notice of appeal shall state the names of the individual and the Ohio department of human services, the docket number and the date of the administrative appeal decision from which appeal is being made, and the grounds upon which it is being appealed.
- (5) Hearing record
 - (a) Upon receipt of the notice of appeal, the office of legal services shall request the original of the complete state hearing record, as defined in rule 5101:6-7-01 of the Administrative Code, and the original of the complete administrative appeal hearing record, as defined in rule 5101:6-8-01 of the Administrative Code, from the local agency.
 - (b) The local agency shall respond to such requests within two workdays, making a copy of each record for retention in the case file before forwarding the original to the office of legal services.
 - (c) Upon receipt of the state hearing record and the administrative appeal hearing record from the local agency, the office of legal services shall certify the records to the court.

(6) Tape recording/transcript of the hearing

Upon receipt of the notice of appeal, the office of legal services shall request the original of the tape recording of the hearing from the district hearings section.

- (a) The district hearings section shall respond to such requests within two workdays.
- (b) Unless one was already provided under the provisions of rule 5101:6-6-03 of the Administrative Code, the individual or authorized representative may request a copy of the tape recording of the hearing from the office of legal services.

Such requests must be in writing and received by the office of legal services within thirty calendar days following the filing of the notice of appeal.

One copy of the tape shall be provided, within two workdays whenever possible, free of any charge.

- (c) If the court orders ODHS to file a transcript of the state hearing, in accordance with section 5101.35 of the Revised Code, ODHS shall do so, within thirty days of the date of the order.

(7) Implementation of the court order

- (a) Upon receipt of the order of the court, the office of legal services shall immediately forward a copy to the appropriate local agency or ODHS unit.
- (b) The local agency or ODHS unit shall be responsible for promptly and fully implementing the order.
- (c) If implementation of the order is the responsibility of the local agency, the office of legal services shall send a copy of the order to the appropriate district office, which shall be responsible for assuring prompt and full implementation of the order.
- (d) WHEN THE APPEAL INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE OFFICE OF LEGAL SERVICES SHALL IMMEDIATELY FORWARD A COPY TO THE MANAGED CARE PLAN AND A COPY TO THE OFFICE OF MEDICAID, ODHS.

THE MANAGED CARE PLAN SHALL BE RESPONSIBLE FOR PROMPTLY AND FULLY IMPLEMENTING THE ORDER.

THE OFFICE OF MEDICAID, ODHS, SHALL BE RESPONSIBLE FOR ASSURING PROMPT AND FULL IMPLEMENTATION OF THE ORDER.

(B) Appeal of certain JOBS issues to the U.S department of labor

- (1) Administrative appeal decisions involving complaints by regular employees about violation of the JOBS displacement prohibitions, and complaints by JOBS participants about on-the-job working conditions, workers' compensation coverage or CWEP wage rates, may be appealed to the U.S. department of labor. Judicial review, as described in paragraph (A) of this rule, does not apply to this category of administrative appeal decisions.

(2) Appeal must be made within twenty days of receipt of the administrative appeal decision.

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(3) The appeal must be sent to:

"Office of Administrative Law Judges
U.S. Department of Labor
Vanguard Building, Room 600
1111 20th Street NW
Washington, DC 20036"

(4) The appeal must contain:

- (a) The full name, address, and telephone number of the individual.
- (b) The provisions of the Social Security Act or regulations believed to have been violated.
- (c) A copy of the original state hearing request.
- (d) A copy of the administrative appeal decision being appealed.

(5) In addition, the individual must send a copy of the appeal, as well as any brief in support of the appeal, to each of the following:

- (a) "Assistant Secretary for Employment and Training
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210"
- (b) "Assistant Secretary for Family Support
Department of Health and Human Services
370 L'Enfant Promenade, SW, 6th Floor
Washington, DC 20447"

(6) Upon receipt of an appeal, the office of administrative law judges will request the entire hearing record from ODHS.

- (a) Upon receipt of such a request, the office of legal services shall request the original of the complete state hearing record, as defined in rule 5101:6-7-01 of the Administrative Code, and the original of the complete administrative appeal hearing record, as defined in rule 5101:6-8-01 of the Administrative Code, from the local agency.
- (b) The local agency shall respond to such requests within two workdays, making a copy of each record for retention in the case file before forwarding the original to the office of legal services.
- (c) Upon receipt of the state hearing record and the administrative appeal hearing record from the local agency, the office of legal services shall certify the records to the office of administrative law judges.
- (d) ODHS may also submit a brief or report to the office of administrative law judges.

(7) Upon notification of the decision of the office of administrative law judges, the office of legal services shall immediately forward copies to the appropriate local agency and district office. The district office

shall be responsible for assuring prompt and full implementation of the decision.

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Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Sections 2301.35, 5101.35

Rule Amplifies: Revised Code Sections 2301.35, 5101.35

Review Date: 12-30-02

Prior Effective Dates: 10-14-88(Emer.), 12-22-88, 7-1-91, 10-1-91, 6-1-93

5101:6-20-01 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION.

- (A) CHAPTER 5101:6-20 OF THE ADMINISTRATIVE CODE GOVERNS DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION IN THE ADC AND FOOD STAMP PROGRAMS.
- (B) AN INDIVIDUAL MAY BE DISQUALIFIED FROM THE ADC AND/OR FOOD STAMP PROGRAMS FOR INTENTIONAL PROGRAM VIOLATION BASED ON ONE OF THE FOLLOWING.
 - (1) A FINDING BY A COURT THAT THE INDIVIDUAL HAS COMMITTED AN INTENTIONAL PROGRAM VIOLATION.
 - (2) A DISQUALIFICATION CONSENT AGREEMENT, SIGNED BY THE INDIVIDUAL, IN ACCORDANCE WITH RULE 5101:6-20-40 OF THE ADMINISTRATIVE CODE.
 - (3) AN ADMINISTRATIVE DISQUALIFICATION HEARING DECISION WHICH FINDS THAT THE INDIVIDUAL HAS COMMITTED AN INTENTIONAL PROGRAM VIOLATION.
 - (4) A WAIVER OF THE RIGHT TO AN ADMINISTRATIVE DISQUALIFICATION HEARING, SIGNED BY THE INDIVIDUAL, IN ACCORDANCE WITH RULE 5101:6-20-30 OF THE ADMINISTRATIVE CODE.
- (C) THE LOCAL AGENCY IS RESPONSIBLE FOR INVESTIGATING ANY CASE OF ALLEGED INTENTIONAL PROGRAM VIOLATION, REGARDLESS OF THE SUSPECTED INDIVIDUAL'S CURRENT ELIGIBILITY STATUS, AND FOR ENSURING THAT APPROPRIATE CASES ARE ACTED UPON EITHER THROUGH ADMINISTRATIVE DISQUALIFICATION PROCEDURES OR REFERRAL FOR PROSECUTION.
- (D) LOCAL AGENCIES ARE ENCOURAGED TO REFER FOR PROSECUTION THOSE INDIVIDUALS SUSPECTED OF COMMITTING INTENTIONAL PROGRAM VIOLATION, PARTICULARLY IF THE VALUE OF BENEFITS INVOLVED IS LARGE OR IF THE INDIVIDUAL IS SUSPECTED OF COMMITTING MORE THAN ONE ACT OF INTENTIONAL PROGRAM VIOLATION.
 - (1) THE LOCAL AGENCY SHALL CONFER WITH ITS LEGAL REPRESENTATIVE TO DETERMINE THE TYPES OF CASES WHICH WILL BE ACCEPTED FOR POSSIBLE PROSECUTION.
 - (2) LOCAL AGENCIES SHALL ALSO ENCOURAGE LOCAL PROSECUTORS TO RECOMMEND TO THE COURTS THAT A DISQUALIFICATION PENALTY, AS PROVIDED FOR BY RULE 5101:6-20-03 OF THE ADMINISTRATIVE CODE, BE IMPOSED IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTIES FOR SUCH VIOLATIONS.
- (E) ADMINISTRATIVE DISQUALIFICATION PROCEDURES SHOULD BE INITIATED IN THE FOLLOWING SITUATIONS:
 - (1) THE LOCAL AGENCY BELIEVES THE FACTS OF THE CASE DO NOT WARRANT CIVIL OR CRIMINAL PROSECUTION.
 - (2) THE FACTS OF THE CASE WERE PREVIOUSLY REFERRED FOR PROSECUTION BUT WERE DECLINED BY THE APPROPRIATE LEGAL AUTHORITY.

- (3) NO ACTION WAS TAKEN ON A PREVIOUSLY REFERRED CASE WITHIN A REASONABLE TIME AND THE REFERRAL WAS FORMALLY WITHDRAWN BY THE LOCAL AGENCY.

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- (F) THE LOCAL AGENCY SHALL NOT INITIATE ADMINISTRATIVE DISQUALIFICATION PROCEDURES AGAINST AN INDIVIDUAL CURRENTLY BEING REFERRED FOR PROSECUTION OR SUBSEQUENT TO ANY ACTION TAKEN AGAINST THE INDIVIDUAL BY THE PROSECUTOR OR THE COURT, IF THE FACTUAL ISSUES OF THE CASE ARISE OUT OF THE SAME, OR RELATED, CIRCUMSTANCES.
- (1) SUCH ACTION BY THE COURT SHALL INCLUDE RECEIVING A COMPLAINT OF AN INTENTIONAL PROGRAM VIOLATION.
- (2) SUCH ACTION BY THE PROSECUTOR SHALL INCLUDE THE FILING OF A COMPLAINT IN COURT OR PRESENTATION OF THE CASE TO A GRAND JURY, REGARDLESS OF WHETHER THE GRAND JURY RETURNS AN INDICTMENT.
- (3) THE PROSECUTOR'S INDEPENDENT REVIEW AND INVESTIGATION OF A REFERRED CASE SHALL NOT, BY ITSELF, CONSTITUTE SUCH ACTION.
- (G) THE LOCAL AGENCY SHALL NOT INITIATE ADMINISTRATIVE DISQUALIFICATION PROCEDURES AGAINST AN ACCUSED INDIVIDUAL WHEN A PREVIOUS ADMINISTRATIVE DISQUALIFICATION HEARING ON THE SAME, OR RELATED, CIRCUMSTANCES WAS DECIDED IN THE ACCUSED INDIVIDUAL'S FAVOR.
- (H) IN PROCEEDING AGAINST AN INDIVIDUAL, THE LOCAL AGENCY SHALL COORDINATE ANY CORRESPONDING ACTIONS TAKEN UNDER THE ADC AND FOOD STAMP PROGRAMS WHERE THE FACTUAL ISSUES ARISE FROM THE SAME OR RELATED CIRCUMSTANCES.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 2994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83

Review Date: December 30, 2002

5101:6-20-02 Definition of intentional program violation.

(A) In the ADC program, intentional program violation shall consist of an action by an individual, for the purpose of establishing or maintaining the family's eligibility for ADC 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.

(B) In the food stamp program, intentional program violation shall consist of ~~having~~ AN ACTION BY AN INDIVIDUAL, FOR THE PURPOSE OF USING, PRESENTING, TRANSFERRING, ACQUIRING, RECEIVING, OR POSSESSING FOOD STAMP BENEFITS, WHICH IS intentionally:

- (1) ~~Made a~~ A false or misleading statement, or ~~misrepresented, concealed or withheld~~ A MISREPRESENTATION, CONCEALMENT OR WITHHOLDING OF facts;-; or
- (2) ~~Committed any~~ 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.

Effective Date: March 18, 1996

Certification: Arnold R. Tompkins

March 8, 1996
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35
Prior Effective Dates: 6-2-80, 10-1-81, 8-1-83, 9-1-94

Review Date: December 30, 2002

5101:6-20-03 Penalties for intentional program violation.

- (A) Individuals subject to disqualification under the provisions of paragraph (B) of rule 5101:6-20-01 of the Administrative Code shall be:
- (1) Disqualified FROM THE TANF PROGRAM for six months for the first violation.
 - (2) DISQUALIFIED FROM THE FOOD STAMP PROGRAM FOR TWELVE MONTHS FOR THE FIRST VIOLATION.
 - (2) (3) Disqualified FROM THE TANF PROGRAM for twelve months for the second violation.
 - (4) DISQUALIFIED FROM THE FOOD STAMP PROGRAM FOR TWENTY-FOUR MONTHS FOR THE SECOND VIOLATION.
 - (3) (5) Disqualified permanently for the third violation.
 - (6) Disqualified from the food stamp program for ~~twelve~~ TWENTY-FOUR months for the first offense and permanently for the second offense when found guilty by a federal, state or local court of using or receiving food stamps in a transaction involving the sale of a controlled substance.
 - (7) DISQUALIFIED FROM THE FOOD STAMP PROGRAM PERMANENTLY IF FOUND GUILTY BY A FEDERAL, STATE OR LOCAL COURT OF USING OR RECEIVING FOOD STAMPS WORTH FIVE HUNDRED DOLLARS OR MORE IN A TRANSACTION INVOLVING THE SALE OF A CONTROLLED SUBSTANCE.
 - (8) Disqualified from the food stamp program permanently for the first offense when found guilty by a federal, state or local court of using or receiving food stamps in a transaction involving the sale of firearms, ammunition, or explosives.
 - (9) DISQUALIFIED FROM THE FOOD STAMP PROGRAM FOR TEN YEARS IF FOUND, EITHER THROUGH THE ADMINISTRATIVE DISQUALIFICATION PROCESS OR BY A FEDERAL, STATE OR LOCAL COURT, OF HAVING MADE A FRAUDULENT STATEMENT OR REPRESENTATION WITH RESPECT TO IDENTITY OR PLACE OF RESIDENCE IN ORDER TO SIMULTANEOUSLY RECEIVE MULTIPLE FOOD STAMP BENEFITS.

The penalties in paragraphs (A)(6) TO (A)(9) of this rule shall also apply if the individual has signed a disqualification consent agreement, under the provisions of rule 5101:6-20-40 of the Administrative Code, if the court has made a finding that the individual engaged in the conduct described in paragraph (A)(6), (A)(7), (A)(8) or (A)(9) of this rule.

- (B) The same act of intentional program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.
- (C) Only the individual found to have committed intentional program violation shall be disqualified, and not the entire assistance group.
- (D) During the disqualification period, the disqualified individual's needs shall not be taken into account in determining the assistance group's eligibility or amount of assistance.
Any income and resources of the disqualified individual shall be considered available to the assistance group.

(E) ~~In the ADC program, if the individual is not eligible for the program at the time the disqualification period is to begin, the disqualification period shall be postponed until the individual again applies and is found eligible for r benefits.~~

~~In the food stamp program, the~~ THE disqualification period shall begin as specified in paragraph (A) of rule 5101:6-20-17, paragraph (H) of rule 5101:6-20-30, paragraph (I) of rule 5101:6-20-40, or paragraph (D) of rule 5101:6-20-50 of the Administrative Code, as applicable, regardless of whether the individual is eligible for the program at that time.

(F) Once a disqualification penalty has been imposed against a currently eligible individual, it shall continue uninterrupted until complete regardless of the eligibility of the disqualified individual's assistance group.

(G) Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is reversed by a court of appropriate jurisdiction.

(H) Both the disqualified individual and the remaining members of the disqualified individual's assistance group, if any, shall continue to be responsible for repayment of the overpayment/ overissuance which resulted from the individual's intentional program violation, regardless of their current eligibility for program benefits.

(I) The disqualification of an individual for intentional program violation in one county or state is valid in another county or state.

~~(J) The disqualification penalties in this rule shall be in addition to, and cannot be substituted for, and other sanctions or penalties which may be imposed by law for the same offender.~~

Effective Date: December 15, 1996

Certification: Arnold R. Tompkins

December 5, 1996
Date

Promulgated Under: Revised Code Chapter 119.
Statutory authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35

Review Date: December 30, 2002

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 4-1-84(Temp.), 6-1-84, 8-1-84(Emer.), 10-20-84, 5-1-85, 9-1-94, 6-1-96, 9-23-96(Emer.), 12-15-96, 9-23-96 (Emer.)

5101:6-20-04 NOTIFICATION AT APPLICATION

- (A) THE AGENCY SHALL INFORM THE ASSISTANCE GROUP IN WRITING OF THE DISQUALIFICATION PENALTIES FOR INTENTIONAL PROGRAM VIOLATION EACH TIME IT APPLIES FOR PROGRAM BENEFITS.
- (B) DISQUALIFICATION PENALTIES SHALL BE IN CLEAR, PROMINENT, AND BOLD-FACE LETTERING ON THE APPLICATION FORM.
- (C) ASSISTANCE GROUPS WHICH ARE RECEIVING ADC ON THE EFFECTIVE DATE OF THIS RULE SHALL BE PROVIDED WRITTEN NOTICE OF THE DISQUALIFICATION PENALTIES NO LATER THAN THE NEXT ADC REDETERMINATION.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35
Prior Effective Dates: 6-2-80, 8-1-83

Review Date: December 30, 2002

5101:6-20-10 Initiating an administrative disqualification hearing.

- (A) To initiate an administrative disqualification hearing, the local agency shall complete a "Referral for Administrative Disqualification Hearing," ODHS 4060, and submit it to the bureau of state hearings, ODHS.
- (B) The ODHS 4060 shall be accompanied by all information and documentation relied upon by the local agency in reaching its conclusion that intentional program violation has been committed.
- (C) If more than one assistance group member is suspected of committing an intentional program violation, a separate ODHS 4060 shall be completed for each.
- (D) If an individual is suspected of intentional program violation in more than one program, a separate ODHS 4060 shall be completed for each.
- ~~(E) The bureau of state hearings shall review the referral to determine whether it has been properly submitted and contains sufficient basis for proceeding against the individual.~~
 - ~~(1) If the request is accepted, it shall be forwarded to the appropriate district hearings section for scheduling.~~
 - ~~(2) If the request is rejected, it shall be returned to the local agency, along with a "Rejection of Referral for Administrative Disqualification hearing," ODHS 4070, stating the reasons for rejection.~~
- ~~(F) A request that has been rejected may be revised and resubmitted to the bureau of state hearings for reevaluation.~~

Effective Date: February 1, 1995

Certification: Arnold R. Tompkins

January 20, 1995
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 9-1-94, 9-1-94

Review Date: December 30, 2002

5101:6-20-11 CONSOLIDATION OF AN ADMINISTRATIVE DISQUALIFICATION HEARING WITH A STATE HEARING.

- (A) THE DISTRICT HEARINGS SECTION MAY COMBINE AN INDIVIDUAL'S STATE HEARING, GOVERNED BY CHAPTERS 5101:6-1 TO 5101:6-9 OF THE ADMINISTRATIVE CODE, AND AN ADMINISTRATIVE DISQUALIFICATION HEARING INTO A SINGLE HEARING IF THE FACTUAL ISSUES ARISE OUT OF THE SAME OR RELATED CIRCUMSTANCES.
- (B) IF THE HEARINGS ARE TO BE COMBINED, THE DISTRICT HEARINGS SECTION SHALL GIVE THE ACCUSED INDIVIDUAL NOTICE OF THAT FACT AT THE TIME THE HEARING IS SCHEDULED.
- (C) THE DISTRICT HEARINGS SECTION SHALL, UPON REQUEST, ALLOW THE ASSISTANCE GROUP TO WAIVE THE THIRTY-DAY ADVANCE NOTICE PERIOD REQUIRED BY RULE 5101:6-20-12 OF THE ADMINISTRATIVE CODE WHEN A STATE HEARING AND A DISQUALIFICATION HEARING ARE COMBINED.
- (D) IF THE HEARINGS ARE COMBINED TO DECIDE THE AMOUNT OF THE OVERPAYMENT/OVERISSUANCE AND WHETHER AN INTENTIONAL PROGRAM VIOLATION WAS COMMITTED, THE ASSISTANCE GROUP SHALL LOSE ITS RIGHT TO A SUBSEQUENT STATE HEARING ON THE AMOUNT OF THE OVERPAYMENT/OVERISSUANCE.
- (E) IF THE STATE HEARING AND THE ADMINISTRATIVE DISQUALIFICATION HEARING ARE COMBINED, THE TIME FRAMES FOR CONDUCTING DISQUALIFICATION HEARINGS SHALL APPLY.
- (F) WHEN AN ADMINISTRATIVE DISQUALIFICATION HEARING IS COMBINED WITH A STATE HEARING, SEPARATE DECISIONS SHALL BE ISSUED FOR THE ADMINISTRATIVE DISQUALIFICATION AND STATE HEARING ISSUES, USING THE "ADMINISTRATIVE DISQUALIFICATION HEARING DECISION," ODHS 4007, AND THE "STATE HEARING DECISION," ODHS 4005, RESPECTIVELY.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 2994
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35
Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83

Review Date: December 30, 2002

5101:6-20-12 Advance notice of the administrative disqualification hearing.

- (A) The district hearings section shall provide written notice to the accused individual at least thirty days prior to the date of the hearing, unless the thirty-day advance notice period has been waived under the provisions of rule 5101:6-20-11 of the Administrative Code.
- (B) The notice shall be provided by one of the following methods:
- (1) Certified mail - return receipt requested
- Notice provided by this method shall be mailed certified mail - return receipt requested.
- (2) Personal service
- Notice provided by this method shall be hand-delivered, to the accused individual, by a person designated to do so by the Ohio department of human services or by the local agency.
- The person so designated shall record the date and location of delivery and the person to whom notice was delivered, using the ODHS 4064, "Certification of Delivery," after which the ODHS 4064 shall be made a part of the hearing record. Failure to make delivery shall be similarly recorded.
- (3) Residence service
- Notice provided by this method shall be hand-delivered, to some person of suitable age and discretion residing at the accused individual's current place of residence, by a person designated to do so by the Ohio department of human services or by the local agency.
- The person so designated shall record the date and location of delivery and the person to whom notice was delivered, using the ODHS 4064, "Certification of Delivery," after which the ODHS 4064 shall be made a part of the hearing record. Failure to make delivery shall be similarly recorded.
- (C) In addition to delivery by one of the methods described in paragraph (B) of this rule, notice shall simultaneously be sent by ordinary mail.
- (D) The notice shall be accompanied by "Explanation of Administrative Disqualification Hearing Procedures," ODHS 4058 and by "Waiver of Administrative Disqualification Hearing," ODHS 4026.
- (E) The notice, in conjunction with the ODHS 4058, shall include the following:
- (1) The date, time and place of the hearing.
- (2) A statement of the charges against the individual.
- (3) A summary of the evidence, and how and where the evidence can be examined.
- (4) A statement of the individual's right to request a postponement of the hearing.
- (5) A warning that the decision will be based solely on the information provided by the local agency if the individual or authorized representative fails, without good cause, to appear at the hearing.

- (6) A statement that the individual or representative shall have ten days from the date of the hearing to contact the district hearings section and present good cause for failure to appear in order to receive a new hearing.
- (7) A description of the penalties that can result from a determination that the individual has committed an intentional program violation, and a statement of which penalty is applicable to the individual.
- (8) A statement that the hearing does not preclude ~~either prosecution for intentional program violation in a civil or criminal court action or~~ collection of the overpayment/overissuance.
- (9) An explanation that the individual may waive the right to an administrative disqualification hearing, under the provisions of rule 5101:6-20-30 of the Administrative Code.
- (10) A statement that the accused individual has the right to remain silent concerning the charges, and that anything said or signed by the individual concerning the charges can be used against the individual in a court of law.
- (11) A statement that the individual may obtain a copy of the department's published hearing rules from the local agency upon request.
- (12) A telephone number to call about free legal services.

(F) In all cases, the "Advance Notice of Administrative Disqualification Hearing," ODHS 4061 shall be used.

Effective Date: October 1, 1996

Certification: Arnold R. Tompkins

September 18, 1996
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35
Prior Effective Dates: 6-2-80, 8-1-83, 9-1-94, 6-1-95

Review Date: December 30, 2002

5101:6-20-13 EFFECT OF A PENDING ADMINISTRATIVE DISQUALIFICATION HEARING.

- (A) A PENDING ADMINISTRATIVE DISQUALIFICATION HEARING SHALL NOT AFFECT THE RIGHT OF EITHER THE ACCUSED INDIVIDUAL OR THE ASSISTANCE GROUP TO APPLY FOR PROGRAM BENEFITS AND TO RECEIVE THEM IF OTHERWISE ELIGIBLE.
- (B) A PENDING ADMINISTRATIVE DISQUALIFICATION HEARING SHALL NOT, HOWEVER, PREVENT THE LOCAL AGENCY FROM TAKING APPROPRIATE ACTION TO DENY, REDUCE OR TERMINATE ASSISTANCE FOR OTHER REASONS.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.
Statutory Authority: Revised Code Section 5101.35
Rule Amplifies: Revised Code Section 5101.35
Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83

Review Date: December 30, 2002

5101:6-20-14 Failure to attend the administrative disqualification hearing.

- (A) If the accused individual or authorized representative fails, without good cause, to appear at the hearing, the hearing shall still be conducted, without the individual being represented, if:
- (1) The district hearings section has proof of either receipt or refusal to accept delivery of the advance notice of the administrative disqualification hearing provided as required by paragraph (B) of rule 5101:6-20-12 of the Administrative Code, or
 - (2) Certified mail delivery of the advance notice of the administrative disqualification hearing, as described in paragraph (B)(1) of rule 5101:6-20-12 of the Administrative Code, is returned unclaimed and the ordinary mailing of the advance notice, required by paragraph (C) of rule 5101:6-20-12 of the Administrative Code, does not return undelivered.

(B) Even though the individual is not represented, the hearing officer shall consider the evidence carefully and determine, based on clear and convincing evidence, whether intentional program violation was committed.

(C) WHEN GOOD CAUSE FOR FAILURE TO APPEAR IS BASED UPON NON-RECEIPT OF THE ADVANCE NOTICE OF THE HEARING REQUIRED BY RULE 5101:6-20-12 OF THE ADMINISTRATIVE CODE, THE INDIVIDUAL OR AUTHORIZED REPRESENTATIVE SHALL HAVE THIRTY DAYS FROM THE DATE OF THE HEARING DECISION TO CONTACT THE DISTRICT HEARING SECTION AND PRESENT GOOD CAUSE FOR FAILING TO ATTEND.

IN ALL OTHER INSTANCES, ~~The~~ THE individual or authorized representative shall have ten days from the date of the scheduled hearing to contact the district hearings section and present good cause for failing to attend.

The hearing officer shall enter the good cause determination into the hearing record.

- (D) When the hearing decision finds that intentional program violation was committed but good cause for failure to appear is subsequently shown, the hearing decision shall be vacated and a new hearing scheduled.
- (1) In this instance, the district hearings section shall immediately notify the local agency and order discontinuation of the disqualification and reinstatement of assistance if otherwise appropriate. A copy of the written notification shall be sent to the bureau of state hearings, ODHS.
 - (2) The new hearing shall be scheduled in accordance with rule 5101:6-20-12 of the Administrative Code.
 - (3) The original hearing officer may conduct the new hearing.

5101:6-20-14

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Effective Date: June 1, 1996

Certification: Arnold R. Tompkins

May 17, 1996
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 9-1-94, 6-1-95

Review Date: December 30, 2002

5101:6-20-15 ADMINISTRATIVE DISQUALIFICATION HEARING PROCEDURES.

(A) THE FOLLOWING PROVISIONS APPLY TO THE ADMINISTRATIVE DISQUALIFICATION HEARING PROCESS:

- (1) THE ACCUSED INDIVIDUAL AND AUTHORIZED REPRESENTATIVE SHALL BE PROVIDED ACCESS TO DOCUMENTS AND REGULATIONS IN ACCORDANCE WITH PARAGRAPH (E) OF RULE 5101:6-5-01 OF THE ADMINISTRATIVE CODE.
- (2) THE ACCUSED INDIVIDUAL AND AUTHORIZED REPRESENTATIVE AND THE LOCAL AGENCY HAVE THE RIGHT TO REQUEST THE ISSUANCE OF SUBPOENAS IN ACCORDANCE WITH PARAGRAPH (F) OF RULE 5101:6-5-01 OF THE ADMINISTRATIVE CODE.
- (3) THE LOCAL AGENCY MAY PROVIDE TRANSPORTATION TO THE ACCUSED INDIVIDUAL IN ACCORDANCE WITH PARAGRAPH (G) OF RULE 5101:6-5-01 OF THE ADMINISTRATIVE CODE.
- (4) THE TIME AND PLACE OF THE ADMINISTRATIVE DISQUALIFICATION HEARING SHALL BE IN ACCORDANCE WITH PARAGRAPH (A) OF RULE 5101:6-6-01 OF THE ADMINISTRATIVE CODE.
- (5) THE ACCUSED INDIVIDUAL IS ENTITLED TO ONE POSTPONEMENT OF THE SCHEDULED HEARING.

(A) THE REQUEST FOR POSTPONEMENT MUST BE RECEIVED BY THE DISTRICT HEARINGS SECTION AT LEAST TEN CALENDAR DAYS PRIOR TO THE DATE OF THE SCHEDULED HEARING.

(B) THE HEARING SHALL NOT BE POSTPONED FOR MORE THAN THIRTY DAYS.

(B) THE FOLLOWING PROVISIONS APPLY TO THE CONDUCT OF THE ADMINISTRATIVE DISQUALIFICATION HEARING:

- (1) THE ACCUSED INDIVIDUAL AND THE LOCAL AGENCY HAVE THE RIGHT TO BE REPRESENTED BY LEGAL COUNSEL IN ACCORDANCE WITH PARAGRAPH (D) OF RULE 5101:6-5-01 OF THE ADMINISTRATIVE CODE.
- (2) THE ADMINISTRATIVE DISQUALIFICATION HEARING SHALL BE CONDUCTED INFORMALLY, IN ACCORDANCE WITH PARAGRAPH (B) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
- (3) ATTENDANCE AT THE ADMINISTRATIVE DISQUALIFICATION HEARING SHALL BE LIMITED IN ACCORDANCE WITH PARAGRAPH (C) OF RULE 5101:6-6-01 OF THE ADMINISTRATIVE CODE.
- (4) ADMINISTRATIVE DISQUALIFICATION HEARINGS SHALL BE TAPE RECORDED IN ACCORDANCE WITH RULE 5101:6-6-03 OF THE ADMINISTRATIVE CODE.

- (5) THE ROLE OF THE AGENCY REPRESENTATIVE AT THE ADMINISTRATIVE DISQUALIFICATION HEARING SHALL BE AS DESCRIBED IN PARAGRAPH (A) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
- (6) THE ACCUSED INDIVIDUAL AND/OR AUTHORIZED REPRESENTATIVE SHALL HAVE THE RIGHTS DESCRIBED IN PARAGRAPH (B) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
- (7) THE ROLE OF THE HEARING OFFICER AT THE ADMINISTRATIVE DISQUALIFICATION HEARING SHALL BE AS DESCRIBED IN PARAGRAPH (C) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE, EXCEPT THAT PARAGRAPHS (C)(14) AND (C)(15) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE DO NOT APPLY.
- (8) AT THE HEARING, THE HEARING OFFICER SHALL ADVISE THE ACCUSED INDIVIDUAL AND REPRESENTATIVE THAT THEY MAY REFUSE TO ANSWER QUESTIONS DURING THE HEARING.
- (9) ONCE THE ADMINISTRATIVE DISQUALIFICATION HEARING HAS BEGUN, THE ACCUSED INDIVIDUAL MAY NO LONGER WAIVE THE RIGHT TO A HEARING. IF THE LOCAL AGENCY OR DISTRICT HEARINGS SECTION HAS NOT RECEIVED A SIGNED "WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING," ODHS 4026, PRIOR TO THE TIME OF THE SCHEDULED HEARING, THE HEARING OFFICER SHALL PROCEED WITH THE HEARING AND RENDER A WRITTEN DECISION.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83

Review Date: December 30, 2002

5101:6-20-16 ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS.

(A) HEARING AUTHORITY

- (1) THE DISTRICT OFFICE OF PROPER JURISDICTION IS RESPONSIBLE FOR PREPARING AND ISSUING ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS UNDER THE AUTHORITY OF THE DIRECTOR OF THE OHIO DEPARTMENT OF HUMAN SERVICES. FOR THIS PURPOSE, THE DISTRICT DIRECTOR SHALL DESIGNATE A HEARING AUTHORITY TO REVIEW THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE DISTRICT HEARING OFFICERS AND TO ISSUE DECISIONS UNDER THE AUTHORITY OF THE DIRECTOR, ODHS.
- (2) IN THE EVENT OF A TEMPORARY ABSENCE OF THE HEARING AUTHORITY, THE DISTRICT DIRECTOR SHALL DESIGNATE ANOTHER INDIVIDUAL WITHIN THE DISTRICT OFFICE TO ASSUME THE DUTIES OF HEARING AUTHORITY, SO THAT TIMELY ISSUANCE OF DECISIONS IS NOT JEOPARDIZED.
- (3) NO PERSON DESIGNATED AS HEARING AUTHORITY SHALL HAVE PREVIOUSLY PARTICIPATED IN THE LOCAL AGENCY DECISION BEING APPEALED, NOR SHALL THE HEARING AUTHORITY AND THE HEARING OFFICER WHO CONDUCTED THE HEARING BE THE SAME PERSON.

(B) TIMELY ISSUANCE

- (1) ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS SHALL BE ISSUED WITHIN NINETY DAYS OF THE MAILING DATE OF THE "ADVANCE NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING," ODHS 4061.
- (2) IF THE HEARING WAS POSTPONED, UNDER THE PROVISIONS OF RULE 5101:6-20-15 OF THE ADMINISTRATIVE CODE, THE NINETY-DAY TIME LIMIT SHALL BE EXTENDED BY AS MANY DAYS AS THE HEARING WAS POSTPONED.
- (3) THE DISTRICT OFFICE IS RESPONSIBLE FOR TIMELY ISSUANCE OF ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS.

(C) BASIS

- (1) THE HEARING OFFICER'S FINDINGS OF FACT SHALL BE BASED EXCLUSIVELY ON THE EVIDENCE INTRODUCED AT THE HEARING, OR, IF THE ACCUSED INDIVIDUAL WAS REPRESENTED AT THE HEARING, AFTER THE HEARING AND SUBJECT TO EXAMINATION AND REBUTTAL BY BOTH PARTIES AS DESCRIBED IN PARAGRAPH (C)(11) OF RULE 5101:6-6-02 OF THE ADMINISTRATIVE CODE.
 - (a) THE HEARING OFFICER MAY BE GUIDED, BUT SHALL NOT BE BOUND, BY THE "OHIO RULES OF EVIDENCE" IN CONDUCTING HEARINGS AND IN MAKING FINDINGS OF FACT. THE HEARING OFFICER SHALL CONSIDER ALL RELEVANT EVIDENCE OFFERED AT THE HEARING.
 - (b) HEARSAY EVIDENCE MAY BE CONSIDERED BY THE HEARING OFFICER IN ARRIVING AT THE FINDINGS OF FACT. HOWEVER, SUCH EVIDENCE MUST BE CRITICALLY EVALUATED, SINCE IT IS NOT GIVEN UNDER OATH AND CANNOT BE CROSS-EXAMINED TO TEST THE PERCEPTION, MEMORY, AND VERACITY OF

THE DECLARANT.

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DIRECT EVIDENCE SHALL NORMALLY BE GIVEN MORE WEIGHT THAN HEARSAY EVIDENCE WHEN THE TWO ARE IN CONFLICT. WHENEVER POSSIBLE, THE HEARING OFFICER SHALL AVOID BASING A FINDING OF FACT SOLELY ON HEARSAY EVIDENCE.

(c) IT SHALL BE THE RESPONSIBILITY OF THE LOCAL AGENCY TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, THAT THE ACCUSED INDIVIDUAL COMMITTED INTENTIONAL PROGRAM VIOLATION.

(d) THE HEARING OFFICER'S FINDINGS OF FACT SHALL BE BINDING UPON THE HEARING AUTHORITY. HOWEVER, THE HEARING AUTHORITY MAY REMAND THE CASE TO THE HEARING OFFICER IF THE HEARING AUTHORITY DETERMINES THAT ADDITIONAL FACTS NOT ALREADY ESTABLISHED BY THE HEARING OFFICER ARE ESSENTIAL TO A CORRECT DECISION, OR IF THE EVIDENCE RELIED UPON WAS TAKEN IN VIOLATION OF PARAGRAPH (C)(1) OF THIS RULE.

THE SCOPE OF THE REMAND SHALL BE LIMITED TO THOSE ADDITIONAL FACTS WHICH THE HEARING AUTHORITY DEEMS NECESSARY. THE REMAND SHALL NOT BE THE OCCASION FOR A NEW DETERMINATION OF ANY OF THE FACTS ALREADY ESTABLISHED.

(2) THE HEARING OFFICER'S CONCLUSIONS OF POLICY AND RECOMMENDATIONS SHALL BE BASED SOLELY ON PUBLISHED ODHS REGULATIONS, EXCEPT WHEN THESE REGULATIONS ARE SILENT AND REFERENCE TO THE REVISED CODE OR OTHER STATUTORY SOURCE IS NECESSARY TO RESOLVE THE ISSUE.

THE HEARING AUTHORITY SHALL REVIEW CONCLUSIONS AND RECOMMENDATIONS BY THE HEARING OFFICER, AND ADOPT THEM WHEN THEY CONSTITUTE A CORRECT APPLICATION OF THE APPROPRIATE REGULATIONS.

THE HEARING AUTHORITY SHALL AMEND CONCLUSIONS AND RECOMMENDATIONS THAT DO NOT CORRECTLY APPLY THE APPROPRIATE REGULATIONS, CLEARLY EXPLAINING THE REASON AND BASIS OF ANY SUCH AMENDMENT.

(3) THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION SHALL BE LIMITED TO DETERMINING WHETHER THE ACCUSED INDIVIDUAL COMMITTED INTENTIONAL PROGRAM VIOLATION AND WHETHER THE SANCTION PERIOD BEING PROPOSED IS APPROPRIATE.

(D) CONTENT

THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION SHALL SEPARATELY SET FORTH THE ISSUE, THE HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF POLICY AND RECOMMENDATIONS, AND THE DECISION AND ORDER.

(1) THE ISSUE SECTION SHALL INCLUDE THE PROGRAMS FOR WHICH ADMINISTRATIVE DISQUALIFICATION IS PROPOSED, THE LENGTH OF THE PROPOSED DISQUALIFICATION PERIOD, AND A BRIEF STATEMENT OF THE ALLEGED ACTIVITY UPON WHICH THE LOCAL AGENCY HAS BASED ITS PROPOSAL. WHEN

DISQUALIFICATION IN MULTIPLE PROGRAMS HAS BEEN PROPOSED, THEY SHALL BE STATED SEPARATELY IN THE ISSUE STATEMENT, AND TREATED SEPARATELY IN THE REMAINDER OF THE DECISION.

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WHEN THE DISQUALIFICATION HEARING HAS BEEN COMBINED WITH A STATE HEARING, THE STATE HEARING ISSUES SHALL BE DECIDED IN A SEPARATE STATE HEARING DECISION, NOT IN THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION. BOTH DECISIONS SHALL BE ISSUED AT THE SAME TIME.

- (2) THE FINDINGS OF FACT SHALL FIRST ADDRESS SUCH PRELIMINARY MATTERS AS DELAYS DUE TO POSTPONEMENT AND AMENDMENTS TO THE ISSUE.

PRELIMINARY MATTERS SHALL BE FOLLOWED BY A CLEAR AND ORDERLY CHRONOLOGICAL DISCUSSION OF THE FACTS AND EVENTS RELEVANT TO THE ISSUE. FACTS UPON WHICH ALL PARTIES AGREE SHALL NORMALLY BE SET FORTH FIRST, FOLLOWED BY DISCUSSION AND RESOLUTION OF FACTUAL DISPUTES. THE DECISION SHALL CLEARLY INDICATE THE BASIS FOR EACH SUCH FINDING, TO INCLUDE DISCUSSION OF THE RELATIVE WEIGHT GIVEN TO THE CONFLICTING EVIDENCE IN ARRIVING AT THE DECISION.

- (3) THE CONCLUSIONS OF POLICY SHALL CITE AND SUMMARIZE RELEVANT PORTIONS OF DEPARTMENTAL RULES OR PROGRAM MANUALS, AND OTHER APPLICABLE REGULATIONS AS NECESSARY, AND SHALL CLEARLY DEMONSTRATE HOW THEY APPLY TO THE FACTS ESTABLISHED.
- (4) THE HEARING OFFICER'S RECOMMENDATIONS SHALL ADDRESS EACH PROGRAM FOR WHICH ADMINISTRATIVE DISQUALIFICATION IS PROPOSED AND SHALL STATE WHETHER OR NOT THE ACCUSED INDIVIDUAL IS FOUND TO HAVE COMMITTED INTENTIONAL PROGRAM VIOLATION. WHEN THE HEARING OFFICER RECOMMENDS THAT THE ACCUSED INDIVIDUAL BE DISQUALIFIED, THE HEARING OFFICER SHALL STATE THE LENGTH OF THE DISQUALIFICATION PERIOD TO BE IMPOSED.

WHEN DISQUALIFICATION IS ORDERED, COMPLIANCE SHALL BE REQUIRED, VIA "STATE HEARING COMPLIANCE," ODHS 4068.

- (5) THE DECISION AND ORDER, SIGNED BY THE HEARING AUTHORITY, SHALL INDICATE ADOPTION OR AMENDMENT OF THE HEARING OFFICER'S RECOMMENDATIONS AND WHETHER THE ACCUSED INDIVIDUAL IS FOUND TO HAVE COMMITTED INTENTIONAL PROGRAM VIOLATION. IF THE ACCUSED INDIVIDUAL IS TO BE DISQUALIFIED, IT SHALL STATE THE PROGRAM(S) FOR WHICH DISQUALIFICATION SHALL BE IMPLEMENTED AND THE LENGTH OF THE DISQUALIFICATION PERIOD TO BE IMPOSED.

(E) NOTIFICATION

THE INDIVIDUAL AND AUTHORIZED REPRESENTATIVE SHALL BE PROVIDED WITH A WRITTEN ADMINISTRATIVE DISQUALIFICATION HEARING DECISION VIA "ADMINISTRATIVE DISQUALIFICATION HEARING DECISION, ODHS 4007. COPIES OF THE DECISION SHALL BE SENT TO THE LOCAL AGENCY AND TO THE BUREAU OF STATE HEARINGS, ODHS.

WHEN THE DISQUALIFICATION HEARING IS COMBINED WITH A STATE HEARING, A SEPARATE DECISION SHALL BE ISSUED FOR THE STATE HEARING ISSUE(S) IN ACCORDANCE WITH RULE 5101:6-7-01 OF THE ADMINISTRATIVE CODE , USING THE "STATE HEARING DECISION," ODHS 4005.

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(F) HEARING RECORD

THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION, TOGETHER WITH DOCUMENTS INTRODUCED AT THE HEARING AND ALL PAPERS AND REQUESTS FILED IN THE PROCEEDING, SHALL CONSTITUTE THE EXCLUSIVE RECORD. THE HEARING RECORD SHALL BE COMPILED AND CERTIFIED BY THE HEARING AUTHORITY AND FORWARDED TO THE LOCAL AGENCY, WHERE IT SHALL BE MAINTAINED IN ACCORDANCE WITH APPLICABLE RECORD RETENTION REQUIREMENTS AND MADE AVAILABLE FOR REVIEW BY THE INDIVIDUAL AND AUTHORIZED REPRESENTATIVE.

(G) LIBRARY OF DECISIONS

THE CHIEF OF THE BUREAU OF STATE HEARINGS, ODHS, SHALL MAINTAIN A LIBRARY OF ALL ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS. THE DECISIONS SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND COPYING, SUBJECT TO APPLICABLE DISCLOSURE SAFEGUARDS.

(H) BINDING EFFECT

ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS SHALL BE BINDING ON THE LOCAL AGENCY FOR THE INDIVIDUAL CASE FOR WHICH THE DECISION WAS RENDERED.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994

Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 4-1-84(Temp.), 6-1-84

Review Date: December 30, 2002

5101:6-20-17 IMPLEMENTATION OF THE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION.

(A) DISQUALIFICATION

- (1) WHEN THE HEARING DECISION FINDS THAT THE ACCUSED INDIVIDUAL HAS COMMITTED INTENTIONAL PROGRAM VIOLATION, HE OR SHE SHALL BE DISQUALIFIED IN ACCORDANCE WITH RULE 5101:6-20-03 OF THE ADMINISTRATIVE CODE.
- (2) PRIOR TO IMPLEMENTING THE DISQUALIFICATION, THE LOCAL AGENCY SHALL PROVIDE THE INDIVIDUAL A "NOTICE OF DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION," ODHS 4062, IN ACCORDANCE WITH RULE 5101:6-20-18 OF THE ADMINISTRATIVE CODE.
- (3) THE DISQUALIFICATION PERIOD SHALL BE IMPLEMENTED AS FOLLOWS:
 - (A) FOR ADC, THE PERIOD SHALL BEGIN NO LATER THAN THE FIRST DAY OF THE SECOND MONTH WHICH FOLLOWS THE DATE THE ODHS 4062 IS MAILED.
 - (B) FOR FOOD STAMPS, THE PERIOD SHALL BEGIN WITH THE FIRST MONTH WHICH FOLLOWS THE DATE THE ODHS 4062 IS MAILED.

(B) COMPLIANCE

- (1) THE LOCAL AGENCY IS RESPONSIBLE FOR PROMPTLY AND FULLY IMPLEMENTING ADVERSE ADMINISTRATIVE DISQUALIFICATION HEARING DECISIONS. THE DISTRICT OFFICE OF PROPER JURISDICTION IS RESPONSIBLE FOR MONITORING TIMELY COMPLIANCE.
- (2) WHEN AN ADMINISTRATIVE DISQUALIFICATION HEARING DECISION FINDS INTENTIONAL PROGRAM VIOLATION, THE DISTRICT HEARINGS SECTION SHALL CHECK THE "COMPLIANCE REQUIRED" BOX ON THE DECISION FORM AND ATTACH A "STATE HEARING COMPLIANCE," ODHS 4068, TO THE AGENCY'S COPY OF THE DECISION.
- (3) AFTER IMPLEMENTING THE DISQUALIFICATION, THE LOCAL AGENCY SHALL PROMPTLY NOTIFY THE BUREAU OF STATE HEARINGS OF THE ACTION TAKEN, USING THE ODHS 4068.
- (4) COMPLIANCE SHALL BE CONSIDERED ACHIEVED ON THE DATE THE DISQUALIFICATION IS REFLECTED IN THE ASSISTANCE GROUP'S BENEFITS.
- (5) IF THE INDIVIDUAL IS NOT ELIGIBLE FOR THE PROGRAM AT THE TIME THE DISQUALIFICATION PERIOD IS TO BEGIN, THE LOCAL AGENCY SHALL REPORT THAT FACT ON THE ODHS 4068 AND COMPLIANCE SHALL BE CONSIDERED ACHIEVED.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 4-1-90

5101:6-20-18 Notice of disqualification for intentional program violation.

- (A) The local agency shall provide an individual found to have committed intentional program violation a written notice of disqualification.
- (1) If more than one member of an assistance group is to be disqualified, a separate disqualification notice shall be provided to each.
 - (2) A copy of the disqualification notice shall also be sent to the bureau of state hearings, ODHS.
- (B) The notice shall be mailed or personally delivered no later than five workdays after the local agency's receipt of the administrative disqualification hearing decision, court decision, waiver or consent agreement upon which disqualification is to be based.
- (C) The notice shall include the following:
- (1) The name of the individual to be disqualified.
 - (2) The program(s) from which the individual is to be disqualified.
 - (3) The basis for the disqualification.
 - (4) The effective date and period of disqualification.
 - (5) A statement of whether, if the individual is not currently eligible for the program, the disqualification period will be postponed until the individual again applies and is found eligible for benefits **THAT THE DISQUALIFICATION PERIOD WILL BEGIN AT ONCE, REGARDLESS OF WHETHER THE INDIVIDUAL IS CURRENTLY RECEIVING BENEFITS.**
 - (6) Notice to the remaining assistance group members, if any, of the benefits they will receive during the disqualification period.
- In the food stamp program, the notice may alternatively inform the remaining assistance group members that they must reapply because the certification period has expired.
- (D) The disqualification notice shall be accompanied by a "Notice of ADC Overpayment," ODHS 7345 and/or a "Food Stamp Repayment Agreement," ODHS 7442, or the CRIS-E equivalents, unless those notices have already been provided.
- (E) In all instances, the "Notice of Disqualification for Intentional Program Violation," ODHS 4062, shall be used.

Effective Date: October 1, 1996

Certification: Arnold R. Tompkins

September 18, 1996
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 4-1-84(Temp.), 6-1-84, 8-1-84(Emer.), 10-20-84, 9-1-94, 6-1-96

Review Date: December 30, 2002

5101:6-20-19 OPPORTUNITY FOR APPEAL OF AN ADMINISTRATIVE DISQUALIFICATION.

- (A) NO FURTHER ADMINISTRATIVE APPEAL PROCEDURE EXISTS AFTER AN ADVERSE ADMINISTRATIVE DISQUALIFICATION HEARING DECISION OR AFTER THE INDIVIDUAL WAIVES THE RIGHT TO AN ADMINISTRATIVE DISQUALIFICATION HEARING AND A DISQUALIFICATION PENALTY HAS BEEN IMPOSED.
- (B) THE DISQUALIFICATION PENALTY CANNOT BE CHANGED BY A SUBSEQUENT STATE HEARING DECISION.
- (C) INDIVIDUALS WHO DISAGREE WITH AN ADMINISTRATIVE DISQUALIFICATION HEARING DECISION HAVE THE RIGHT TO APPEAL THAT DECISION TO THE COURT OF COMMON PLEAS, IN ACCORDANCE WITH RULE 5101:6-9-01 OF THE ADMINISTRATIVE CODE.
- (D) IF THE DETERMINATION OF INTENTIONAL PROGRAM VIOLATION IS REVERSED BY A COURT, THE LOCAL AGENCY SHALL REINSTATE THE INDIVIDUAL IN THE PROGRAM(S) FROM WHICH HE OR SHE WAS DISQUALIFIED, IF OTHERWISE ELIGIBLE, AND SHALL RESTORE BENEFITS THAT WERE LOST AS A RESULT OF DISQUALIFICATION.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83

Review Date: December 30, 2002

5101:6-20-30 Waiver of administrative disqualification hearing.

- (A) An individual suspected of having committed an intentional program violation shall be provided written notice that he or she can waive the right to an administrative disqualification hearing.
- (1) The local agency shall provide the notice at least fifteen days prior to referring the case to ODHS for an administrative disqualification hearing.

Prior to providing notice, the local agency shall ensure, through a review by someone other than the eligibility worker assigned to the individual's case, that the evidence against the individual warrants disqualification.

In cases where reliable information indicates that the individual has left the project area, the waiver notice may be mailed, to the accused individual's last known address, at the same time the referral is sent to ODHS.

- (2) The district hearings section shall also provide the notice along with the advance notice of the administrative disqualification hearing.
- (B) The notice shall be accompanied by "Explanation of Administrative Disqualification Hearing Procedures," ODHS 4058.
- (C) The waiver notice, in conjunction with the ODHS 4058, shall include the following:
- (1) A statement of the charges against the individual.
- (2) A summary of the evidence, and how and where the evidence can be examined.
- (3) A description of the penalties for intentional program violation and a statement of which penalty is applicable to the individual.
- (4) For notice sent by the local agency prior to referral, the time period within which the signed waiver must be received by the local agency to prevent initiation of the referral.
- (5) A statement that the head of the assistance group must also sign the waiver when the accused individual is not the head of the assistance group.
- (6) A statement that the accused individual has the right to remain silent concerning the charges, and that anything said or signed by the individual concerning the charges can be used against the individual in a court of law.
- (7) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the local agency.
- (8) A statement that signing the waiver will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the local agency.
- (9) A statement that the waiver does not preclude ~~either prosecution for intentional program violation i a~~

~~civil or criminal action~~ or collection of the overpayment/overissuance.

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- (10) A statement that both the accused individual and the remaining assistance group members, if any, will be held responsible for repayment of the overpayment/ overissuance.
- (11) The name and telephone number of the person to contact for more information.
- (12) A telephone number to call about free legal services.
- (13) A statement that the individual may obtain a copy of the department's published hearing rules from the local agency upon request.

- (D) In all instances, the "Waiver of Administrative Disqualification Hearing," ODHS 4026, shall be used.
- (E) To waive the disqualification hearing, the accused individual must sign and return the waiver so that it is received by the local agency or the district hearings section prior to the disqualification hearing.
- (F) When the individual suspected of intentional program violation signs and returns the ODHS 4026 so that it is received prior to the disqualification hearing, the local agency shall disqualify the individual in accordance with rule 5101:6-20-03 of the Administrative Code, regardless of whether or not the individual admits to the facts as presented by the local agency.

A copy of the ODHS 4026 shall be filed in the individual's case record and a copy shall be sent to the bureau of state hearings, ODHS.

- (G) Prior to implementing the disqualification, the local agency shall provide the individual a "Notice of Disqualification for Intentional Program Violation," ODHS 4062, in accordance with rule 5101:6-20-18 of the Administrative Code.
- (H) The disqualification period shall be implemented as follows:
 - (1) For ADC, the period shall begin no later than the first day of the second month which follows the date the ODHS 4062 is mailed.
 - (2) For food stamps, the period shall begin with the first month which follows the date the ODHS 4062 is mailed.

Effective Date: October 1, 1996

Certification: Arnold R. Tompkins

September 18, 1996
Date

Promulgated Under: Revised Code Chapter 119.
 Statutory Authority: Revised Code Section 5101.35
 Rule Amplifies: Revised Code Section 5101.35
 Prior Effective Dates: 8-1-83, 8-1-84 (Emer.), 10-20-84, 9-1-94

5101:6-20-40 DISQUALIFICATION CONSENT AGREEMENT.

- (A) THE LOCAL AGENCY HAS THE OPTION OF ESTABLISHING PROCEDURES TO ALLOW AN INDIVIDUAL SUSPECTED OF INTENTIONAL PROGRAM VIOLATION TO SIGN A DISQUALIFICATION CONSENT AGREEMENT. LOCAL AGENCIES ARE ENCOURAGED TO USE THIS OPTION FOR THOSE CASES IN WHICH A DETERMINATION OF GUILT IS NOT OBTAINED FROM A COURT BECAUSE:
- (1) THE ACCUSED INDIVIDUAL HAS MET THE TERMS OF A COURT ORDER.
 - (2) THE ACCUSED INDIVIDUAL WAS NOT PROSECUTED BECAUSE HE OR SHE MET THE TERMS OF AN AGREEMENT WITH THE PROSECUTOR.
- (B) THOSE COUNTIES WHICH CHOOSE THIS OPTION SHALL ENTER INTO AN AGREEMENT WITH THE COUNTY PROSECUTOR WHICH PROVIDES FOR GIVING THE INDIVIDUAL ADVANCE WRITTEN NOTIFICATION OF THE CONSEQUENCES OF SIGNING A DISQUALIFICATION CONSENT AGREEMENT.
- (C) THE DISQUALIFICATION CONSENT AGREEMENT SHALL INCLUDE THE FOLLOWING:
- (1) FOR INDIVIDUALS ACCUSED OF COMMITTING INTENTIONAL PROGRAM VIOLATION IN THE ADC PROGRAM, A STATEMENT THAT SIGNING THE AGREEMENT CONSTITUTES AN ADMISSION OF GUILT.
 - (2) A STATEMENT FOR THE ACCUSED INDIVIDUAL TO SIGN INDICATING THAT HE OR SHE UNDERSTANDS THE CONSEQUENCES OF SIGNING THE AGREEMENT.
 - (3) A STATEMENT THAT THE HEAD OF THE ASSISTANCE GROUP MUST ALSO SIGN THE AGREEMENT IF THE ACCUSED INDIVIDUAL IS NOT THE HEAD OF THE ASSISTANCE GROUP.
 - (4) A STATEMENT THAT SIGNING THE AGREEMENT WILL RESULT IN DISQUALIFICATION AND A REDUCTION IN BENEFITS FOR THE PERIOD OF DISQUALIFICATION, EVEN THOUGH THE INDIVIDUAL WAS NOT FOUND GUILTY OF CIVIL OR CRIMINAL MISREPRESENTATION OR FRAUD.
 - (5) A DESCRIPTION OF THE PENALTIES FOR INTENTIONAL PROGRAM VIOLATION, AND A STATEMENT OF WHICH PENALTY OR PENALTIES WILL BE IMPOSED IF THE INDIVIDUAL SIGNS THE AGREEMENT.
 - (6) A STATEMENT THAT BOTH THE ACCUSED INDIVIDUAL AND THE REMAINING ASSISTANCE GROUP MEMBERS, IF ANY, WILL BE HELD RESPONSIBLE FOR REPAYMENT OF THE OVERPAYMENT/OVERISSUANCE.
- (D) IN THE ADC PROGRAM, THE DISQUALIFICATION CONSENT AGREEMENT MUST BE CONFIRMED BY THE COURT.

(E) THE LOCAL AGENCY MAY USE THE "DISQUALIFICATION CONSENT AGREEMENT," ODHS 4027 OR A SIMILAR, COUNTY-DEVELOPED FORM WHICH MEETS THE REQUIREMENTS OF THIS RULE.

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(F) WHEN SIGNED, A COPY OF THE DISQUALIFICATION CONSENT AGREEMENT SHALL BE GIVEN TO THE INDIVIDUAL, A COPY PROVIDED TO THE LOCAL AGENCY TO BE FILED IN THE INDIVIDUAL'S CASE RECORD, AND A COPY SENT TO THE BUREAU OF STATE HEARINGS, ODHS.

(G) WHEN THE INDIVIDUAL SUSPECTED OF INTENTIONAL PROGRAM VIOLATION SIGNS A DISQUALIFICATION CONSENT AGREEMENT, HE OR SHE SHALL BE DISQUALIFIED IN ACCORDANCE WITH RULE 5101:6-20-03 OF THE ADMINISTRATIVE CODE, UNLESS CONTRARY TO THE COURT ORDER.

(H) PRIOR TO IMPLEMENTING THE DISQUALIFICATION, THE LOCAL AGENCY SHALL PROVIDE THE INDIVIDUAL A "NOTICE OF DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOATION," ODHS 4062, IN ACCORDANCE WITH RULE 5101:6-20-18 OF THE ADMINISTRATIVE CODE.

(I) THE DISQUALIFICATION PERIOD SHALL BE IMPLEMENTED AS FOLLOWS:

(1) FOR ADC, THE PERIOD SHALL BEGIN NO LATER THAN THE FIRST DAY OF THE SECOND MONTH WHICH FOLLOWS THE DATE THE ODHS 4062 IS MAILED.

(2) FOR FOOD STAMPS, THE PERIOD SHALL BEGIN WITHIN FORTY-FIVE DAYS OF THE DATE THE INDIVIDUAL SIGNED THE DISQUALIFICATION CONSENT AGREEMENT.

(3) IF THE COURT IMPOSES A DISQUALIFICATION PERIOD OR SPECIFIES THE DATE FOR INITIATING THE DISQUALIFICATION PERIOD, THE COUNTY AGENCY SHALL DISQUALIFY THE INDIVIDUAL IN ACCORDANCE WITH THE COURT ORDER.

Effective Date: September 1, 1994

Certification: Arnold R. Tompkins

August 22, 1994
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective dates: 8-1-83, 5-1-85

Review Date: December 30, 2002

5101:6-20-50 Disqualification based on court action.

- (A) If a court finds that an individual committed intentional program violation, the local agency shall disqualify the individual in accordance with the court order.
- (B) Prior to implementing the disqualification, the local agency shall provide the individual a "Notice of Disqualification for Intentional Program Violation," ODHS 4062, in accordance with rule 5101:6-20-18 of the Administrative Code.
- (C) If the court orders FAILS TO IMPOSE A disqualification ~~but fails to specify~~ OR a disqualification period, the local agency shall impose a disqualification period, in accordance with rule 5101:6-20-03 of the Administrative Code, UNLESS CONTRARY TO THE COURT ORDER.
- (D) If the court orders disqualification but fails to specify a date for initiating the disqualification period, the disqualification period shall be implemented as follows:
 - (1) For ADC, the period shall begin no later than the first day of the second month which follows the date the ODHS 4062 is mailed.
 - (2) For food stamps, the period shall begin within forty-five days of the date of the court order.

Effective Date: June 1, 1996

Certification: Arnold R. Tompkins

May 17, 1996
Date

Promulgated Under: Revised Code Chapter 119.

Statutory Authority: Revised Code Section 5101.35

Rule Amplifies: Revised Code Section 5101.35

Prior Effective Dates: 6-2-80, 10-1-81, 5-1-82, 8-1-83, 4-1-84(Temp.), 6-1-84, 9-1-94

Review Date: December 30, 2002