

921 KAR 3:070. Fair hearings.

RELATES TO: KRS Chapter 13B, 45.237, 205.231, 7 C.F.R. 273.16

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Food Stamp Program. C.F.R. 273.15 requires the agency administering the Food Stamp Program to provide a hearing system for any Food Stamp Program applicant or recipient who is dissatisfied with an agency decision or action. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Food Stamp Program.

Section 1. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

- (a) On the part of the cabinet; and
- (b) That affects the food stamp benefits of the household.
- (2) A fair hearing shall be conducted;
 - (a) On a state level;
 - (b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and
 - (c) 1. At the local office administering the benefits of the appellant; or
 2. An alternate site, if the appellant:
 - a. Is unable to travel to the local office; and
 - b. Requests an alternate site.
- (3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

Section 2. Notification of Hearing Rights. (1) At the time of application, a participant shall receive written notification of the:

- (a) Right to a hearing;
- (b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and
- (c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:
 1. Legal counsel;
 2. A relative;
 3. A friend; or
 4. An individual to act on behalf of the participant.
- (2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:
 - (a) An action is taken that affects the benefits of the participant; or
 - (b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.
- (3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Criteria for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a food stamp household may request a hearing on any cabinet action.

Section 4. Request for a Hearing. (1) An individual shall follow the procedures for submitting a hearing request set forth in 921 KAR 2:055, Section 3.

- (2) The request for a hearing shall clearly state the reason for the request.
- (3) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.
- (4) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.
- (5) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:
 - (a) Help an appellant with a hearing request; and
 - (b) Make available, without charge, the materials necessary for an appellant to:
 1. Determine whether a hearing may be requested; or
 2. Prepare for a hearing.
- (6) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

- (2) The notice of the hearing shall:
 - (a) Comply with the requirements of KRS 13B.050(3);
 - (b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and
 - (c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(1), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

- (a) Acknowledge the request in accordance with Section 5 of this administrative regulation;
- (b) Conduct a hearing; and
- (c) Issue a final order.
- (2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:

- (a) Within ten (10) days of the final order; or
- (b) With the next issuance following receipt of the final order.
- (3) If an appellant requests a postponement of a hearing, the:
 - (a) Hearing shall be postponed;
 - (b) Postponement shall not exceed thirty (30) days from the request for the postponement; and
 - (c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

- (a) Request does not meet the criteria specified in Section 3 of this administrative regulation;
- (b) Appellant submits a written request to withdraw of the hearing request; or
- (c) Appellant or representative fails to appear for the scheduled hearing without:
 1. Notifying the cabinet prior to the hearing; or
 2. Establishing good cause for failure to appear as defined in subsection (2) of this section, within ten (10) days.
- (2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:
 - (a) Was away from home during the entire filing period;
 - (b) Is unable to read or comprehend the notice;
 - (c) Moved, resulting in a delay in receiving or failure to receive the notice;
 - (d) Or other household member had a serious illness;
 - (e) Was not at fault for the delay, as determined by the hearing officer; or
 - (f) Did not receive the notice.
- (3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Recommended Order of Dismissal.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

- (a) Issues of the hearings are based on the same or related circumstances; and
- (b) Appellant receives prior notice of the hearings being combined.
- (2) If a fair hearing and an administrative disqualification hearing are combined the:
 - (a) Timeframe for conducting an administrative disqualification hearing specified in Section 2 of 921 KAR 3:060 shall be followed; and
 - (b) Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3 may be waived if requested by the appellant.
- (3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:
 - (a) The amount of the claim; and
 - (b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

- (a) Individual issues of fact are not disputed; and
- (b) The issues relate to the same state or federal:
 1. Laws;
 2. Regulations; or
 3. Policy.
- (2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

- (2) The appellant shall be informed that an agency conference:
 - (a) Is optional; and
 - (b) Shall not delay or replace the fair hearing process.
- (3) A fair hearing shall be dismissed if:
 - (a) An agency conference leads to an informal resolution of the dispute; and
 - (b) The appellant makes a written withdrawal of the request for a hearing.
- (4) An agency conference shall be attended by the:
 - (a) Appellant's caseworker;
 - (b) Local office supervisor; and
 - (c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

- (a) Examine:
 1. The contents of the case file; and
 2. All documents and records to be used at the hearing;
- (b) Present the case or have the case presented by a representative or legal counsel;
- (c) Bring witnesses, friends, or relatives;
- (d) Present arguments without undue interference;
- (e) Submit evidence to establish the pertinent facts and circumstances of the case; and
- (f) Question; or:
 1. Refute testimony or evidence; and
 2. Cross-examine an adverse witness.
- (2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.
- (3) Confidential information, such as the following, shall be protected from release:
 - (a) Names of individuals who have disclosed information about the appellant's household; and
 - (b) The nature or status of pending criminal prosecutions.
- (4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:
 - (a) Confidential information as specified in subsection (3) of this section;
 - (b) Documents, testimony, or records irrelevant to the hearing; and
 - (c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

- (a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and
- (b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).
- (2) When conducting a hearing, a hearing officer shall:
 - (a) Have the authority set forth in KRS 13B.080;
 - (b) Order an independent medical assessment or professional evaluation from a source agreeable to both the appellant and the cabinet;
 - (c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 13; and
 - (d) Issue a recommended order as specified in Section 14 of this administrative regulation to the Commissioner of the Department of Community Based Services or designee, in accordance with KRS 13B.110.
- (3) The Commissioner or designee shall:
 - (a) Serve as the hearing authority as specified in 7 C.F.R. 273.15(n); and
 - (b) Issue the final order on behalf of the cabinet.

Section 14. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

- (a) Summarizes the facts of the case;
- (b) Specifies the:
 - 1. Reasons for the recommended order; and
 - 2. Address to which a party in the hearing may send an exception to the recommended order; and
- (c) Identifies the:
 - 1. Findings of fact;
 - 2. Conclusions of law;
 - 3. Supporting evidence; and
 - 4. Applicable state and federal regulations.
- (2) A copy of the recommended order shall be sent to the:
 - (a) Appellant or representative; and
 - (b) Local Department for Community Based Services office.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the commissioner or designee.

- (2) A written exception or rebuttal shall:
 - (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
 - (b) Be based on facts and evidence presented at the hearing;
 - (c) Not refer to evidence that was not introduced at the hearing; and
 - (d) Be sent to each other party involved in the hearing.

Section 16. Final Order. (1) A final order shall be issued in accordance with 7 C.F.R. 273.15(c).

(2) If the final order differs from the recommended order, it shall include information and documentation in accordance with KRS 13B.120 and 7 C.F.R. 273.15(q).

Section 17. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

- (2) A request for appeal of a final order shall be submitted:
 - (a) 1. Orally; or
 - 2. In writing; and
 - (b) To the:
 - 1. Local department for community based services office; or
 - 2. Appeal board.
- (3) An appeal request shall be considered:
 - (a) Filed on the day the request is received by the cabinet; and
 - (b) Timely, if the request is received within twenty (20) days of the date of the final order.

Section 18. Appellant's rights prior to appeal board consideration. (1) The appeal board shall send the appellant and the authorized representative written acknowledgement of the request for appeal.

- (2) The acknowledgement shall:
 - (a) Offer the opportunity to:
 - 1. File a brief; or
 - 2. Request permission to submit new or additional evidence; and
 - (b) State the tentative date on which the board shall consider the appeal.

Section 19. Appeal Board Review. (1) The appeal board shall consider:

- (a) The records of the hearing; and
- (b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2), (3), or (4) of this section.
- (2) If an appeal is being considered on the record, the parties may:
 - (a) Present written arguments; and
 - (b) At the board's discretion, be allowed to present oral arguments.
- (3) If needed, the appeal board may request additional evidence to resolve the appeal.
- (4) Additional evidence shall be accepted by the board after a party to the hearing has been given seven (7) days notice of the opportunity

to:

- (a) Object to the introduction of additional evidence; or
- (b) Rebut or refute any additional evidence.

Section 20. The Appeal Board Decision. (1) The decision of the appeal board shall:

- (a) Establish in writing the facts on which the decision is based; and
- (b) Be issued within forty-five (45) days of the request for an appeal.
- (2) If necessary, benefits of the appellant shall be adjusted:
 - (a) Based on the decision of the appeal board; and
 - (b) Within ten (10) days of the appeal board decision.

(3) A party aggrieved by the appeal board decision shall have the right to pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150. (8 Ky.R. 258; eff. 11-5-81; Am. 9 Ky.R. 1261; eff. 6-1-83; 15 Ky.R. 2320; 16 Ky.R. 179; eff. 8-5-89; 18 Ky.R. 906; eff. 10-16-91; 22 Ky.R. 407; eff. 9-20-95; 2165; eff. 7-5-96; Recodified from 904 KAR 3:070, 10-30-98; 33 Ky.R 134; 429; eff. 9-1-06.)