

PART 358**FAIR HEARINGS**

(Statutory authority: Social Services Law, §§ 20, 30; L. 1971, ch. 110, § 83)

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Historical Note

Part filed Feb. 15, 1968; repealed, new (§§ 358.1-358.27) filed April 21, 1972 eff. April 22, 1972.

Section 358.1 Federal categories; home relief. The State Department of Social Services will consider all complaints and appeals and requests for fair hearings on the basis of the eligibility requirements as set forth in the Social Services Law, the rules of the State Board of Social Welfare and the regulations of the department (see Chapter II of this Title), the policies governing the administration of public assistance in the districts involved and the reasonable application of discretionary judgments properly exercised by social services officials.

Historical Note

Sec. filed Feb. 15, 1968; repealed, new filed April 21, 1972 eff. April 22, 1972.

358.2 Definitions. (a) *Appellant.* An applicant or recipient who requests a fair hearing shall be termed an *appellant*.

(b) *Board.* *Board* means the State Board of Social Welfare.

(c) *Commissioner.* *Commissioner* means the State Commissioner of Social Services.

(d) *Conference.* A *conference* is the procedure by which an applicant for or recipient of public assistance or care may have any aspect of his case reviewed by an agency employee with authority to reverse the local determination, action, or failure to act complained of.

(e) *Department.* *Department* means the State Department of Social Services.

(f) *Fair hearing.* *Fair hearing* is the procedure by which an applicant for or recipient of public assistance and care or services may appeal to the commissioner from certain decisions or actions of a social services official and have a hearing thereon.

(g) *Hearing Officer.* *Hearing officer* means an attorney who is employed by the department exclusively to conduct hearings for the commissioner.

(h) *Parties.* The *parties* to a fair hearing shall be the appellant and the social services official whose decision or action is being reviewed.

(i) *Social services official.* *Social services official* means the county, city or town official responsible for the administration of public assistance and care. The term shall also include the director of the bureau of mental health affairs or the head of any other bureau of the department to which is assigned responsibility for furnishing public assistance and care to persons in family care on conditional release from an institution in the State Department of Mental Hygiene in accordance with the provisions of section 138-a of the Social Services Law and responsibility for furnishing medical assistance for the needy, to eligible persons who are 65 years of age or older who are patients in State hospitals, for the mentally disabled or for the treatment of tuberculosis in accordance with the provisions of subdivision 2 of section 365 of the Social Services Law.

Historical Note

Sec. filed Feb. 15, 1968; repealed, new filed April 21, 1972; amd. filed Aug. 24, 1982 eff. Aug. 24, 1982.

358.3 Informing applicants and recipients of right to conference or fair hearing. [Additional statutory authority: Social Services Law, § 34] Every applicant and recipient shall be informed in writing at the time of application and at the time of any agency action affecting his receipt of assistance or services:

- (a) of his right to an agency conference;
- (b) of his right to a State fair hearing;
- (c) of the method by which he may obtain a conference or hearing;
- (d) that he may be represented by legal counsel, or by a relative, friend or other spokesman, or he may represent himself;
- (e) of the community legal services available to assist him in the conference or fair hearing; and
- (f) that the request for a conference will not in any way affect the right to request a hearing and that such fair hearing must be requested within the timely notice period in order to receive continued and unchanged assistance, and that a request for a conference will not afford the right to receive continued and unchanged assistance.

The information herein indicated shall also be given to every home relief applicant and recipient, in writing, whenever he is determined to be employable.

Historical Note

Sec. filed Feb. 15, 1968; amd. filed Sept. 30, 1968; repealed, new filed April 21, 1972; amds. filed: Dec. 5, 1972; Aug. 24, 1982 eff. Aug. 24, 1982.

358.4 Right to a fair hearing. The following persons shall be entitled to a fair hearing:

(a) Applicants for or recipients of aid to dependent children, emergency assistance to aged, blind or disabled persons, medical assistance for needy persons, home relief, veterans assistance, emergency assistance for families with dependent children, or services provided by local districts pursuant to the Social Services Block Grant of title XX of the Social Security Act on the following grounds:

- (1) denial of assistance or services;
- (2) failure to determine the applicant's eligibility and, if found eligible, to issue a cash grant or authorize medical assistance or services within 30 days from the date his application therefore was made;

(3) inadequacy in amount or manner of payment of assistance or receipt of services or a determination that a protective, vendor or two-party payment should be made or continued;

(4) discontinuance or suspension of assistance, or services in whole or in part;

(5) objections to department policy as it affects the applicant or recipient's situation; and

(6) any other grounds affecting the applicant or recipient's entitlement to assistance or the amount thereof or the time of payment thereof, including, but not limited to, determinations of employability where assistance has not been discontinued or reduced.

(b) Notwithstanding the above, recipients of medical assistance have no right to a hearing when the department discontinues payment to a facility in which they are residing because of the decertification of the facility from participation in the Medicaid program.

(c) Applicants for or recipients of aid to dependent children, aid to the aged, blind or disabled, home relief or veterans assistance, and applicants for or recipients of child welfare services, on the following grounds:

(1) denial of an application for any service required to be provided by a social services official in accordance with applicable provisions of law, rules of the board or regulations of the department;

(2) discontinuance of any such service;

(3) a determination that an applicant or recipient must participate in a service program; or

(4) a determination which failed to take account of a recipient's choice of service program.

(d) Applicants for or participants in the food stamp program on the following grounds:

(1) denial of authorization for participation;

(2) failure to determine the applicant's eligibility and, if found eligible, to authorize participation within 30 days from the date of application therefor was made;

(3) inadequacy in the extent or manner of authorization for participation; or

(4) discontinuance or suspension of authorization, in whole or in part.

(e) Parents or guardians of children placed voluntarily in foster care pursuant to an instrument executed under section 384-a of the Social Services Law on the following grounds:

(1) the failure of the authorized agency which executed such an instrument to permit the parent or guardian to visit the child while the child is receiving foster care; or

(2) the failure of the authorized agency which executed such an instrument to provide to the foster child, parent or guardian those preventive and other supportive services authorized to be provided pursuant to the State consolidated services plan.

Historical Note

Sec. filed Feb. 15, 1968; amd. filed Sept. 30, 1968; repealed, new filed April 21, 1972; amds. filed: Dec. 19, 1980; July 12, 1983; Jan. 16, 1984; April 1, 1986 eff. April 1, 1986.

Added (e).

358.5 How request for a fair hearing is made, withdrawn or abandoned. (a) Any clear written or oral communication to the department by or on behalf of an applicant or recipient requesting review of a social services official's decision, action or failure to act shall constitute a request for a fair hearing if made within 60 days after the action or failure to act complained of.

(b) The freedom to make such a request must not be limited or interfered with in any way, and emphasis must be on helping the appellant to submit and process his request and in preparing his case, if needed.

(c) A request for a fair hearing shall not be denied or dismissed except where it has been withdrawn by the applicant or recipient in writing, or abandoned.

(1) A request for a hearing shall be considered as withdrawn only upon receipt of a written statement from the appellant or his representative, or upon a statement on the record at the hearing

(2) A request for a hearing may be considered abandoned if neither the appellant nor his representative appears at the time and place agreed upon for the hearing, and if, within 10 calendar days after the mailing of an inquiry by the department as to whether the appellant or his representative wishes any further action taken on his request for a hearing, no reply is received by the department.

(3) In the event the appellant informs the social services official that he is satisfied and no longer wishes to pursue his request for a fair hearing, he shall be advised that he must address a written withdrawal to the department in Albany.

Historical Note

Sec. filed Feb. 15, 1968; amds. filed: Sept. 30, 1968; Aug. 6, 1971; repealed, new filed April 21, 1972 eff. April 22, 1972.

358.6 Group hearings. Where two or more appellants request fair hearings and the sole issue is one of objection to department policy, such cases shall be consolidated and decided by a group hearing at the request of the appellants or they may be consolidated by the department without such a request. Each appellant has the right to withdraw from the group hearing and have an individual hearing.

Historical Note

Sec. filed Feb. 15, 1968; repealed, new filed April 21, 1972 eff. April 22, 1972.

358.7 Referral of request to social services official. The department shall send promptly a copy of the request for a fair hearing to the social services official of the appropriate county, city or town.

Historical Note

Sec. filed Feb. 15, 1968; repealed, new filed April 21, 1972 eff. April 22, 1972.

358.8 Continuation of assistance payments, medical assistance authorization and food stamp authorization when fair hearing is requested. [Additional statutory authority: Social Services Law, §§ 20, 22(8), 34] (a) Except as set forth in this section, in cases of any proposed action to discontinue or reduce assistance payments, medical assistance authorization, or to change the manner or method of assistance payments to protective, vendor or two-party payments, timely and adequate notice thereof detailing the reasons for the proposed action shall be sent to the recipients. Under this requirement:

(1) *Timely* means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective.

(2) *Adequate notice* means a written notice that includes details of reasons for the proposed action, explanation of the individual's right to conference, his right to request a fair hearing, and the circumstances under which assistance payments or medical assistance authorization is continued if a fair hearing is requested.

(b) At any reasonable time before the commencement of the fair hearing, the recipient shall have the right to request and shall be afforded a conference with local agency staff pursuant to section 358.26 of this Part.

(c) In cases in which there is a request for a fair hearing within the timely notice period:

(1) Assistance shall be continued or the manner or method of payment of assistance shall remain the same until the fair hearing decision is rendered and through a period consistent with the established policies for issuance of payments or authorization

except in a case in which the department has determined, in accordance with Federal requirements, that the issue is one of State policy (including law and department regulations) and neither one of fact or judgment, nor whether the State's policies (including law and department regulations) were correctly applied to the facts of the particular case; except when the recipient requests an adjournment of or fails to appear for the hearing without good cause. Food stamp benefits shall continue only where the adverse action takes place during the certification period. If a food stamp fair hearing is requested on an action or actions taken as a result of a regularly scheduled recertification, participation will be on the basis shown in the recertification.

(2) On receipt of a request for a fair hearing, the department shall promptly decide whether the case is one that requires assistance to be continued, or does not require that assistance be continued because the issue is one of State policy (including law and department regulations), and the department shall promptly advise the appropriate social services official and the recipient accordingly.

(d) (1) The agency shall dispense with timely notice but shall send adequate notice not later than the date of action when:

(i) the agency has factual information confirming the death of a recipient or of the payee when there is no relative available to serve as a new payee;

(ii) the agency has received a clear written statement signed by the recipient that he/she no longer wishes assistance, or that such written statement gives information which requires termination or reduction of assistance, and the recipient has indicated in the written statement that he/she understands that this must be the consequence of supplying such information;

(iii) the recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan and/or State financial participation under the Social Services Law;

(iv) the recipient has been placed for long-term care in a skilled nursing home, intermediate care facility or hospital;

(v) the recipient's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The recipient's check must, however, be made available to the recipient if the whereabouts of the recipient becomes known during the period covered by the return check;

(vi) a recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(vii) a child is removed from the recipient's home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(viii) a change in the level of medical care is prescribed by the recipient's physician;

(ix) a special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

(2) In any of the above cases set forth in paragraph (1) of this subdivision where action was taken without timely notice, if the recipient requests a fair hearing within 10 days of the mailing of the notice of the action and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the fair hearing.

(e) Requirements governing the provision of notice, continuation of benefits and other fair hearing requirements in relation to food stamp authorization shall be in accordance with the *New York State Food Stamp Manual*, except as modified by instructions by the department or the United States Department of Agriculture.

Historical Note

Sec. filed Feb. 20, 1969; renum. 358.9, new filed June 20, 1969; repealed, new filed April 21, 1972; amds. filed: July 18, 1972; April 30, 1974; May 30, 1974; March 21, 1975; Feb. 16, 1977; June 23, 1978; Sept. 18, 1979; March 31, 1980; Dec. 19, 1980; July 22, 1981; Aug. 24, 1982; Nov. 8, 1982. Subparagraphs 358.18(viii) and (ix) reprinted to correct error made in November 1982 supplement.

358.9 Responsibility of the social services official in cases of proposed discontinuance, suspension or reduction of assistance. When a social services official proposes to discontinue, suspend or reduce a grant of assistance, he or his designee who has the appropriate authority, shall:

(a) review, or cause to be reviewed, the proposed action to determine its correctness on the basis of the available evidence in support of such action which shall be included in the case record;

(b) if, after the review, it is decided that the proposed action would be correct, send, or cause to be sent, a notice of the proposed action, as defined in section 358.8 (a)(2) of this Part, to the recipient at least 10 days before the date the action is to be taken, on forms required by the department;

(c) [*Reserved*]

(d) within 72 hours after receipt of notification from the department of a request for a fair hearing, send to the appellant, his representative and to the department copies of all documents to be submitted into evidence at the hearing in support of the proposed action;

(e) immediately upon notification from the department that assistance must be continued until the fair hearing decision is issued, take such action to assure that such assistance shall not continue for more than one payment period after the fair hearing decision is issued;

(f) take such action to assure that a representative of the social services agency appears at the hearing with the case record and a brief written summary of the case. Such representative must:

(1) have reviewed the case; and

(2) be prepared to present evidence in support of the action, including:

(i) the case number;

(ii) the applicable category or categories or type of public assistance or care, medical assistance, food stamp benefits or services involved;

(iii) the names, addresses, relationships and ages of persons affected;

(iv) the determination regarding which the hearing request was made;

(v) a brief description of the facts, evidence and reasons supporting such determination, including identification of the specific provisions of law, department regulations and approved local policies which support the action; and

(vi) the relevant budget or budgets prepared by the local agency for the appellant or the household of such appellant;

(3) have the authority to make binding decisions at the hearing on behalf of the social services agency, including the authority to withdraw the action or otherwise settle the case.

Historical Note

Sec. added by renum. 358.8, filed June 20, 1969; repealed, new filed April 21, 1972; amds. filed: June 6, 1974; Aug. 4, 1983; Sept. 14, 1987; Dec. 11, 1987 eff. Dec. 30, 1987.

358.10 Time and place of hearing. The hearing shall be held at a time and place convenient to the appellant as far as practicable, taking into account circumstances such as the physical inability of the appellant to travel to the regular hearing location. If requested, necessary transportation for the appellant and his representative and witnesses, child care and other costs and expenditures reasonably related to the hearing shall be provided by the social services official.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.11 Notice of hearing. At least six working days prior to the date of the hearing, written notice thereof shall be sent to the parties and their representatives. The notice of the parties shall inform them:

(a) of the date and place of the hearing and the appellant's right to a change in the date and place of the hearing where necessary;

(b) of the appellant's rights with respect to transportation and other costs and expenditures;

(c) of the circumstances under which assistance may continue until the fair hearing decision is issued where the recipient requests an adjournment or fails to appear for his hearing;

(d) of the manner in and means by which adjournments may be requested and granted:

(e) of the issues which are to be the subject of the hearing:

(f) of the manner in which the hearing will be conducted

(g) of the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses and evidence.

Historical Note

Sec. filed Apr. 21, 1972 eff. Apr. 22, 1972.

Decisions

1. Effect of failure to serve notice of hearing

Held that a determination requiring a County Commissioner of Social Services to provide medical assistance to a named person made after a hearing of which said Commissioner was not given notice as required by the rules of the Board of Social Welfare (18 NYCRR 84.8 [cf. 358.11]) must be set aside as being in violation of lawful procedure. *Matter of Lascaris v. Wyman*, 62 Misc 2d 62 (1970).

358.12 Examination of documents before hearing, examination of case record before the hearing. [Additional statutory authority: Social Services Law, § 34]

(a) If copies of the documentary evidence which the social services official plans to use at the hearing have not already been provided to the appellant and his representative, an opportunity to examine such documents, if requested, shall be afforded the appellant or his representative, who shall have appropriate written authorization, at a reasonable time before the date of the hearing.

(b) The applicant, recipient, client, or their representative, who shall have appropriate written authorization, shall be afforded an opportunity to examine the case record at a reasonable time before the hearing in accordance with and to the extent permitted by sections 231.3(b)(5) and 357.3(c) of this Title.

Historical Note

Sec. filed Apr. 21, 1972; Sept. 8, 1972 eff. Sept. 8, 1972. Amended (b).

358.13 Hearing officer. The hearing shall be conducted by an impartial hearing officer of the department, who has not been involved in any way with the action in question.

Historical Note

Sec. filed Apr. 21, 1972 eff. Apr. 22, 1972.

Decisions

1. Qualifications of hearing officer

Held that a hearing officer for the Department of Social Services was properly qualified to conduct a hearing under 18 NYCRR 351.26 [cf. 358.13] which resulted in denial of assistance to petitioner since she had no part in the original proposal to discontinue assistance and was superior to the case unit supervisor who approved the findings that petitioner was not qualified for assistance. *Matter of Kenton v. Wyman*, 70 Misc 2d 874 (1972).

358.14 Powers and duties of hearing officers. (a) The hearing officer shall have all the powers conferred by law and regulations of the department to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

(b) The hearing officer shall preside over the hearing. The hearing officer shall make an opening statement describing the nature of the proceeding, the issues and the manner in which the hearing shall be conducted. The hearing officer shall elicit testimony, review the evidence submitted by the parties, determine the credibility of the witnesses, examine the parties if necessary, and shall make findings of fact relevant to the issues of the hearing, which findings shall be binding upon the commissioner or the commissioner's designee unless such person has read a verbatim transcript or has listened to the electronic recording of the hearing. The hearing officer shall also prepare an official report containing the substance of what transpired at the hearing and shall provide a recommended decision to the commissioner or commissioner's designee.

Historical Note

Sec. filed Apr. 21, 1972; amd. filed May 16, 1980 as emergency measure; made permanent by order filed July 11, 1980 eff. July 11, 1980.

Decisions

1. Issuance of subpoenas by hearing officer

Hearing examiner directed to issue subpoenas requested by unrepresented petitioner at "fair hearing" since authority granted to examiner to issue subpoenas applies most cogently where petitioner appears without counsel (18 NYCRR 358.14, 358.16[c]). Hearing stayed until such time as petitioner in receipt of documents subpoenaed. A recipient of public assistance is not required to pay the cost of issuance of subpoenas, including witness fees, since failure to provide payment would deny effective and equal access to the courts. *Matter of Murphy v. Lavine*, 77 Misc 2d 772 (1973), affd. 43 AD2d 971 (1974).

358.15 Who may be present at hearing; authorization of representative.

(a) The appellant, his representative or representatives (who may be attorneys or other persons representing him), counsel or other representatives of the social services official, witnesses of both parties and any who may be called by the hearing officer and representatives of the department may be present at the hearing, together with such other persons as may be admitted by the hearing officer in his discretion with the consent of the appellant.

(b) An individual or organization, other than an attorney, representing an appellant shall have an appropriate written authorization, unless the condition of the appellant makes it impracticable for him to execute such authorization.

Historical Note

Sec. filed Apr. 21, 1972 eff. Apr. 22, 1972.

358.16 Conduct of hearing—rights of parties. (a) Technical rules of evidence followed in a court of law shall not apply, but evidence must be relevant and material.

(b) Each party has a right to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party.

(c) The recipient or his representative shall have the right to examine the case record in accordance with and to the extent permitted by section 357.3(c) of this Title.

(d) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained and made part of the record if the hearing officer considers it necessary.

(e) The hearing may be adjourned by the hearing officer for good cause on his own motion or at the request of either party.

(f) A verbatim record of the hearing shall be made.

Historical Note

Sec. filed Apr. 21, 1972; amds. filed: Dec. 9, 1976; May 16, 1980 as emergency measure; made permanent by order filed July 11, 1980 eff. July 11, 1980.

Decisions

1. Issuance of subpoenas by hearing officer

Hearing examiner directed to issue subpoenas requested by unrepresented petitioner at "fair hearing" since authority granted to examiner to issue subpoenas applies most cogently where petitioner appears without counsel (18 NYCRR 358.14, 358.16[c]). Hearing stayed until such time as petitioner in receipt of documents subpoenaed. A recipient of public assistance is not required to pay the cost of issuance of subpoenas, including witness fees, since failure to provide payment would deny effective and equal access to the courts. *Matter of Murphy v. Lavine*, 77 Misc 2d 772 (1973), affd. 43 AD 2d 971 (1974).

358.17 Examination of record after hearing. The record of the hearing, including the recommendations of the hearing officer, shall be confidential, but it may be examined by either party or their representatives at a place accessible to them and at a reasonable time.

Historical Note

Sec. filed Apr. 21, 1972 eff. April 22, 1972.

358.18 Decision after hearing. [Additional statutory authority: Social Services Law, § 34] (a) The fair hearing decision shall be made and issued by the commissioner or by an appropriate member of his staff designated by him to consider and make such decisions and shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendations of the hearing officer shall constitute the exclusive record. It shall be issued as promptly as feasible and within 90 days from the date the request for a fair hearing is received by the department. However, such time may be extended when the appellant requests a delay in his hearing. The decision shall describe the issues, recite the relevant facts, the pertinent provisions of law, department regulation, and State-approved local policy provisions, make appropriate findings, determine the issues, state reasons for the determinations, and when appropriate, direct specific action by the social services official. The decision shall be binding upon the social services official.

(b) A copy of the decision shall be sent to each of the parties and their representatives, if any.

(c) In the letter transmitting the decision, clear reference shall be made to availability of judicial review.

Historical Note

Sec. filed Apr. 21, 1972; amds. filed: Sept. 8, 1972; June 6, 1974; Nov. 14, 1974 eff. immediately. Amended (a).

Decisions**1. Provision for decision within 60 days held mandatory**

Held that the State Social Services Department's policy of rendering decisions in fair hearing cases more than 60 days after request for a fair hearing due to case backlog is invalid. Federal regulations (45 CFR 205.10 [a] [11]) require a decision within 60 days. The State is therefore enjoined from further violation and directed to revise or amend its regulations (18 NYCRR 358.18 [a]) in conformity with Federal requirements. *Matter of Cisco v. Lavine*, 72 Misc 2d 1087 (1973), modfg. 72 Misc 2d 1009 (1973).

2. Effect of stipulation settling review proceeding

Held that a county social services department could not avoid a stipulation settling an Article 78 proceeding to review suspension of petitioner's assistance grant on a claim that at the time of entering into same it was unaware that an internal hearing had been held prior to such suspension. *Matter of Slochowsky v. Nassau County Dept. of Social Serv.*, 70 Misc 2d 669 (1972).

358.19 Decision without hearing. (a) The appellant shall have the option to request that his appeal from a social services official's determination, action or failure to act be decided by the commissioner without a hearing. Such request will be granted only when it is determined by the commissioner, or by an appropriate member of his or her staff designated to consider and make such decisions, that no unresolved material issue of fact is involved in the case, and that the only question or questions presented are questions of law. A request for a decision without a hearing must be accompanied by sufficient information to enable the commissioner or the commissioner's designee to ascertain whether any unresolved material issue of fact exists, and should contain a full and clear statement of the issues and the appellant's position on these issues.

(b) Upon receipt of a request for a decision without a hearing which presents, on its face, no factual dispute, a copy of the request and any supporting documents will be sent by the commissioner to the local social services district (or districts) involved. The district shall forward to the commissioner, the appellant, and the appellant's representative, its response containing sufficient information to ensure resolution of the dispute, within 10 working days of its receipt of the documents from the commissioner.

(c) The appellant and/or the appellant's representative shall be allowed to submit comments or rebuttal, relating to the documents submitted by the local social services district, within 10 days of receipt of such documents.

(d) The commissioner shall make any further inquiries of the appellant (and/or the appellant's representative) and the social services district which are necessary to resolve the issues involved.

(e) If at any point after a request for a decision without a hearing has been made, it appears that there is a material and unresolved issue of fact relating to the issue or issues upon which the hearing has been requested, the commissioner shall inform the parties that a full hearing in accordance with the provisions of this Part must be scheduled to resolve the dispute, and the appellant shall then have the option of proceeding with such hearing or withdrawing the request for review.

(f) Notwithstanding the foregoing, if at any time after a decision without a hearing has been requested, the commissioner determines that the social services district's action or failure to act is contrary to law, department regulation or the social services district's own State-approved policy, the commissioner may issue a decision or other appropriate directive requiring the social services district to perform specific actions for the benefit of the appellant. If the action or failure to act is based upon any local policy which is found to be contrary to law, as noted above, the directive may contain instructions as to the application of such policy to any affected class of persons.

Historical Note

Sec. filed April 21, 1972; repealed, new filed
March 8, 1979 eff. March 8, 1979.

358.20 Correction of error. When a fair hearing decision has ordered the correction of a discontinuance, the correction of a denial of an application for assistance, or the correction of the amount of assistance, a grant shall be made to cover the full amount to which the applicant or recipient was entitled in accordance with the decision for the entire period from the date the incorrect action was taken.

Historical Note

Sec. filed, April 21, 1972 eff. April 22, 1972.

358.21 Direction relative to similar cases. When a fair hearing decision indicates that the social services official has misapplied provisions of law, board rule, department regulation, or such official's own State-approved policy, the commissioner's letter transmitting such decision to such official may contain a direction to such official to review other cases with similar facts for conformity with the principles and findings in the decision.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.22 Compliance with decision. When a decision of the commissioner (whether made after or without a hearing) directs a social services official to perform specific actions, such official shall comply promptly with such direction and the department shall ascertain compliance with such direction by inquiry addressed to the applicant or recipient for whose benefit such direction was given, and by such other means as the department may deem necessary and appropriate under the circumstances of the case.

Historical Note

Sec. filed April 21, 1972; repealed, new filed
Dec. 4, 1972 eff. Dec. 4, 1972.

358.23 Compliance with direction relative to similar cases. When a direction has been given to a social services official to correct misapplication of law, board rule, department regulation or such official's own State-approved policy in all cases similar to the one in which a decision has been issued, such official shall report the actions he has taken to comply with such direction to the department within 30 days after receipt of the direction. The social services official shall make such additional reports as the department may require.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.24 Promulgation of decisions. Copies of all fair hearing decisions, complete or in summary form, shall be furnished all social services officials who shall cause them to be accessible to the public, subject to the requirements for safeguarding the confidentiality of public assistance information.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.25 Need for revision of board rule and department regulation indicated by appeals and fair hearings. When, as a result of appeals and fair hearings, there are indications that provisions of board rule or department regulation or both may be inadequate, review of such provisions shall be promptly initiated by the department.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.26 Required local procedures for conference. (a) Each local social services agency shall encourage the use of conferences to settle disputes with and complaints from applicants and recipients. Conferences are excellent mechanisms to resolve disputes and explain rights and procedures to applicants and recipients. The proper utilization of conferences should result in avoiding unnecessary administrative hearings and thus avoiding the unnecessary expenditure of State and local funds.

(b) When an applicant or recipient makes any oral or written request of an agency employee which indicates their desire to have any aspect of their case reviewed, and the matter cannot be resolved at that level, the applicant or recipient shall be informed of the right to an agency conference.

(c) If the applicant or recipient indicates that he wants an agency conference pursuant to subdivision (b) of this section or if a conference is requested pursuant to section 358.8 of this Part, such conference will be arranged.

(d) An agency employee with the authority to reverse the local determination, action, or failure to act complained of shall conduct the conference. The conference shall be held at such a time and in a manner as to afford a meaningful opportunity to resolve the dispute.

(e) The conference shall not be conducted in such a way as to inhibit the exercise of any rights to a fair hearing granted under this Part.

Historical Note

Sec. filed April 21, 1972; repealed, new filed
Aug. 24, 1982 eff. Aug. 24, 1982.

358.27 Application of regulations to cases for which department is responsible. This Part shall apply to cases for which the department is responsible for furnishing public assistance and care pursuant to the provisions of section 138-a and subdivision 2 of section 365 of the Social Services Law. In such cases, the reports required to be made to the department by sections 358.22 and 358.23 of this Part shall be made to the commissioner or any deputy commissioner designated by him.

Historical Note

Sec. filed April 21, 1972 eff. April 22, 1972.

358.28 Expedited hearings. A hearing requested to review a denial of an application for emergency assistance to families or emergency assistance for adults shall be provided upon an expedited basis in accordance with procedures established by the department.

Historical Note

Sec. filed Aug. 8, 1975 eff. Aug. 8, 1975.