

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Family Development Hearings

Proposed Readoption with Amendments: N.J.A.C. 1:10

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-200.

Submit comments by January 16, 2015, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, the special rules for matters transmitted to the Office of Administrative Law (OAL) by the Division of Family Development (DFD) will expire on November 20, 2014. In accordance with N.J.S.A. 52:14B-5.1.c(2), submission of this proposal to the OAL extends that expiration date 180 days to May 19, 2015. The OAL in consultation with the DFD has reviewed these rules and has found them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The last amendments to the rules were effective in 2007. Therefore, the OAL proposes to readopt these rules. There are proposed amendments to the rules which are discussed below.

The proposed amendments address the difference in the rules and current practice between the OAL and DFD; subsequent updates to regulations; and the names of programs and a division. When the DFD transmits cases that require an emergency fair hearing, the practice is for DFD, not the OAL, to prepare the transmittal form. It is more efficient for DFD to prepare the form since the information required is first obtained by DFD. DFD then transmits the completed form to the OAL. The proposed amendments delete the reference to the DEA (Division of Economic Assistance), the former name of the division, and replace it with DFD. Additionally, the proposed amendments replace references in the chapter to the now-defunct Federal assistance program of Aid to Families with Dependent Children (AFDC) with references to the current

Federal assistance program, Temporary Assistance to Needy Families or TANF. The proposed amendments will also delete references to Code of Federal Regulations provisions that no longer exist and correct a reference to N.J.A.C. 10:87-11.4(l) to N.J.A.C. 10:87-11.5(a)4i.

The summary of the subchapters proposed for readoption with amendments follows:

Subchapter 1 sets forth the applicability of these rules.

Subchapter 5 sets forth that applicants or recipients may or may not be represented by an attorney, relative, friend, or spokesperson at the hearing. The proposed amendment corrects a citation and deletes a reference to a Code of Federal Regulations provision that no longer exists.

Subchapter 9 sets forth the process of adjournments in the various types of Family Development hearings. The subchapter states time requirements for the notice and scheduling of hearings. The proposed amendment to N.J.A.C. 1:10-9.2 replaces the reference to the now-defunct Federal AFDC program to TANF.

Subchapter 10 sets forth that the county welfare agency (CWA) or municipal welfare department (MWD) will provide the applicant or recipient with discovery consisting of the entire case file and all relevant documents. Other discovery shall be by motion to the administrative law judge. Cases will not be adjourned to permit discovery. The proposed amendment deletes a reference to a Federal regulation that no longer exists. Other appropriate references to the Code of Federal Regulations still remain in the subchapter.

Subchapter 12 outlines the process by which emergency fair hearings are transmitted and heard at the OAL. The subchapter provides that the case shall be scheduled at the OAL within three days of the hearing request and that the administrative law judge shall issue a decision no later than the day after the hearing. The subchapter states that exceptions must be filed the day after the initial decision and provides for the subsequent three-day timeline for DFD to issue its final decision. The OAL proposes to delete the reference to the DEA (Division of Economic Assistance) and replace it with the current abbreviation of the agency – DFD. The OAL proposes to delete the existing language at N.J.A.C. 1:10-12.2(a)1 that states that the Clerk of the OAL will prepare the transmittal form since the current practice is, and has been for quite some time, for DFD to prepare the transmittal form and provide it to the OAL. The OAL proposes to add new language that states that DFD shall prepare the transmittal form.

Subchapter 14 provides who will be in attendance at the hearing. The subchapter also states that at an intentional program violation hearing, the charged applicant or recipient has the right to remain silent. For good cause, the administrative law judge may order an independent medical assessment at the expense of the CWA or MWD. In N.J.A.C. 1:10-14.1, the proposed amendment corrects the reference to N.J.A.C. 10:87-11.4(l) to N.J.A.C. 10:87-11.5(a)4i.

Subchapter 18 outlines the deadlines for initial decisions corresponding to each type of Family Development case. The subchapter describes the process of filing exception and notes that initial decisions

must be in writing. Extensions of time for issuing initial or final decisions or for filing exceptions will not be granted.

Subchapter 19 sets forth the settlement process and the information needed in a Stipulation of Settlement and Withdrawal when it is executed by the parties.

As the Office of Administrative Law has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules govern the fair and efficient hearing process for resolution of issues arising at the Division of Family Development. Updating language to reflect the current practice between DFD and the OAL in emergency hearing requests and updating other language to correspond with the correct Federal and State regulations better informs the public and the legal community about the conduct of these cases at the OAL. The proposed amendments will accurately reflect the current practices of Family Development cases transmitted to the OAL.

Economic Impact

The rules proposed for readoption with amendments are not anticipated to have any substantial economic impact. As the rules establish procedures for contested case matters, these economic effects are administrative in nature (preparation of documents, etc.) or related to possible employment of legal counsel. Changing certain aspects to comply with actual practice and correcting references to applicable regulations will have no adverse economic impact.

Federal Standards Statement

The rules proposed for readoption with amendments implement the Administrative Procedure Act. N.J.S.A. 52:14B-1 and 52:14F-1 et seq. They also implement Federal regulations at 7 CFR § 273.16, 7 CFR § 273.15, and 45 CFR § 205.10 regarding fair hearings and Federal assistance programs. The requirements of these rules are the same as those imposed by Federal law.

Jobs Impact

The rules proposed for readoption and the proposed amendments will not generate or cause the loss of any jobs.

Agriculture Industry Impact

The rule proposed for readoption and the proposed amendments will not impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption and the proposed amendments impose no reporting or recordkeeping requirements. There are no greater or lesser compliance requirements provided for small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these rules only apply to cases involving individual recipients or applicants for programs administered by the Division of Family Development.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on housing affordability, as the rules concern contested case hearings arising out of programs administered by the Division of Family Development.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the rules concern contested case hearings arising before the Division of Family Development.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:10.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

1:10-5.1 Representation at hearing

[(a)] An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative,

friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4; 7 C.F.R. 273.15[(c)4](f); 45 C.F.R. 205.10(a)(3)(iii); [7 C.F.R. 273.15(d)(3)(ii)(D);] and 7 C.F.R. 273.15(p)(2).

1:10-9.2 Notice of hearing

(a) In cases involving [AFDC] **Temporary Aid to Needy Families (TANF)** or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. (No change.)

(b) (No change.)

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c).)

(b) (No change.)

1:10-12.2 Emergency fair hearings in [AFDC] **TANF** or General Assistance cases

(a) When DFD determines that a request for hearing should be scheduled as an emergency fair hearing:

1. [DEA] **DFD** shall notify the Office of Administrative Law of the hearing request on the same day as the request is received. [The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the information provided by DFD.]

2. (No change.)

3. Notice of the time, date, and place of the hearing shall be transmitted to DFD within one day after the Office of Administrative Law is notified of the hearing request. DFD shall **prepare the OAL transmittal form** and notify the CWA or MWD, the petitioning applicant/recipient, or the petitioner's representative of the scheduled hearing on the day that it receives notification of the hearing time and place.

4.-6. (No change.)

1:10-14.1 Attendance at hearing

(a)-(c) (No change.)

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-[11.4(l)]**11.5(a)4i**.

1:10-14.2 Intentional program violation hearings

At an intentional program violation hearing, the charged applicant/recipient has a right to remain silent and may refuse to answer questions. 7 C.F.R. 273.16(e)(2)(iii); 45 C.F.R. 235.113(b)(3)(ii)(K).

1:10-14.3 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment or professional evaluation when the hearing involves medical issues. Such medical assessment shall be obtained at CWA or MWD expense. 7 C.F.R. 273.15(m)(2)(v); 7 C.F.R. 273.16(e)(2)(ii); 45 C.F.R. 205.10(a)(1)(iii)(10); 45 C.F.R. 235.113(b)(6).

1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving [AFDC] **TANF** benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b)-(d) (No change.)