

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 APPEALS AND HEARINGS DIVISION

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments of rules, repeals of rules and new rules pursuant to Tennessee Code Annotated Sections 4-5-202; 71-1-105(12) and 71-1-111. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 2nd Floor Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248, at 1:30PM CST on the 19th day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Anneita Dunbar, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)-(800)270-1349.

For a copy of this Notice of Rulemaking hearing, contact: Phyllis Simpson, Assistant General Counsel,, Department of Human Services, Citizens Bank Building, 400 Deaderick Street, 15th Floor, Nashville, Tennessee, 37248-0006, telephone number (615) 313-4731.

SUBSTANCE OF PROPOSED RULES OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1240-5-1 INTRODUCTION

AMENDMENTS

The Division designation for the Administrative Procedures Division of the Department of Human Services in Chapter 1240-5 is amended to change the name of the Division from the Administrative Procedures Division to the Appeals and Hearings Division.

Authority: *T.C.A. §§ 4-5-101, 4-5-202, 71-1-105(12) and 71-1-111.*

Rule 1240-5-1-.01, Grievances, is amended by deleting the rule in the entirety, and by renaming subchapter .01, "Appeals" and by amending the Table of Contents accordingly, so that, as amended, the rule shall read as follows:

1240-5-1-.01 APPEALS.

(1) General Rule.

(a) When an appellant is dissatisfied with any adverse administrative action taken by the Department of Human Services, including failure to act upon a request or application within required time frames, which is within the discretion and control of the Department of Human Services, unless otherwise directed or limited by law or regulation, or unless

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waived, he/she has the right to timely appeal for a fair hearing conducted by an impartial Department official or by a hearing official with the Department of State, at the designation of the Commissioner of Human Services. (Proceedings involving Families First and Food Stamp Intentional Program Violations are set forth under Department of Human Services State Rules at Chapters 1240-5-14 and 1240-5-15.)

(b) Vocational Rehabilitation Services Appeals.

1. Appeals of decisions of the Division of Rehabilitation Services affecting Vocational Rehabilitation Services appellants and the designation of a hearing official are specifically governed by State Rule 1240-5-1-.05.
2. The conduct of appeals for the Vocational Rehabilitation Program under this Chapter and under the Administrative Procedures Act shall be subject to the procedural provisions contained in Rule 1240-5-1-.05 because of specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of Chapter 1240-5-1-.05, and any conflicting provisions of this Chapter and the Administrative Procedures Act shall be resolved by reference to Chapter 1240-5-1-.05.

(c) Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

1. Appeals of decisions of the Department of Human Services affecting the Summer Food Service Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.
2. The conduct of appeals for the Summer Food Service Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

(d) Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.

1. Appeals of decisions of the Department of Human Services affecting the Child and Adult Care Food Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.
2. The conduct of appeals for the Child and Adult Care Food Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.

(e) Child Care Agency Licensing Appeals.

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1. Child care agency appeals of adverse administrative actions by the Department pursuant to T.C.A. § 71-3-509 involving denials, revocations or restrictions of a child care agency's license and civil penalties or safety plans involving child care agencies are heard only by the Child Care Agency Board of Review pursuant to T.C.A. §§ 71-3-509—510 and Chapters 1240-4-5 and 1240-5-13.
- (2) When any party to an adverse administrative action for child support or related administrative enforcement of child support is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002, or which is otherwise required to have due process procedures for administrative actions affecting the party, he/she has the right to timely appeal for a fair hearing by an impartial Department official.
- (3) Administrative actions taken by the Department of Human Services pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: T.C.A. §§ 4-5-101, 4-5-202, 4-5-301, 36-5-1001, 36-5-1002, 71-1-105(12) and 71-1-111.

Rule 1240-5-1-.03, Legal Base, is amended by deleting paragraphs (1), (3) and (4) in their entireties, and by substituting instead the following new language, so that, as amended, paragraphs (1), (3) and (4) shall read as follows:

- (1) Basis for hearings.
 - (a) Fair hearings providing due process for the resolution of appeals of decisions of the Tennessee Department of Human Services affecting persons receiving services or assistance or child support services from the Department are required by Federal and/or State law, regulations and *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 2011 (1970) for:
 1. The Food Stamp program at 7 U.S.C. §§ 2020 and 2025 and at 7 C.F.R. § 273.15;
 2. Temporary Assistance to Needy Families (TANF/Families First) pursuant to Title IV-A of the Social Security Act [42 U.S.C. §§ 601 et seq.] and 45 C.F.R. § 205.10;
 3. Medicaid/TennCare services under Titles XVI and XIX of the Social Security Act, pursuant to 42 U.S.C. § 1396 and 42 C.F.R. §§ 431.200 et seq.;
 4. Social Services in Title XX of the Social Security Act, pursuant to 42 U.S.C. § 1397 and 42 U.S.C. § 9901 and Federal regulations applicable to individual programs;
 5. Services for the blind pursuant to the Randolph-Sheppard Act pursuant to 20 U.S.C. § 107b(6) and 34 C.F.R. §§ 395 et seq.;
 6. Vocational rehabilitation services pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 et seq., 720 et seq., and 722 et seq. and 34 C.F.R. §§ 361 et seq.;
 7. Child support services pursuant to Title IV-D of the Social Security Act at 42 U.S.C. § 651 et seq. and in Tennessee Code Annotated Title 36, Chapter 5, Part 10;

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8. Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13;
9. Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6;
10. Low Income Home Energy Assistance Program and Weatherization Assistance Program pursuant to 42 U.S.C. § 8624 and 42 U.S.C. § 6851 and Tennessee Department of Human Services Rules 1240-7-1 and 1240-7-2;
11. Child care agency report card assessments pursuant to Chapter 1240-4-7;
12. Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;
13. Criminal history exclusions for persons having access to children in child care agencies or having access to adults in adult day care centers pursuant to T.C.A. §§ 71-2-403(a) and 71-3-509(e) and (f);
14. Adult day care licensing actions pursuant to T.C.A. § 71-2-401 et seq.; and
15. Any other programs to which due process requirements may apply.

(b) Authority for Contested Case Hearings.

1. The Commissioner of Human Services has authority to conduct or cause to be conducted hearings for fact determinations that the Department is authorized or required to make. The commissioner, and any officer or employee of the Department upon written authorization from the commissioner, has the power to administer oaths and affirmations, take depositions, issue subpoenas, and require the production of any books and records that may be necessary. Hearings involving the programs providing services and assistance from the Department of Human Services shall be conducted pursuant to the contested case provisions of the Administrative Procedures Act, Tennessee Code Annotated, Sections 4-5-301 et seq., except as otherwise required by law or regulation.
 2. The Department of Finance and Administration has placed responsibility for conducting contested case proceedings for Title XIX cases involving the determination of eligibility for the TennCare/Medicaid program in the Commissioner of the Department of Human Services.
 3. The Commissioner of Human Services is specifically authorized to designate a hearing official in the Department of Human Services pursuant to T.C.A. § 71-1-111 or a hearing official of the Department of State Administrative Procedures Division, to conduct contested case proceedings .
- (3) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-101 et seq., and T.C.A. §§ 4-5-201 et seq. provides for the use of uniform procedures for agency rulemaking.
- (4) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-301 et seq., requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.

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Authority: T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301, 36-5-701 et seq., 36-5-1001—1003, 71-1-105(12), 71-1-111 and 71-3-151 et seq.; 7 U.S.C. §§ 2014, 2015, 2020(e)(10) and 2025; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 651 et seq.; 42 U.S.C. § 1396; 42 U.S.C. § 1397; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624(b)(13); 42 U.S.C. § 9901; 34 C.F.R. §§ 361 et seq.; and 34 C.F.R. §§ 395 et seq. and 10 C.F.R. § 440.1.

Rule 1240-5-1-.04, Scope, is amended by deleting paragraph (1) in its entirety, and by substituting instead the following new language so that, as amended, paragraph (1) shall read as follows:

- (1) Subject to any superseding Federal or State law, and specifically subject to the superseding provisions of 1240-5-1-.01(1)(b), (d) and (e), these rules shall govern contested case proceedings before the Department of Human Services and will be relied upon by hearing officials in all contested cases utilizing hearing officials.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-1-105(12) and 71-1-111; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 1761 and 1766; 34 C.F.R. §§ 361 et seq.; and 7 C.F.R. §§ 225.13 and 226.6.

CHAPTER 1240-5-2 DEFINITIONS

AMENDMENTS

Rule 1240-5-2-.01, Definitions, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-2-.01 DEFINITIONS.

- (1) The following words and terms as used in the rules for the Appeals and Hearings Division shall have the meaning described below:
 - (a) **Administrative Law Judge.** An Administrative Law Judge is an impartial hearing official of the Department of Human Services' Appeals and Hearings Division or the Administrative Procedures Division of the Office of the Secretary of State who is licensed to practice law and is designated by the Commissioner to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The Administrative Law Judge shall have no direct involvement in the action under consideration prior to filing of the appeal.
 - (b) **Administrative Procedures Division, Secretary of State's Office.** The Administrative Procedures Division of the Office of the Secretary of State, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243; Telephone (615) 741-7008 which provides Administrative Law Judges to adjudicate contested case hearings involving State agencies.
 - (c) **Adverse Administrative Action.** Determinations, procedures or omissions of the Department of Human Services affecting an appellant or person who is a party in a child support case being enforced by the Department of Human Services concerning:
 1. The denial of an application for assistance or services;
 2. Cost sharing disputes for assistance or services;

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3. The limitation, reduction, suspension or termination of eligibility for assistance or services;
 4. Failure to act upon a request or application within required time frames; disputes regarding disenrollment from TennCare Standard or TennCare Medicaid; or
 5. The provision of child support services.
- (d) Agency. The Tennessee Department of Human Services.
- (e) Appeal. The process by which an appellant requests review of an adverse administrative action in accordance with procedures established in these rules.
- (f) Appeals and Hearings Division, Department of Human Services. The Appeals and Hearings Division, Department of Human Services, P. O. Box 198996, 400 Deaderick Street, 9th Floor Citizen's Plaza Building, Nashville Tennessee 37219-8996; Telephone (615) 313-5800 and 1-866-768-1046 toll free number is responsible for processing appeals involving the assistance or service programs of the Department, or any other programs that have been assigned or delegated to the Department by law, regulation, or contract.
- (g) Appellant. An appellant is an individual who is dissatisfied with an adverse administrative action of the Department in regard to the furnishing or denial of assistance or services or eligibility actions by the TennCare Bureau or the provision of child support services, and who, as a result, is requesting a fair hearing before the Appeals and Hearings Division.
- (h) Applicant for Assistance. An applicant for assistance shall be the person who submits an application for assistance from an Assistance Program of the Department of Human Services or the TennCare Bureau or the person in whose behalf an application is submitted if the person submitting the application is applying for assistance for someone else.
- (i) Applicant for Services. An applicant for services shall be the person on whose behalf a service is sought from a Service Program or the Child Support Program of the Department of Human Services, even though some other person may request the service and/or may incidentally benefit from the service.
- (j) Assistance Programs. The assistance programs currently encompass Families First, Food Stamp, Mandatory Minimum State Supplement, Medicaid or TennCare under Title XIX of the Social Security Act (42 U.S.C. §§ 1396, et seq.) and any programs in the Adult and Community Services Division that determine eligibility for direct cash or third party vendor payments to applicants or recipients. Additional programs may be added at a later time or programs may be terminated due to legal, policy or financial considerations.
- (k) Burden of Proof.
1. The "burden of proof" refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party.
 2. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

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3. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue.
 4. Generally, the party with the burden of proof presents his or her proof first at the hearing.
 5. The hearing official makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy determination of the matter at hand.
- (l) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare and Medicaid, the programs administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (m) Commissioner. The Commissioner of the Tennessee Department of Human Services.
- (n) Commissioner's Designee.
1. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for a stay or reconsideration of final orders. A Commissioner's designee may also be a hearing officer who is an impartial official of the Department of Human Services or the Department of State Administrative Procedures Division who is designated by the Commissioner to conduct contested case administrative hearing proceedings.
 2. The person so designated shall have no direct involvement in the adverse administrative action under consideration prior to the filing of the appeal.
- (o) Contested Case. Contested case means an administrative hearing proceeding, including a declaratory proceeding conducted pursuant to T.C.A. § 4-5-223, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by the Department after an opportunity for hearing. The Department may commence a contested case at any time with respect to a matter within its jurisdiction.
- (p) Department. The Tennessee Department of Human Services.
- (q) Enrollee. Enrollee shall mean an individual eligible for and enrolled in the TennCare Standard Program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act.
- (r) Fair Hearing.
1. A fair hearing is a contested case proceeding before an impartial hearing official designated by the Commissioner of the Department of Human Services (except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9) or other State or Federal law or regulation) in which an appellant or his/her representative may present his/her case, with or without

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witnesses, to determine whether action or inaction by the county, area, regional, district, child support office or state office is erroneous and should be corrected.

2. A fair hearing may combine appeals of an appellant involving any programs for which the Department and the Appeals and Hearings Division may have responsibility. If necessary for the proper resolution of an appeal involving multiple programs, separate fair hearings for an appellant involving multiple program actions for a single appellant or household may be held in the discretion of the Commissioner, the Assistant Commissioner for Appeals and Hearings or their designees, or, on motion of the parties or in his/her discretion, the hearing official.
- (s) Filing. Unless otherwise provided by law or by these rules, "filing" means actual receipt by the entity designated to receive the required materials.
- (t) Final Order.
1. The final decision of the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, concerning contested case administrative hearing proceedings.
 2. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317, or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable.
 3. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the petition for reconsideration or the date the Petition for Reconsideration was deemed denied.
 4. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included in the Final Order.
- (u) Findings of Fact. The factual findings following the administrative hearing, enumerated in the Initial and/or Final Order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (v) Hearing Officer. A Hearing Officer is an impartial official of the Department of Human Services or the Department of State who, may be, but is not required to be licensed to practice law, and is designated by the Commissioner or his/her designated representative to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The staff member designated as Hearing Officer shall have no direct involvement in the action under consideration prior to filing of the appeal.
- (w) Hearing Official. An Administrative Law Judge or Hearing Officer.
- (x) Initial Order.
1. The decision of the hearing official following a contested case administrative hearing proceeding.

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2. The Initial Order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed.
 3. It shall include a statement of any circumstances under which the Initial Order may, without further notice, become a Final Order.
 4. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317 is not filed within 15 days after the entry of the Initial Order, with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed.
 5. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the petition for reconsideration or the date the Petition for Reconsideration was deemed denied.
 6. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included with the Initial Order.
 7. If an Initial Order is timely appealed, the Commissioner's designated representative shall process the appeal pursuant to Chapter 1240-5-9 of these rules.
- (y) License. A license includes the whole or part of any permit, certificate, approval, registration, charter or similar form of permission required by law to engage in a business trade or profession.
- (z) Licensing. Licensing includes the processes of the Department respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license.
- (aa) Local Office.
1. A local office is the Departmental office from which the case that is being heard by the Appeals and Hearings Division originated based upon its determination of eligibility for assistance or services. It refers primarily to the county office, except Services for the Blind or Vocational Rehabilitation Services, which would be the area office.
 2. In the case of Title IV-D child support appeals, the local office refers to the local Title IV-D child support office in each judicial district operated by the Department or its contractors.
- (bb) Notice of Hearing. The document containing a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. § 4-5-307 (b).

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- (cc) Party. A party means each person, entity or agency named or admitted as a participant, or properly seeking and entitled as of right to be admitted as a participant, in a contested case administrative hearing..
- (dd) Person. A person means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character, including another agency.
- (ee) Petition for Appeal. A pleading filed pursuant to T.C.A. § 4-5-315 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order stating the specific grounds upon which relief from the Initial Order is requested. If an Initial Order is subject to both a timely filed Petition for Appeal and Petition for Reconsideration, as provided in T.C.A. § 4-5-315(b), the Petition for Reconsideration is disposed of first and a new time period to file a Petition for Appeal commences as provided in State Rule 1240-5-9-.01(5).
- (ff) Petition for Judicial Review. A pleading filed with the Chancery Court appealing the contested case administrative hearing decision as provided in T.C.A. § 4-5-322 and State Rule 1240-5-10-.02.
- (gg) Petition for Reconsideration. A pleading filed pursuant to T.C.A. § 4-5-317 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order or Final Order stating the specific grounds upon which relief from the Initial Order or Final Order is requested from the hearing official who entered the Order.
- (hh) Petition for Stay of Effectiveness of Initial or Final Order. A document seeking to have the agency suspend the effectiveness of an Initial or Final Order pending further appeal. A party may submit under T.C.A. § 4-5-316 to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (ii) Petitioner. The petitioner in a contested case proceeding is the party who has initiated the proceedings.
- (jj) Pleadings. Pleadings are written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form – as, for example, a “Notice of Hearing and Charges”, “Petition for Hearing” or “Answer”. Where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (kk) Recipient of Assistance. The recipient of assistance shall be the person or household actually receiving assistance from an Assistance Program of the Department of Human Services.
- (ll) Recipient of Services. The recipient of services is the person for whose benefit services are provided by a service program of the Department of Human Services. The recipient

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of services for children shall be the child for whose benefit the service is being provided. The recipient of adult protective services shall be the elderly or disabled adult for whose benefit the service is provided. The recipient of rehabilitation services or services to the blind shall be the disabled individual to whom such services are directed.

- (mm) Respondent. The Respondent in a contested case proceeding is the party who is responding to the action brought by the “petitioner”.
- (nn) Rule. A rule means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements for any agency. The term includes the amendment or repeal of a prior rule, but does not include:
 - 1. Statements concerning only the internal management of an agency and not affecting private rights, privileges or procedures available to the public; or
 - 2. Declaratory rulings issued pursuant to T.C.A. § 4-5-223; or
 - 3. Intra-agency memoranda; or
 - 4. General policy statements which are substantially repetitious of existing law.
- (oo) Services Programs. The service programs are those in the Division of Adult and Community Services, the Rehabilitation Services Divisions and Services for the Blind or Child Support Division that provide social, protective services, rehabilitation services or child support services to individuals.
- (pp) TennCare Standard. TennCare Standard is that part of the TennCare Program which provides health coverage for certain Tennessee residents who meet certain eligibility requirements but who are not eligible for Medicaid under Tennessee’s Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance and Administration Bureau of TennCare at Chapter 1200-13-14.
- (qq) Tennessee Rules of Civil Procedure (TRCP). The rules governing civil actions in courts of record in Tennessee or where applicable as otherwise required by statute.
- (rr) Uniform Administrative Procedures Act (UAPA or APA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.
- (ss) Valid Factual Dispute. A dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal.

Authority: T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301 et seq., 36-5-1001 and 1002, 71-1-105(12), 71-1-111, 71-1-132 and 71-3-151 et seq.; 7 U.S.C. §§ 2014 and 2015; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 651 et seq.; 42 U.S.C. § 1396; 42 C.F.R. §§ 431.210(d)(2) and 431.220(b); 34 C.F.R. §§ 395 et seq. and 34 C.F.R. §§ 361 et seq.; 7 C.F.R. § 273.15(k)(1); and 45 C.F.R. § 205.10(a)(4)(iii) and (5).

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CHAPTER 1240-5-3 FAIR HEARING REQUESTS

AMENDMENTS

Rule 1240-5-3-.01, Right To Appeal, is amended by deleting the rule in the entirety and by substituting instead the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.01 RIGHT TO APPEAL.

- (1) Commencement of Action. A contested case proceeding may be commenced by original agency action, by appeal from an agency action, by request for hearing by an affected person, or by any other lawful procedure.
- (2) An appellant or his/her authorized representative on his/her behalf, has a right to appeal any adverse administrative action taken by the Department in regard to the assistance or services for which he/she has applied, is receiving, or which has/have been terminated or any other adverse administrative action otherwise affecting a person's status under a program administered by the Department of Human Services. Grievances shall be addressed to the Department's interpretations of the law and the validity and applicability of the policies promulgated under the law as they apply to the appellant's individual factual situation; provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.
- (3) When any party to an administrative action for child support or related administrative enforcement is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, and that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002 or which may otherwise be required by law, he/she has the right to timely appeal for a fair hearing by an impartial Department official.
- (4) Methods of Filing an Appeal.
 1. Except as provided in part 2 below, the appellant or his/her representative may request a hearing by any clear expression, oral or written.
 2. Exceptions requiring appeals to be submitted in writing:
 - (i) Appeals of the denial, revocation, restriction or probation involving an adult day care center license or the placement of an adult day care center on probation pursuant to T.C.A. §§ 71-2-401 et seq.;
 - (ii) Child support-related appeals as required by Title 36, Chapter 5 of the Tennessee Code Annotated;
 - (iii) Child care agency appeals of license denials, restrictions, revocations, civil penalties and safety plans pursuant to T.C.A. § 71-3-509 which shall be made in writing to the Director of Child Care Licensing and are heard only by the Child Care Agency Board of Review;
 - (iv) Child care agency appeals of report card assessments pursuant to Chapter 1240-4-7;
 - (v) Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;

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- (vi) Summer Food Service Program and Child and Adult Care Food Program appeals as provided in State Rule 1240-5-8-.01(8) and (9); and
 - (vii) Tennessee Blind Enterprises appeals as provided in State Rule 1240-5-3-.03(j)2.
- (5) The Appeals and Hearings Division may process an informal resolution of an appeal as provided in State Rule 1240-5-3-.04(4) and (5).
- (6) Food Stamp Cases.
- (a) The Department of Human Services shall offer agency conferences to Food Stamp households that wish to contest a denial of expedited service. The conference shall be scheduled within two (2) working days, unless the household requests that it be scheduled later. The agency conferences shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative.
 - (b) An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing, unless the withdrawal is made as provided in 1240-5-3-.04(4).

Authority: *T.C.A. §§ 4-5-102, 4-5-202, 36-5-1001, 36-5-1002, 71-1-105(12), 71-1-111 and 71-1-132; 71-3-502; 71-3-509; Chapter 1240-4-7; 7 C.F.R. § 273.15; 45 C.F.R. § 205.10; and 42 C.F.R. §§ 431.220 and 431.221.*

Rule 1240-5-3-.02 Information Regarding Right To Appeal, is amended by deleting the rule in the entirety and by substituting the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.02 INFORMATION REGARDING RIGHT TO APPEAL.

- (1) Every applicant for or recipient of services shall be informed at the time of application and at the time of any action affecting his/her claim to assistance or services:
 - (a) Of his/her right to a fair hearing;
 - (b) Of the method by which he/she may obtain a hearing;
 - (c) Of his/her right to be represented by an authorized representative, such as legal counsel, relative, or friend. Information and referral services shall be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing.
- (2) Advance written notification.
 - (a) Notice of intended action to discontinue, terminate, suspend, or reduce assistance or services shall be given in writing to recipients in the Families First Program (including Refugee Cash Assistance), Food Stamp Program and the Medicaid Program under Title XIX of the Social Security Act (42 U.S.C. §§1396 et seq.), including TennCare Standard, cases at least ten (10) days in advance before the date of intended action.
 - (b) Advance written notification of intended action in Vocational Rehabilitation Services cases is governed by State Rule 1240-5-1-.05(02) - (4).

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- (c) Notice of Appeal Rights in Child Support Administrative Actions.

Unless advance notice is not permitted by federal or state law, the obligor, obligee, or other caretaker of a child in a child support case that is subject to administrative action and that is being enforced by the Department under Title IV-D of the Social Security Act shall be given at least ten (10) days advance notice. The notice shall contain information regarding the time frames for appeal and how to file an appeal as set forth by statute and Department child support regulations.

- (d) Notice of administrative actions affecting licenses of adult day care centers shall be provided pursuant to T.C.A. § 71-2-408 and Chapter 1240-7-10.
- (e) Notice of administrative actions affecting licenses of child care agencies shall be provided pursuant to T.C.A. § 71-3-509 and Chapter 1240-4-5.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 36-5-701 et seq., and 36-5-1001—1003; 29 U.S.C. § 722(a)(5) and (c)(2); 7 C.F.R. § 273.13(a)(1); 34 C.F.R. § 361.57(b)(2)(iv) and (b)(4); 42 C.F.R. § 431.211; 45 C.F.R. § 205.10(a)(4)(i)(A) and 45 C.F.R. § 400.54.

Rule 1240-5-3-.03, Time Limit For Filing An Appeal, is amended by deleting the rule in its entirety and by substituting instead the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.03 TIME LIMIT FOR FILING AN APPEAL.

- (1) Appeals or requests for a hearing will be accepted only if they are filed within the required time limit unless good cause can be shown as to why the appeal or request for a hearing could not be filed within the required time limit; provided, however, no good cause will be permitted for TennCare Standard/TennCareMedicaid eligibility reform disenrollment appeals. (State Rule 1240-5-3-.03(1)(l)3(vi)(III) governs the restriction on good cause extensions and untimely appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms).
- (a) Adult and Community Services Program Appeals.
1. Except as otherwise specified by these rules or laws or regulations specifically applicable to a program, appellants or individuals acting in their behalf involving Adult and Community Services programs, including persons dissatisfied with services provided directly by the Department, or persons who are dissatisfied with the grievance hearing decision involving assistance/services provided through Department grantees, in the:
 - (i) Emergency Shelter Grant Program;
 - (ii) Low Income Home Energy Assistance Program;
 - (iii) Weatherization Assistance Program;
 - (iv) Community Services Block Grant Programs;
 - (v) Social Services Block Grant Programs;
 - (vi) Refugee Services Program;

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(vii) Adult Day Care Services Program; or

(viii) Homemaker Program,

will be allowed thirty (30) days commencing from the date of the notice of action or notice of intended action to appeal any action of the Department, or action of the Department's grantee under the Department grantee's local level grievance process, in regard to denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness. The appellant will be allowed thirty (30) days to appeal the local level grantee grievance decision to the Department.

(b) Adult Day Care Licensing Appeals.

1. The appeal of denials, revocations, or restrictions of the license of an adult day care center licensed by the Department pursuant to T.C.A. §§ 71-2-401 et seq. shall be made by petition in writing to the commissioner within ten (10) days of the date of the mailing of notice by the Department to the applicant/licensee.
2. The appeal of the decision to continue probation for an adult day care center shall be filed in writing within five (5) business days of the receipt of the notice of the Department's decision regarding the review of the probationary status pursuant to T.C.A. § 71-2-409(2) and (3).

(c) Child and Adult Care Food Program Appeals. 7 C.F.R. § 226.6 and State Rule 1240-5-8-.01(9) govern appeals in the Child and Adult Care Food Program.

1. Applicants and participating institutions and responsible principals and responsible individuals and day care homes will be allowed fifteen (15) days from the date on which notice of action, sent by certified mail, return receipt requested, is received to appeal an action of the Department of Human Services as allowed under 7 C.F.R. § 226.6(k)(2) and 7 C.F.R. § 226.6(l)(2) and (3).
2. The receipt of the appeal requesting an administrative review pursuant to this subparagraph (c) must be acknowledged by the Department within ten (10) days of receiving the request.
3. Where inconsistencies are present between the requirements of the Tennessee Uniform Administrative Procedures Act, as amended, and the Federal regulations governing the Child and Adult Care Food Program, appeals of the Child and Adult Care Food Program will be processed in accordance with 7 C.F.R. § 226.6(k) and 226.6(l) and State Rule 1240-5-8-.01(9) and not the Uniform Administrative Procedures Act.

(d) An appeal of an agency's dispute of the result of the Intradepartmental Review of a child care agency program assessment under Chapter 1240-4-7, shall be submitted to the Commissioner in writing within (10) business days of receiving the Department's written decision regarding the Review.

(e) Criminal history exclusions for persons having access to children in child care agencies or having access to adults in adult day care centers pursuant to T.C.A. §§ 71-2-403(a) and 71-3-509(e) and (f) shall be filed within ten (10) days of the mailing date of the notice of exclusion or denial of a waiver of the exclusion.

(f) Child Support Appeals.

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Timely filed child support appeals shall be in writing and shall be filed within:

1. Twenty (20) days from the date of service of the notice in license revocation proceedings, such as professional, business, fishing, hunting licenses, etc. under T.C.A. §§ 36-5-701 et seq.; and
 2. Fifteen (15) days of the date of the notice of administrative action for all other appeals as governed under T.C.A. §§ 36-5-1001 et seq. and for all other administrative actions where otherwise not established by statute.
- (g) Families First Program appellants or individuals acting in their behalf will be allowed ninety (90) days commencing from the date of the advance written notice of intended action to appeal any action of the Department.
- (h) Food Stamp Appeals.
1. A Food Stamp household or its representative shall be allowed to request a fair hearing on any adverse action by the Department of Human Services within ninety (90) days of the date of such action as established by the date of the notice to the household of such action. In the event an appellant successfully appeals an adverse action, such appellant will only be entitled to receive retroactive benefits from the date that is twelve (12) months prior to the date upon which the beneficiary requests such retroactive benefits.

For example, a beneficiary begins receiving benefits from the Food Stamp Program on January 1, 2000. On January 1, 2003, the beneficiary determines that the amount of benefits that she has been receiving is incorrect; she actually should have been receiving a greater amount of Food Stamp benefits since she first entered the program on January 1, 2000. On January 2, 2003, the beneficiary contacts her local DHS office to request that her benefits be increased according to her calculations and that she receive retroactively the benefits that she believes she should have been entitled to since January 1, 2000. DHS sends the beneficiary a written notice on January 30, 2003, which states that DHS is denying her request for increased benefits and retroactive benefits. The beneficiary timely appeals this determination on February 15, 2003 and is informed that she won the appeal on March 31st, 2003. The beneficiary would be entitled to have her benefits increased going forward, and she would be entitled to retroactive benefits from January 2, 2002. the date of the request, to present. She would not be entitled to retroactive benefits from January 1, 2000 through January 1, 2002, because this period is more than twelve months prior to the date when the beneficiary first requested the retroactive benefits, January 2, 2003.

- (i) Refugee Assistance Program appellants or individuals acting in their behalf will be allowed ninety (90) days commencing from the date of the advance written notice of intended action to appeal any action of the Department.
- (j) Rehabilitation Services Appeals.
1. Vocational Rehabilitation Services Appeals.
 - (i) Vocational Rehabilitation Services appellants or individuals acting in their behalf, as set forth in Tennessee State Rule 1240-5-1-.05, will be allowed thirty (30) calendar days after the date of notification of the Informal Administrative

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Review finding to appeal any action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Appeals and Hearings Division.

- (ii) If the appellant or appellant's representative elects not to utilize the Informal Administrative Review, the appeal, as specified in State Rule 1240-5-1-.05(9), must be filed within thirty (30) calendar days of the date of the notice by the Division of Rehabilitation Services to the appellant of the action with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Appeals and Hearings Division.

2. Tennessee Blind Enterprises Appeals.

- (i) A manager in the Tennessee Blind Enterprises program who is dissatisfied with any action arising from the operation or administration of the vending facility program may ask for a review of the action as permitted by State Rule 1240-6-11-.01 by filing a written request within thirty (30) days of the Department's action with the Director of the Services for the Blind Division, Tennessee Department of Human Services; or the manager may file an appeal by a written request by the manager, or by a representative selected by the manager, within thirty (30) days of the agency's action from which the grievance arises or within fifteen (15) days following the manager's receipt of an administrative review decision issued by the Director of Services for the Blind Division pursuant to rule 1240-6-11-.01. Receipt is deemed to be five (5) days from the date of mailing for purposes of this subpart.
- (ii) Appeals and arbitration proceedings related to the Randolph-Sheppard Act or the Tennessee Business Enterprises Program will be accepted only if they are filed within the time limits specified in this Chapter and State Rules 1240-6-11-.02 and .03, and must be appealed as set forth in those rules; provided, however, time frames for filing petitions for appeals, reconsideration of initial orders and final orders and stays of effectiveness of those orders in contested case proceedings conducted under the Administrative Procedures Act shall be governed by this Chapter.

- (k) Summer Food Service Program Appeals. 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8) govern appeals in the Summer Food Service Program.

1. Applicants and participants will be allowed ten (10) days from the date on which the notice of action, sent by certified mail return receipt requested, is received to appeal an action of the Department of Human Services as allowed under 7 C.F.R. § 225.13(a).
2. Where inconsistencies are present between the requirements of the Tennessee Uniform Administrative Procedures Act, as amended, and the Federal regulation, appeals of the Summer Food Service Program will be processed in accordance with 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8), and not the Uniform Administrative Procedures Act.

- (l) TennCare Standard and TennCare Medicaid Appeals.

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1. Appeal Time Frames.

Requests for appeals for Medicaid Program applicants and recipients or individuals acting in their behalf under Title XIX of the Social Security Act (42 U.S.C. §§ 1396 et. seq.) and TennCare Standard applicants or enrollees must be made within forty (40) calendar days (inclusive of mail time) of the date of the notice to the applicant/enrollee regarding the intended action or prior to the date of action specified in the notice, whichever is later; provided, however, that if the TennCare Bureau enacts a different appeal time, such time frame shall supersede the time frame set forth in this part 1.

2. Requirement for Valid Factual Dispute.

(i) TennCare Medicaid and TennCare Standard appellants will be given the opportunity to have an administrative hearing before a hearing official, as determined by the Appeals and Hearings Division if the appeal presents a valid factual dispute regarding an adverse administrative action.

(ii) If the Appeals and Hearings Division makes an initial determination that an appeal does not present a valid factual dispute, then the Appeals and Hearings Division will send the appellant a letter asking him or her to submit additional clarification regarding the appeal within ten (10) days (inclusive of mail time). Unless such clarification is timely received and is determined by the Appeals and Hearings Division to establish a valid factual dispute, a fair hearing will not be granted.

(iii) The Appeals and Hearings Division's decisions with respect to determination of whether an appeal raises a valid factual dispute shall not be appealable.

3. Appeal Rights for Disenrollment Related to TennCare Standard and TennCare Medicaid Eligibility Reforms.

(i) TennCare Medicaid and TennCare Standard enrollees, who have not been determined eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in State Rules 1200-13-13-.02 and 1200-13-14-.02, will have the right to request a hearing forty (40) days (inclusive of mail time) from the date of the Termination Notice.

(ii) Such appeals will be conducted by the Appeals and Hearings Division for TennCare Medicaid and TennCare Standard applicants/enrollees in accordance with these administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs.

(iii) Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day time frame in which to request a hearing.

(iv) Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of termination specified in the Termination Notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

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- (v) The Appeals and Hearings Division is designated by the TennCare Bureau to review each request for hearing to determine if it is based on a valid factual dispute. Enrollees will be given the opportunity to have an administrative hearing before a hearing official, as determined by the Appeals and Hearings Division, regarding valid factual disputes related to termination. If the Appeals and Hearings Division makes an initial determination that the request for a hearing is not based on a valid factual dispute, the appellant will receive a notice which provides ten (10) days (inclusive of mail time) to provide additional clarification of any factual dispute on which his/her appeal is based. Unless such clarification is timely received and is determined by the Appeals and Hearings Division to establish a valid factual dispute, a fair hearing will not be granted.
 - (vi) The Appeals and Hearings Division will grant hearings under this subparagraph (I) only for those enrollees raising valid factual disputes related to the action of disenrollment. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the adverse action that is the subject of the appeal. Appeals that do not raise a valid factual dispute will not proceed to a hearing. Valid factual disputes include, but are not limited to:
 - (I) Enrollee received the Termination Notice in error (e.g., they are currently enrolled in a TennCare Medicaid or TennCare Standard category that is not ending);
 - (II) The Department failed to timely process information submitted by the enrollee during the requisite time period following the Request for Information or Verification Request;
 - (III) The Department granted a “good cause” extension of time to reply to the Request for Information Notice, but failed to extend the time (this is the only circumstance surrounding good cause which can be appealed with respect to disenrollment appeals);
 - (IV) Enrollees requested assistance because of a health, mental health, learning problem or disability, but did not receive this assistance; or
 - (V) The TennCare Bureau sent the Request for Information or Termination Notice to the wrong address as defined under state law.
 - (vii) If the enrollee does not appeal prior to the date of termination as identified in the Termination Notice, the enrollee will be terminated from TennCare.
 - (viii) If the enrollee is granted a hearing and the hearing decision sustains the State’s action, the State reserves its right to recover from the enrollee the cost of services provided during the hearing process.
4. Appeals regarding recertification of enrollees in the Core Medicaid Population, as such term is defined in State Rule 1200-13-13-.01 will be processed in accordance with State Rule 1200-13-13-.12. All other appeals regarding recertification of TennCare Medicaid and TennCare Standard eligibility shall be processed in accordance with the Rules of the Department of Human Services, in conjunction with the applicable rules of the TennCare Bureau regarding eligibility criteria.

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(2) Continuation of Assistance or Services Pending Appeal.

(a) Continuation of Eligibility for Assistance or Services in Food Stamp and Families First Program Appeals.

Assistance for a recipient in the Families First and Food Stamp programs shall continue pending the appeal, until such determination is made under 1240-5-3-.03(2)(d) below, if the appeal is received within ten (10) days from the date of the advance written notice of intended action, unless the appellant specifically requests assistance or services not be continued while the appeal is pending.

(b) Continuation of Assistance or Services in the TennCare Medicaid and TennCare Standard Programs. (State Rule 1240-5-3-.03(1)(l)3 above governs the continuation of assistance or services for appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms).

1. Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of action specified in the notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the appeal results in the State's action being sustained, the State reserves its right to recover from the enrollee the cost of services provided to the enrollee during the pendency of the appeal.

2. Benefit Level Continuation in TennCare Medicaid and TennCare Standard Programs.

(i) Enrollees disputing the applicability of changes in coverage to their current TennCare category who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall, notwithstanding State Rule 1240-5-3-.03(2)(b)1 above, continue to receive benefits pending a determination by the Appeals and Hearings Division that the appellant has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(ii) If the enrollee does not clearly allege the applicability of a particular eligibility category, benefits will be continued at the level for Non-Institutionalized Medicaid Adults pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(iii) If the Appeals and Hearings Division subsequently determines that the enrollee is alleging that a particular eligibility category is currently applicable, benefits will be prospectively continued at the level for such eligibility category pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(c) If the recipient can show good cause existed for the failure to appeal within the time frames in subparagraphs (a) for the Food Stamp and Families First Programs and (b)

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for the TennCare Medicaid and TennCare Standard Programs, assistance or services may be reinstated or continued pending appeal; provided, however, State Rule 1240-5-3-.03(1)(l)3(vi)(III) above governs the restriction on good cause extensions and untimely appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms.

- (d) Once continued, the assistance or services designated in subparagraphs (a) for the Food Stamp and Families First Programs and (b) for the TennCare Medicaid and TennCare Standard Programs will, nevertheless, cease as of the earliest of the following events:
 - 1. As provided in State Rule 1240-5-3-.03(2)(b)1 and 2 above for TennCare Standard or TennCare Medicaid appeals; or
 - 2. A change affecting the recipient's assistance occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or
 - 3. In Food Stamp cases, the certification period ends; or
 - 4. A final decision is made by the agency that the appellant is not entitled to the assistance or services.
- (e) Continuation of services in Vocational Rehabilitation Services appeals are governed under State Rule 1240-5-1-.05(5) and State Rule 1240-5-1-.05(10)(b).
- (f) Continuation of services in Summer Food Service Program appeals are governed under 7 C.F.R. § 225.13(11) and State Rule 1240-5-8-.01(8).
- (g) Continuation of services in Child and Adult Care Food Program appeals are governed under 7 C.F.R. § 226.6(k)(10) and State Rule 1240-5-8-.01(9).
- (h) Title IV-D child support services shall continue if an appeal of the termination of services is filed within sixty (60) days of the date of the notice of the proposed closure of the case.
- (i) Continuation of services in Refugee Cash Assistance Program appeals are governed under 45 C.F.R. § 400.54.
- (j) Continuation of services in appeals for other Programs administered by the Department are contingent upon other Federal regulations applicable to the Program.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 4-5-307, 71-1-105, 71-2-408; 71-3-151, 71-3-154, 71-4-508, 71-4-610, 71-5-106, 71-5-110 and 71-5-305; 7 U.S.C. § 2020(b) and (e)(10) and (e)(11); 20 U.S.C. §§ 107d-1 and 107b(6); 29 U.S.C. § 722(c); 42 U.S.C. §§ 1396 et seq.; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624; 7 C.F.R. §§ 225.13, and 226.6; 7 C.F.R. §§ 273.13, 273.13(a)(1), 273.13(a)(3)(v), 273.15 (g) and (k); 273.17; 34 C.F.R. §§ 361.48 and 361.57; 34 C.F.R. §§ 395.4 and 395.13; 42 C.F.R. §§ 431.200 et seq.; 42 C.F.R. §§ 431.210, 431.211, 431.221, 431.230 and 431.231; 45 C.F.R. § 205.10(a)(4)(i)(A) and (ii)(K); 45 C.F.R. § 205.10(a)(5)(iii) and (a)(6) and (7); and 45 C.F.R. §§ 400.23, 400.54 and 400.145.

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Rule 1240-5-3-.04, Dismissal of Hearing Requests, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-3-.04 DISMISSAL OF HEARING REQUESTS.

- (1) The Department may dismiss a request for hearing if it has been withdrawn by the appellant in writing or if it is abandoned. Abandonment may be deemed to have occurred if the appellant, or the authorized representative, without good cause fails to appear at the scheduled hearing.
- (2) The Department may dismiss a previously accepted appeal, upon evidence presented at a “good cause” hearing, pre-hearing conference, or in the pleadings that the appeal was not timely filed and that “good cause” for the lack of timely filing did not exist.
- (3) Upon appropriate proof, the Department may dismiss an appeal at any point in the hearing process for any of the reasons that the appeal might be denied by the Appeals and Hearings Division by rule or law, if such facts had been known by the Appeals and Hearings Division before the appeal was accepted for hearing.
- (4) Dismissal Process for Informally Resolved Appeals in Food Stamp Program.
 - (a) The Department may dismiss a request for a fair hearing when the Appeals and Hearings Division determines the appeal has been resolved in the appellant’s favor and the appellant has expressed orally that he/she wishes to withdraw the request for a hearing.
 - (b) In such case, prior to dismissal of the appeal, the Appeals and Hearings Division will provide a written notice of confirmation to the appellant within ten (10) days of the appellant’s oral expression to withdraw the request for a fair hearing. The written notice will advise the appellant that he/she has ten (10) days from the date of the written notice confirming the withdrawal of the request for a hearing to notify the Appeals and Hearings Division that he/she wishes to reinstate the fair hearing request. If reinstatement is requested, the appeal will proceed to a hearing.
- (5) Dismissal Process for Informally Resolved Appeals in Other Programs.
 - (a) The Department may dismiss a request for a fair hearing when the Appeals and Hearings Division determines the appeal has been resolved in the appellant’s favor.
 - (b) In such case, the Appeals and Hearings Division will provide a written notice to the appellant that the appeal has been resolved. The written notice will advise the appellant that he/she has ten (10) days from the date of the written notice to notify the Appeals and Hearings Division that he/she wishes to reinstate the fair hearing request. If reinstatement is requested, the appeal will proceed to a hearing.
- (6) The Department may dismiss requests for hearings, regarding the TennCare and Medicaid programs if the appeal does not present a valid factual dispute. (The valid factual dispute process is provided in 1240-5-3-.03(1)(l)2, 3 and 4).

Authority: *T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 71-1-111 and 71-1-132; 42 C.F.R. § 431.223; 45 C.F.R. § 205.10(a)(5)(v); and 7 C.F.R. § 273.15 (d) and (j).*

Rule 1240-5-3-.05, Group Hearings, is amended by deleting the “Authority” section under the rule and by substituting instead the following, so that as amended, the Authority section under the rule shall read as follows:

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Authority: T.C.A. §§ 4-5-202, 4-5-301 et seq., 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(e); 42 C.F.R. § 431.222 and 45 C.F.R. § 205.10(a)(5)(iv).

Chapter 1240-5-3, Fair Hearing Requests, is amended by adding a new subchapter to be titled 1240-5-3-.06, "Time", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-3-.06 TIME.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. The Notice of Hearing will provide notice of this provision or inform the applicants/recipients of the specific calendar dates by which certain actions must be taken.
- (2) Except in regard to petitions for appeal, reconsideration or review under T.C.A. §§ 4-5-315, 4-5-317 and 4-5-322, or except where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the hearing official may, at any time—
 - (a) With or without motion or notice, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.
- (3) Any waiver of the time limits in State Rule 1240-5-3-.03 is subject to the approval of the Commissioner or his/her designated representative.

Authority: T.C.A. §§ 1-3-102, 4-5-202, 4-5-219, 71-1-105(12) and 71-1-111.

Chapter 1240-5-3, Fair hearing Requests, is amended by adding a new subchapter to be designated 1240-5-3-.07, "Filing and Service of Pleadings and Other Materials", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-3-.07 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain following the filing of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the Administrative Procedures Division or the Department within the required time period.
- (2) Upon the involvement of the Administrative Procedures Division in any contested case, all pleadings and other materials required to be filed or submitted prior to the contested case hearing shall be filed with the designated office, where they will be stamped with the date of their receipt.

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- (3) Petitions for appeal of an Initial Order and for reconsideration or stay of an Initial or Final Order may be filed with the Department or the Administrative Procedures Division, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1240-5-6-.04.
- (5) Copies of any and all materials filed with the Department or the Administrative Procedures Division in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier or by hand delivery.

Authority: T.C.A. §§ 4-5-202, 4-5-311, 71-1-105(12) and 71-1-111.

CHAPTER 1240-5-4 NOTICE OF THE HEARING

AMENDMENTS

Rule 1240-5-4-.01, Notice, is amended by deleting the rule in its entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-4-.01 NOTICE.

- (1) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the Department that shall comply with T.C.A. § 4-5-307(b) and shall be served as provided in 1240-5-4-.01(4) of these rules.
- (2) The hearing shall be conducted at a reasonable time, date, and place after adequate written notice has been given to the appellant.
 - (a) For contested cases in the Families First, Food Stamp, TennCare Medicaid and TennCare Standard programs, adequate written notice shall be sent ten (10) days in advance of the date of the hearing.
 - (b) The notice of hearing in Child and Adult Care Food Program appeals, for actions that are subject to administrative review, is governed under 7 C.F.R. § 226.6(k)(5) and State Rule 1240-5-8-.01(9), and adequate written notice shall be sent ten (10) days in advance of the date of the hearing.
 - (c) The notice of hearing in Summer Food Service Program appeals is governed under 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8) and adequate written notice shall be sent five (5) days in advance of the date of the hearing.
 - (d) For Child Support appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (e) For Vocational Rehabilitation appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (f) For Blind Services appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.

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- (g) Notice of the revocation or restriction of an existing license for an adult day care center licensed by the Department shall be provided sixty (60) days prior to the hearing.
 - (h) For all other appeals not otherwise specified herein, adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (i) The notice periods set forth in this paragraph may be extended for any individual or all programs by direction of the Commissioner's designee in his/her sole discretion except where otherwise limited by statute or federal regulation.
- (3) The notice shall include:
- (a) The date, time, place, and nature of the hearing with instructions to the appellant to notify the Appeals and Hearings Division if he/she is unable to meet the appointment.
 - (b) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.
 - (c) A short and plain statement of the matters asserted. The notice will define the issues and refer to detailed statements of the matters involved, if available.
 - (d) Information about hearing procedures.
 - (e) The appellant's option to present his/her case or be represented by a lawyer or another authorized person.
 - (f) The appellant's right to inspect the files of the agency with respect to the matter under appeal and to copy from the file.
 - (g) The appellant's right to present written evidence and testimony and to bring witnesses and members of his/her family to the hearing.
 - (h) The process by which an appellant may petition for reconsideration of an initial or final order, if applicable.
 - (i) The process by which an appellant may appeal an initial order, if applicable.
 - (j) The appellant's right to judicial review, if he/she is dissatisfied with the final order entered on his/her appeal.
 - (k) Supplemented Notice.
- In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later written notice.
- (4) Service of Notice of Hearing.
- (a) In any case in which an appellant in TennCare Standard or TennCare Medicaid, Families First or Food Stamp has requested a hearing from the Department, a copy of the notice of hearing shall be delivered to the party by certified mail, postage prepaid or by personal service. Service of notice of the hearing for other programs administered by the Department shall be served by any method permitted or required by law or program regulations governing those programs.

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- (b) Service of the notice of hearing for TennCare Standard or TennCare Medicaid cases shall be made at the address required to be kept current by the applicant/recipient with the Department by T.C.A. §§ 71-5-106(l) and 110(c)(1), or such other address as the Department of Human Services may have for applicant/recipients of Families First or Food Stamp or other programs, and at the address provided with the request for hearing, if different from the address on file with the Department. However, the Department shall use the best address known to it, whether provided directly by the applicant/recipient or whether obtained indirectly.
- (c) In the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default:
 - 1. Whether any other attempts at actual service were made;
 - 2. Whether and to what extent actual service is practicable in any given case;
 - 3. What attempts were made to make contact with the party by telephone, by regular mail, or otherwise; and
 - 4. Whether the Department has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.
- (5) Filing of Documents. When a contested case is commenced, if the matter is being heard by the Administrative Procedures Division, the Department shall provide the Administrative Procedures Division with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the Department concerning that particular case. Legible copies may be filed in lieu of originals.
- (6) Answer. The party may respond to the matters set out in the notice or other original pleading by filing a written answer with the Department in which the party may:
 - (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Department may proceed;
 - (b) Object on the basis of lack of jurisdiction over the subject matter;
 - (c) Object on the basis of lack of jurisdiction over the person;
 - (d) Object on the basis of insufficiency of the notice;
 - (e) Object on the basis of insufficiency of service of the notice;
 - (f) Object on the basis of failure to join an indispensable party;
 - (g) Generally deny all the allegations contained in the notice or state that he/she is without knowledge as to each and every allegation, both of which shall be deemed a general denial of all charges;
 - (h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues; and
 - (i) Assert any available defense.
- (7) Amendment to Notice.

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- (a) The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing official or Commissioner's designee, and leave shall be freely given when justice so requires.
 - (b) No amendment to the notice may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice.
 - (c) The hearing official shall not grant a continuance to amend the notice or original pleading if such would prejudice a respondent's right to a hearing and Initial Order within any mandatory time frames.
- (8) Amendments to Conform to the Evidence.
- (a) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to amend for this reason does not affect the result of the determination of these issues.
 - (b) If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing official may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing official may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the individual is not represented by counsel, the burden cannot be put on such individual to object to the State's trying of cases without proof and legal authorities set out in the pleadings, and the hearing official shall rule on whether to allow additional evidence and the need for continuances to enable the respondent further time to address the new grounds.

Authority: *T.C.A. §§ 4-5-202; 4-5-307; 71-1-105(12) and 71-1-111.*

Rule 1240-5-4-.03, Subpoenas for Evidence and Witnesses, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-4-.03 SUBPOENAS FOR EVIDENCE AND WITNESSES.

- (1) The Department shall have the authority in an administrative hearing to require the attendance of such witnesses and the production of such books, records, papers, or other tangible things as may be necessary and proper for the purpose of the hearing proceeding. The hearing official at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas.
- (2) Upon motion of a party, the hearing official may at or before the time specified in the subpoena for compliance:
 - (a) Void or modify the subpoena if it is unreasonable and oppressive, or

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- (b) Tax the party making the request with reasonable costs in the production of books, papers, documents, or other tangible things. T.C.A. § 4-5-311 provides that an agency may promulgate rules to prevent abuse and oppression in discovery. The Department's rules at 1240-9-1 establish reasonable fees and costs for reproduction of records and those rules shall be used as general guidelines for the taxing of such costs; provided that in unique or unusual cases, the hearing official may deviate from those guidelines as justice requires.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-311, 71-1-105(12) and 71-1-111.

Chapter 1240-5-4, Notice Of The Hearing, is amended to insert a new subchapter to be titled 1240-5-4-.04, "Representation By Counsel", and by amending the Table of Contents accordingly, so that as amended the new subchapter shall read as follows:

1240-5-4-.04 REPRESENTATION BY COUNSEL.

- (1) Any party to a contested case hearing may be advised and represented, at the party's own expense, by a licensed attorney.
- (2) Any party to a contested case may represent himself or herself or, in the case of a corporation or other artificial person, may participate through a duly authorized representative such as an officer, director or appropriate employee.
- (3) A party to a contested case hearing may not be represented by a non-attorney, except in any situation where federal law requires or state law specifically permits.
- (4) The Department shall notify all parties in a contested case hearing of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (5) Entry of an appearance by counsel shall be made by:
 - (a) The filing of pleadings;
 - (b) The filing of a formal or informal notice of appearance; or
 - (c) Appearance as counsel at a pre-hearing conference or a hearing.
- (6) After appearance of counsel has been made, all pleadings, motions, and other documents shall be served upon such counsel.
- (7) Counsel wishing to withdraw shall give written notice to the Appeals and Hearings Division, or the Department of State, Administrative Procedures Division when applicable, and the hearing official.
- (8) Out-of-state counsel shall comply with T.C.A. § 23-3-103(a) and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the director of the Appeals and Hearings Division or Administrative Procedures Division, when applicable, with a copy to the hearing official presiding in the matter in which counsel wishes to appear.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-305, 4-5-312, 71-5-105(12) and 71-1-111.

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Chapter 1240-5-4, Notice Of The Hearing, is amended by adding a new subchapter to be designated 1240-5-4-.05, "Pre-hearing Motions", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-4-.05 PRE-HEARING MOTIONS.

- (1) Motions.
 - (a) Scope. This rule applies to all motions made prior to a hearing on the merits of a contested case.
 - (b) Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and by filing the motion with the Administrative Procedures Division, the Department of Human Services' Appeals and Hearings Division or directly with the hearing official.
 - (c) Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
 - (d) A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the hearing official.
 - (e) Telephonic, Televised and Alternate Electronic Methods for Conducting Hearings and Pre-hearing Conferences.

In the discretion of the hearing official, and with the concurrence of the parties, any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

- (2) Time Limits; Oral Argument.
 - (a) A party may request oral argument on a motion; however, a brief memorandum of law submitted with the motion is preferable to oral argument.
 - (b) Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. If oral argument is requested, the motion may be argued by conference telephone call.
- (3) Affidavits; Briefs and Supporting Statements.
 - (a) Motions and responses to motions shall be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses to them shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto.
 - (b) In the discretion of the hearing official, a party or parties may be required to submit briefs or supporting statements pursuant to a schedule established by the hearing official.

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- (4) Disposition of Motions; Drafting the Order.
 - (a) When a pre-hearing motion has been made in writing or orally, the hearing official shall render a decision on the motion by issuing an order or by instructing the prevailing party to prepare and submit an order in accordance with subparagraph (b) below.
 - (b) The prevailing party on any motion shall draft an appropriate order, unless otherwise directed by the hearing official. This order shall be submitted to the hearing official within five (5) days of the ruling on the motion, or as otherwise ordered by the hearing official.
 - (c) The hearing official, after signing any order, shall cause the order to be served immediately upon the parties.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-308, 71-1-105(12) and 71-1-111.

Chapter 1240-5-4, Notice of the Hearing, is amended by adding a new subchapter to be designated 1240-5-4-.06, "Continuance", and by amending the Table of Contents accordingly, so that as amended the new subchapter shall read as follows:

1240-5-4-.06 CONTINUANCE.

- (1) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing official as soon as practicable by the appellant, by the Department, or by mutual consent of the parties.
- (2) The maximum time limits for processing appeals are governed under Tennessee Department of Human Services, State Rule 1240-5-8-.01.
- (3) If an appellant requests a continuance, any mandatory deadlines for conducting hearings and issuance of initial orders by a hearing official or commissioner's designee may be extended by a like period of time. Calculation of the applicable time frame may be adjusted only to the extent that any delays are attributable to the beneficiary. The beneficiary shall only be charged with the amount of delay occasioned by the beneficiary's acts or omissions, and any other delays should be deemed to be the responsibility of the Department of Human Services.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-308, 71-1-105(12) and 71-1-111.

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CHAPTER 1240-5-5 THE ADMINISTRATIVE JUDGE/HEARING OFFICER

AMENDMENTS

Chapter 1240-5-5, "The Administrative Judge/Hearing Officer", is amended by deleting the Chapter in its entirety, and by renaming the Chapter "The Hearing Official" and is further amended by substituting instead the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-5 THE HEARING OFFICIAL

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1240-5-5-.01 ROLE.

- (1) The Commissioner of the Department of Human Services has placed responsibility for hearings in the Appeals and Hearings Division. The hearing official is vested with full authority in the conduct of the hearing process. The hearing official is fully responsible for conducting hearings properly and promptly in accordance with the rules and regulations established by the Department.
- (2) Hearings for an appellant or household involving any program or any other persons/entities entitled to appeal any adverse administrative action may be consolidated by the Commissioner, the Assistant Commissioner for Appeals and Hearings or their designees, or by a hearing official in his or her discretion; provided, however, that if necessary to promote justice or to address issues that require separate hearings for any reason, a consolidated appeal may be separated into individual hearings.

Authority: TCA §§ 4-5-202, 4-5-312, 36-5-101(f)(1);71-1-105(12) and 71-1-111: and 42 U.S.C. § 666(a)(9)

1240-5-5-.02 AUTHORITY.

- (1) The hearing official shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Set the time and place for continued hearings;

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- (g) Enter an Initial Order stating his/her decision;
 - (h) Rule on petitions for reconsideration of the Initial Order; and
 - (i) Perform those duties or take those actions that are otherwise appropriate and necessary for the fair, timely and adequate administration of the administrative hearing process.
- (2) No hearing official, without the consent of the parties, shall, on the hearing official's own motion, raise and determine issues that were not raised in the notice of hearing, or which were not raised and tried in the course of the hearing.
 - (3) A hearing official is not authorized to forgive any child/spousal support arrearages in a hearing considering an appeal of administrative action by the Department of Human Services in the Child Support program.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 71-1-105(12), 71-1-111, 71-5-105 and 71-5-109; 7 C.F.R. § 273.15(g); 42 C.F.R. § 431.220 and 42 C.F.R. § 431.221; and 45 C.F.R. § 205.10(a)(5)(iii).*

1240-5-5-.03 ORDER OF PROCEEDINGS.

- (1) Telephonic, Televised and Alternate Electronic Methods for Conducting Hearings and Pre-hearing Conferences.

In the discretion of the hearing official, and with the concurrence of the parties, all or part of the contested case proceeding, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

- (2) Order of proceedings for the hearing of contested cases, including reconsideration hearings:
 - (a) The hearing official may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) The hearing is called to order by the hearing official.
 - (c) The hearing official introduces him/herself and gives a very brief statement of the nature of the proceedings, including a statement of the hearing official's role in making factual and legal rulings.
 - (d) The hearing official then calls on the respondent to ask if the respondent is represented by counsel, and if so, counsel is introduced. The hearing official then introduces the petitioner's counsel and any other officials who may be present at the hearing.
 - (e) The hearing official states what documents the record contains.
 - (f) In appropriate cases, the hearing official or petitioner reads the charges as set out in the notice with regard to the respondent, while giving references to the appropriate statutes and rules.
 - (g) In appropriate cases, the respondent is asked how he or she responds to the charges or disposition of his/her case. If he or she admits the charges or agrees with the disposition of his/her case, no further proof may be necessary, other than introduction of evidence pertaining to the proper penalty, if appropriate. If he or she denies the charges or fails to

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admit them or disagrees with the disposition of any portion of his/her case, the hearing proceeds. (Proceedings involving Families First and Food Stamp Intentional Program Violations are governed under Department of Human Services State Rules at Chapters 1240-5-14 and 1240-5-15.).

- (h) The hearing official swears the witnesses;
- (i) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the State or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative;
- (j) Any preliminary motions, stipulations, or agreed orders are entertained;
- (k) Opening statements are allowed by both the petitioner and the respondent;
- (l) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 - 1. (Petitioner) moving party questions;
 - 2. (Respondent) other party cross-examines;
 - 3. (Petitioner) moving party redirects;
 - 4. (Respondent) other party re-cross-examines;
 - 5. Hearing official questions;
 - 6. Further questions by petitioner and respondent. (Questioning proceeds as long as necessary to provide all pertinent testimony.)
- (m) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions;
 - 2. (Petitioner) moving party cross-examines;
 - 3. (Respondent) other party redirects;
 - 4. (Petitioner) moving party re-cross-examines;
 - 5. Hearing official questions;.
 - 6. Further questions by respondent and petitioner. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (n) Petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above;

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- (o) Closing arguments are allowed to be presented by the petitioner and by the respondent;
 - (p) The hearing official announces the decision or takes the case under advisement.
- (3) The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
- (4) Paragraphs (1) – (3) of this rule are intended to be merely a general outline as to the conduct of a contested case proceeding and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

Authority: *T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-312, 71-1-105(12) and 71-1-111.*

1240-5-5-.04 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
- (a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of contested case proceedings after appropriate notice of those actions is cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the hearing official, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and shall be cause for a holding of default.
 - (b) If a party fails to attend or participate as provided in subparagraph (a) above, the hearing official, after entering into the record evidence of service of notice to an absent party shall determine whether the service of notice is sufficient as a matter of law, according to State Rule 1240-5-4-.01. If the notice is held to be adequate, the hearing official may do either of the following:
 - 1. Hold the party failing to attend or to participate in default and, after determining that the party in default has the burden of proof, adjourn the proceedings and enter an order of default setting forth the grounds for the default, that will become a Final Order without further notice as provided in State Rule 1240-5-8-.02, unless a timely filed petition for reconsideration is filed; or
 - 2. Hold the party failing to attend or to participate in default and, after determining that the party not in default has the burden of proof, conduct the proceedings without the participation of the defaulting party and include in the Initial Order a written notice of default setting forth the grounds for the default. The Initial Order will become a Final Order without further notice as provided in State Rule 1240-5-8-.02, unless a timely filed Petition for Reconsideration is filed.
 - (c) The hearing official shall serve upon all parties the written notice of entry of default for failure to appear as provided in part (b)1 or 2 above. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a Petition for Reconsideration as provided in T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing official may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. § 4-5-317.

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Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-309, 4-5-317, 71-1-105(12) and 71-1-111; 42 C.F.R. § 431.223; 45 C.F.R. § 205.10(a)(5)(v); and 7 C.F.R. § 273.15(j)(1)(ii).

CHAPTER 1240-5-6 CONTENT OF THE HEARING

AMENDMENTS

Chapter 1240-5-6, "Content of the Hearing", is amended by deleting the current Chapter name and by substituting instead as the Chapter name "Rules of Evidence and Discovery", so that, as amended, Chapter 1240-5-6 shall read as follows:

CHAPTER 1240-5-6 RULES OF EVIDENCE AND DISCOVERY

AMENDMENTS

Rule 1240-5-6-.01, Rules Of Evidence, is amended by deleting the rule in its entirety, and by substituting the following language, so that, as amended, the rule shall read as follows:

1240-5-6-.01 RULES OF EVIDENCE.

- (1) Evidence in Hearings. In all Department hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the Department, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence, including admissibility of affidavits, is set forth at T.C.A. § 4-5-313.
- (2) The hearing official shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing official shall give effect to the rules of privilege recognized by law and to state or federal statutes or regulations protecting the confidentiality of certain records and shall exclude evidence which in his/her judgment is irrelevant, immaterial or unduly repetitious.
- (3) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Department. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.
- (4) Official notice may be taken of:
 - (a) Any fact that could be judicially noticed in the courts of this state;
 - (b) The record of other proceedings before the Department;
 - (c) Technical or scientific matters within the hearing official's specialized knowledge; and
 - (d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties must be notified before or during the hearing, or before the issuance of any Initial or Final Order that is based in whole or in part on facts or material noticed, of the specific facts

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or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

- (5) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.
- (6) At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit which such party proposes to introduce in evidence, together with a notice in the form provided in 1240-5-6-.01(8) below. Unless the opposing party within seven (7) days after delivery delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as herein provided, the affidavit shall not be admitted into evidence. Delivery for purposes of this paragraph shall mean actual receipt.
- (7) The hearing official assigned to conduct the hearing may admit affidavits not submitted in accordance with paragraph (6) above, where necessary to prevent injustice.
- (8) The notice referred to in 1240-5-6-.01(6) above shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

Authority: T.C.A. §§ 4-5-202, 4-5-313, 71-1-105(12) and 71-1-111.

Rule 1240-5-6-.04, Discovery, is amended by deleting the rule in its entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-6-.04 DISCOVERY.

- (1) Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.
- (2) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure (TRCP).
- (3) Upon motion of a party or upon the hearing official's own motion, the hearing official may order that discovery be completed by a certain date.
- (4) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:

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- (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (5) The hearing official shall decide any motion relating to discovery pursuant to the Uniform Administrative Procedures Act (UAPA) and the rules promulgated thereunder or the TRCP.
 - (6) Other than as provided in paragraph (4) above, discovery materials need not be filed with either the Department of State Administrative Procedures Division or the Appeals and Hearings Division.

Authority: T.C.A. §§ 4-5-202, 4-5-311, 71-1-105(12) and 71-1-111.

CHAPTER 1240-5-7 THE HEARING REPORT

AMENDMENTS

Chapter 1240-5-7, "The Hearing Report", is amended by deleting the Chapter in its entirety and by renaming the Chapter "The Hearing Record", and is further amended by substituting the following language, so that, as amended, Chapter 1240-5-7 shall read as follows:

CHAPTER 1240-5-7 THE HEARING RECORD

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1240-5-7-.01	Contents of Hearing Record.
1240-5-7-.02	Record of Oral Proceedings.

1240-5-7-.01 CONTENTS OF HEARING RECORD.

- (1) The hearing record shall be maintained for not less than three (3) years.
- (2) Hearing decisions are accessible to the public for inspection and copying, subject to the requirements of safeguarding case information and to the deletion of any portions that are confidential under any provision of law.
- (3) The hearing record shall be available to the appellant or his/her representative at any reasonable time. The record shall include:
 - (a) All pleadings, motions, and intermediate rulings;
 - (b) Exhibits;
 - (c) A summary of the oral testimony plus all other evidence received or considered, stipulations, and admissions;

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- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof, objections, and rulings thereon;
- (f) Findings and conclusions;
- (g) The tape recording, stenographic notes or symbols, or transcript of the hearing;
- (h) Any Final Order, Initial Order, or Order on reconsideration;
- (i) All staff memoranda or data submitted to the hearing official or members of the agency in connection with their consideration of the case;
- (j) Matters placed on the record after an ex parte communication.

Authority: T.C.A. §§ 4-5-202, 4-5-319, 4-5-218(a)-(d), 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(q)(1) and (5); 42 C.F.R. § 431.244(g) and 45 C.F.R. § 205.10(a)(14) and (19).

1240-5-7-.02 RECORD OF ORAL PROCEEDINGS. A record (which may consist of a stenographic record, tape or similar electronic recording, or comprehensive notes) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the Department at its expense.

Authority: T.C.A. §§ 4-5-202, 4-5-319, 71-1-105(12) and 71-1-111.

CHAPTER 1240-5-8 THE FINAL ORDER

AMENDMENTS

Chapter 1240-5-8, "The Final Order", is amended by deleting the Chapter in its entirety and by renaming the Chapter "The Initial and Final Order" and is further amended by substituting instead the following language, so that, as amended, Chapter 1240-5-8 shall read as follows:

CHAPTER 1240-5-8 THE INITIAL AND FINAL ORDER

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1240-5-8-.01	Appeal Processing Time Frames.
1240-5-8-.02	Initial and Final Orders.
1240-5-8-.03	Public Access to Final Orders.
1240-5-8-.04	Re-instatement of Assistance or Services.
1240-5-8-.05	Recovery of Assistance.

1240-5-8-.01 APPEAL PROCESSING TIME FRAMES.

- (1) The time frames in State Rule 1240-5-8-.01 are an administrative requirement for the Department and may not be used as a basis for overturning the Department's action if a decision is not

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made within the specified time frame, unless otherwise required by Federal or State law or Court Order. The time limit applies to the period extending from the date the request is received by the Department until the date the Final Order is entered, unless otherwise specified.

- (2) State Rule 1240-5-1-.05 sets forth the time limits for processing appeals for Vocational Rehabilitation Services.
- (3) State Rule 1240-6-11-.02 sets forth the time limits for processing appeals related to the Randolph Sheppard Act and the Tennessee Business Enterprises Program.
- (4) The maximum time limit for processing appeals is ninety (90) days for the Families First Program and Services Programs, except as otherwise specified by these rules or laws or regulations specifically applicable to a program.
- (5) Refugee Cash Assistance Program appeals will be processed within sixty (60) days from the date of the hearing request.
- (6) The maximum time limit for processing appeals is ninety (90) days for TennCare Standard or TennCare Medicaid.
- (7) Food Stamp Appeals will be processed within sixty (60) days. The postponement of the scheduled hearing in Food Stamp Appeals shall not exceed thirty (30) days, and the time limit for processing the Food Stamp appeal shall be extended because of:
 - (a) Illness of the appellant;
 - (b) Delay in obtaining medical evidence; or
 - (c) Because of circumstances beyond the control of the appellant or the Department.
- (8) 7 C.F.R. § 225.13 governs appeals in the Summer Food Service Program and the maximum time limit for processing appeals is nineteen (19) days for the Summer Food Service Program as follows:
 - (a) The time period allowed for filing the appeal, where actions are appealable as specified in 7 C.F.R. § 225.13(a), is ten (10) days from the date on which the notice of action sent by certified mail return receipt, is received. The appeal must be in writing.
 - (b) The appellant is allowed to refute the charges in the notice of action in person, or by filing written documentation with the review official. If the appeal letter does not specifically request a hearing, a review of written documentation in lieu of a hearing will occur. To be considered, written documentation must be submitted by the appellant within seven (7) days of submitting the appeal. An appellant is allowed the opportunity to review information upon which the action described in the notice of action was based.
 - (c) If the appellant requested a hearing in the appeal letter, the appellant shall be given at least five (5) days advance written notice of the hearing date by certified mail return receipt.
 - (d) If the appellant requested a hearing in the appeal letter, the hearing will be conducted within fourteen (14) days of the receipt of the appeal. However, the hearing will not be held before the appellant's written documentation is received where the appellant has requested to submit the written documentation. The appellant may retain legal counsel or may be represented by another person.

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- (e) Within five (5) working days after receiving the written documentation, and where a hearing was not requested in the appeal letter, the administrative review official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested of the official's determination.
 - (f) Within five (5) working days after the hearing has been held, when a hearing was requested in the appeal letter, the hearing official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested of the official's determination.
 - (g) 7 C.F.R. § 225.13(11) requires the Program's administrative action to remain in effect during the appeal process.
 - (h) Participating sponsors and sites may continue to operate during an appeal of a termination.
 - (i) Reimbursement shall be paid for meals served during the appeal process if the administrative review determination overturns the Program's administrative action that was appealed.
 - (j) If the sponsor or site has been terminated for the reason of imminent dangers to the health or welfare of children, the operation shall not be allowed to continue during the appeal process and this reason shall be specified in the notice of action.
 - (k) The determination made by the hearing official is the final administrative determination provided under 7 C.F.R. § 225.13(12), will become the Final Order and will set forth the time limits for seeking judicial review.
- (9) 7 C.F.R. § 226.6(k)(5) governs appeals described in 7 C.F.R. § 226.6(k)(2) in the Child and Adult Care Food Program that are subject to administrative review by the state agency and the maximum time limit for processing appeals is sixty (60) days for the Child and Adult Care Food Program as follows:
- (a) 7 C.F.R. § 226.6(k)(9) makes provision for abbreviated administrative reviews, as specified in § 226.6(k)(9), to review written submissions concerning the accuracy of the Child and Adult Care Food Program's determination, if an application was denied, or the Program proposed to terminate an institution's agreement, because of the circumstances described in 7 C.F.R. § 226.6(k)(9)(i) through (iv).
 - (b) The time period to file an appeal to request an administrative review of an action described in 7 C.F.R. § 226.6(k)(2) that is subject to administrative review by the state agency is fifteen (15) days after the notice of the action to be taken or action proposed, sent by certified mail return receipt, is received. The appeal request for administrative review must be in writing.
 - (c) The receipt of the appeal requesting an administrative review must be acknowledged by the Department within ten (10) days of receiving the request. The appellant may retain legal counsel or may be represented by another person.
 - (d) The appellant is allowed to inspect information on which the action was based. The information must be available for inspection from the date the appeal request is received.

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- (e) The appellant may refute the findings contained in the notice of action in person, or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than thirty (30) days after receipt of the notice of action. If the written request for administrative review does not specifically request a hearing, a review of written information in lieu of a hearing will occur.
 - (f) At least ten (10) days advance notice of the hearing shall be given, if the appellant requested a hearing in the written appeal. The service of the advance notice of the hearing will be in accordance with State Rule 1240-5-4-.01.
 - (g) The determination of the administrative review official must be based solely on the information provided by the Department, the appellant, Federal and State laws, regulations, policies, and procedures governing the Child and Adult Care Food Program.
 - (h) The administrative review official must inform the appellant of the administrative review's outcome within sixty (60) days of the receipt of the appeal requesting administrative review. This sixty (60) day time frame is an administrative requirement and may not be used as a basis for overturning the action, if the administrative decision is not made within this time frame.
 - (i) 7 C.F.R. § 226.6(k)(10) requires the Child and Adult Care Food Program's action to remain in effect during the administrative review. 7 C.F.R. § 226.6(k)(10)(i) through (iii) describes actions of the Department that are permitted or prohibited during the pendency of the administrative review.
 - (j) The determination made by the administrative review official is the final administrative determination provided under 7 C.F.R. § 226.6(k)(5)(x) and will become a Final Order and set forth the time limits for seeking judicial review.
- (10) The maximum time limit for processing appeals is ninety (90) days for the Child Support Program, unless otherwise specified by the Tennessee Code Annotated or by rule in Chapter 1240-2.
 - (11) The maximum time for processing license probation appeals for child care agencies pursuant to T.C.A. § 71-3-509(b)(2) and (3) is seven (7) business days following conclusion of the hearing.
 - (12) The maximum time for rendering a decision regarding the Department's assessment of a child care agency program under the provisions of Chapter 1240-4-7 is thirty (30) days following the conclusion of the hearing.
 - (13) The maximum time for processing license probation appeals for adult day care centers pursuant to T.C.A. § 71-2-409(2) and (3) is fifteen (15) days following the receipt of the appeal.
 - (14) Hearings on the denial, revocation or restriction of an adult day care center license shall be held within sixty (60) days of the of the receipt of the petition requesting an appeal of the licensing action by the Department.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 71-1-111 and 71-4-508; 20 U.S.C. §§ 107d-1 and 107b(6); 29 U.S.C. § 722(c); 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396a(a)(5); 42 U.S.C. § 1761 and 1766; 7 C.F.R. §§ 225.13 and 226.6; 7 C.F.R. § 225.13(12) and 7 C.F.R. § 226.6(k)(5)(x); 7 C.F.R. § 273.15(c); 34 C.F.R. § 361.57(b)(1)(i), (e)(1) and (e)(3)(ii), and (g); 34 C.F.R. §§ 395.4 and 395.13; 42 C.F.R. §§ 431.10 and 431.244; 45 C.F.R. § 400.54 and 205.10(a)(16).

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1240-5-8-.02 Initial and Final Orders.

- (1) The provisions of this subchapter shall apply to the Initial and Final Order, except Vocational Rehabilitation Services appeals which are governed under State Rule 1240-5-1-.05(9)(e) and (10) and Summer Food Service Program and Child and Adult Care Food Program appeals which are governed under State Rules 1240-5-8-.01(8) and 1240-5-8-.01(9).
- (2) The hearing official shall render an Initial Order. The Initial Order shall automatically become the Final Order fifteen (15) days after it is issued unless a timely Petition for Appeal, Petition for Reconsideration or Petition for a Stay of Effectiveness is filed with the Appeals and Hearings Division or the Administrative Procedures Division, as applicable. The Final Order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.
- (3) Contents of the Order.
 - (a) An Initial Order or a Final Order, shall include conclusions of law, the policy reasons for the decision, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness.
 - (b) Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings.
 - (c) The Initial Order or Final Order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief of the initial or final orders and the time limits for seeking judicial review of the Final Order.
 - (d) An Initial Order or decision shall include a statement of any circumstances under which the Initial Order or decision may, without further notice, become a Final Order.
 - (e) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.
- (4) If an individual serving or designated to serve as a hearing official becomes unavailable, for any reason, before rendition of the Final Order or Initial Order or decision, a substitute shall be appointed as provided in T.C.A. § 4-5-302. The substitute shall use any existing record and may conduct any further proceedings as are appropriate in the interest of justice.
- (5) The hearing official may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.
- (6) Unless such period is required to be otherwise for compliance with applicable Federal regulations as specified in Tennessee Department of Human Services, State Rule 1240-5-8-.01, or unless such period is waived or extended with the written consent of all parties, or for good cause shown, or unless any State or Federal law or regulation requires that the order be entered in a shorter period, an Initial order or Final Order rendered pursuant to paragraph (2) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (5).
- (7) The hearing official shall send copies of the Initial and Final Order to each party.
- (8) Rule 1240-5-1-.05 sets forth the process for final orders in Vocational Rehabilitation Services appeals.

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Authority: T.C.A. §§ 4-5-202, 4-5-302, 4-5-314, 4-5-315, 4-5-318, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c); and 34 C.F.R. § 361.57(e)(4) and (g).

1240-5-8-.03 PUBLIC ACCESS TO FINAL ORDERS.

- (1) The record of the hearing and the Final Order will remain on file in the Appeals and Hearings Division State Office for any further inspection as may be needed by the parties or their representatives.
- (2) Hearing decisions are accessible to the public for inspection and copying, subject to the requirements of safeguarding information which is confidential under any provision of law or regulations. Those portions of any record that contain confidential information may be deleted prior to providing access to the final order.
- (3) The hearing record as specified in State Rule 1240-5-7-.01 shall be maintained for, not less than three (3) years.

Authority: T.C.A. §§ 4-5-202, 4-5-218(a)-(d), 4-5-319, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(q)(1) and (5); 42 C.F.R. § 431.244(g) and 45 C.F.R. § 205.10(a)(14) and (19).

1240-5-8-.04 REINSTATEMENT OF ASSISTANCE OR SERVICES.

- (1) If the Final Order is in favor of the appellant and retroactive benefits are in order, authorization will be given for retroactive benefits to be made in specific amounts and for specific months as provided for by program rules or state or federal regulations. The retroactive benefits will in no instance be authorized for any month prior to the month of incorrect action.
- (2) Any benefits which are reinstated shall be done so at the benefit level in effect during the time it was determined by the Final Order that the appellant was eligible.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12) and 71-1-111; 45 C.F.R. § 205.10(a)(4)(ii)(K) and (a)(18).

1240-5-8-.05 RECOVERY OF ASSISTANCE.

- (1) When the Final Order upholds the local office, any benefits due to continuation of assistance or services pending the hearing decision will be subject to recovery according to the procedures of the Department or as otherwise provided by law or regulation for recovering benefits except as provided in paragraph (2).
- (2) Vocational Rehabilitation services are subject to recovery where services were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative as provided in 1240-5-1-.05(5)(a).

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c)(7); 7 C.F.R. § 273.15(s)(2); 34 C.F.R. § 361.57(b)(4)(i); 42 C.F.R. § 431.230(b); 42 C.F.R. § 431.231(b); 45 C.F.R. § 400.54 and 45 C.F.R. § 205.10(a)(6)(i).

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CHAPTER 1240-5-9 RECONSIDERATION

AMENDMENTS

Chapter 1240-5-9, "Reconsideration", is amended by deleting the Chapter in its entirety and by renaming the Chapter "Reconsideration and Appeal of Orders", and by substituting the following language, so that, as amended, Chapter 1240-5-9 shall read as follows:

CHAPTER 1240-5-9 RECONSIDERATION AND APPEAL OF ORDERS

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1240-5-9-.01	Notice of Right to a Petition for Reconsideration and/or Appeal of the Initial Order.
1240-5-9-.02	Notice of Right to a Petition for Reconsideration of a Final Order.
1240-5-9-.03	Effect of Filing of Petition for Reconsideration of the Final Order.
1240-5-9-.04	Reconsideration of Initial/Final Order.
1240-5-9-.05	Administrative Recourse When Aggrieved By Final Order Affecting Vocational Rehabilitation Services under Individual Plans of Employment

1240-5-9-.01 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION AND / OR APPEAL OF THE INITIAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals which are governed under State Rule 1240-5-8-.01(8), written notice of the right to Petition for Reconsideration and/or Appeal shall accompany the Initial Order mailed to the parties.
- (2) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (3) A Petition for Appeal from an Initial Order must be filed with the Administrative Procedures Division if the hearing official with the Department of State conducted the contested case proceeding, or if the hearing was conducted by a hearing officer from the Department of Human Services, then the appeal must be filed with the Appeals and Hearings Division of the Department within fifteen (15) days after entry of an Initial Order.
 - (a) Pursuant to T.C.A. § 4-5-315(c), the Petition for Appeal shall state its basis.
 - (b) Pursuant to T.C.A. § 4-5-315(e), the parties shall be permitted an opportunity to file briefs, and the Department may afford each party an opportunity to present oral argument.
 - (c) Pursuant to T.C.A. § 4-5-315(f), (g), (h) and (i):

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1. The Appeals and Hearings Division may cause a transcript to be prepared at the Department's expense, of such portions of the proceeding under review as the Appeals and Hearings Division considers necessary.
 2. The Appeals and Hearings Division may render a Final Order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the Initial Order. Upon remanding a matter, the Appeals and Hearings Division may order such temporary relief as is authorized and appropriate.
 3. A Final Order or an order remanding the matter for further proceedings pursuant to this subparagraph (c) shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.
 4. A Final Order or an Order remanding the matter for further proceedings under this subparagraph (c), shall identify any difference between such order and the Initial Order, and shall include, or incorporate by express reference to the Initial Order, all matters required by T.C.A. § 4-5-314(c).
- (4) Also, within fifteen (15) days after entry of an Initial Order, any party may file a Petition for Reconsideration with the hearing official stating the specific grounds upon which relief is requested.
- (5) If an Initial Order is subject to both a timely Petition for Reconsideration and to a Petition for Appeal, the Petition for Reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the Petition for Reconsideration.

Authority: T.C.A. §§ 4-5-202, 4-5-315, 4-5-317, 71-1-105(12) and 71-1-111.

1240-5-9-.02 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION OF A FINAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals, which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals, which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals, which are governed under State Rule 1240-5-8-.01(8), if a separate Final Order is entered following the entry of an Initial Order, written notice of the right to petition for reconsideration of the Final Order is to accompany the Final Order to the parties.
- (2) Within fifteen (15) days following the date of the Final Order, any party aggrieved by a Final Order, may file a written Petition for Reconsideration which shall specify in detail the reasons for the request.

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111.

1240-5-9-.03 EFFECT OF FILING OF PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

- (1) The filing of a Petition for Reconsideration of the Final Order shall not supersede or delay the effective date of the Final Order.

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- (2) The Final Order shall take effect on the date entered by the Department and shall continue in effect until the Petition for Reconsideration shall be granted or until the Final Order is stayed, superseded, modified, or set aside in a manner provided by law.
 - (a) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (3) If a change affecting the recipient's benefits/services occurs while the reconsideration is pending, action to implement that change will not be delayed pending the decision concerning reconsideration of the Final Order.

Authority: T.C.A. §§ 4-5-202, 4-5-316, 4-5-318, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(k)(2)(iii); and 45 C.F.R. § 205.10(a)(6)(i)(B).

1240-5-9-.04 RECONSIDERATION OF INITIAL/FINAL ORDER.

- (1) Within twenty (20) days of receiving the Petition for Reconsideration of the Initial or Final Order, the hearing official or the Commissioner or his/her designated representative, who rendered the Initial or Final Order, which is the subject of the Petition for Reconsideration, shall, enter a written order either:
 - (a) Denying the petition, as provided in T.C.A. § 4-5-317(c);
 - (b) Granting the petition and setting the matter for further proceedings, as provided in T.C.A. § 4-5-317(c); or
 - (c) Granting the petition and issuing a new Initial or Final Order, as provided in T.C.A. § 4-5-317(c).
 - (d) If no action has been taken on the Petition for Reconsideration within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period, as provided in T.C.A. § 4-5-317(c).
- (2) As provided in T.C.A. § 4-5-317(d), an order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings which shall be limited to argument upon the existing record; and no new evidence shall be introduced, unless the party proposing such evidence shows good cause for his/her failure to introduce the evidence in the original proceeding.

Authority: T.C.A §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111.

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1240-5-9-.05 ADMINISTRATIVE RECOURSE WHEN AGGRIEVED BY FINAL ORDER AFFECTING VOCATIONAL REHABILITATION SERVICES UNDER INDIVIDUAL PLANS OF EMPLOYMENT.

When an individual being provided Vocational Rehabilitation Services under an Individualized Plan of Employment (IPE) is dissatisfied with the Impartial Hearing Official's decision resulting from the Fair Hearing as set forth in Tennessee State Rule 1240-5-1-.05(9), the individual may request review as provided in Rule 1240-5-1-.05(9) and (10).

Authority: T.C.A. §§ 4-5-202 and 71-1-105(12); 29 U.S.C. § 722(c); 34 C.F.R. § 361.48 and 34 C.F.R. § 361.57(e)(4) and (g).

CHAPTER 1240-5-10 JUDICIAL REVIEW

AMENDMENTS

Chapter 1240-5-10, "Judicial Review", is amended by deleting the Chapter in its entirety and by substituting instead, the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-10 JUDICIAL REVIEW

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1240-5-10-.02	Method for Filing.
1240-5-10-.03	Clerical Mistakes.

1240-5-10-.01 NOTICE OF RIGHT TO JUDICIAL REVIEW OF THE FINAL ORDER.

Written notice of the right to seek judicial review of the Final Order and the time within which to file a Petition for Judicial Review of the Final Order shall be contained in the Initial and Final Order sent to the appellant or other party affected by adverse administrative action of the Department.

Authority: T.C.A. §§ 4-5-202, 4-5-314, 4-5-322 and 71-1-105(12).

1240-5-10-.02 METHOD FOR FILING.

- (1) Proceedings for review are instituted by filing a Petition for Review in a Chancery Court of Tennessee having jurisdiction within sixty (60) days after the Final Order is entered by the hearing official or by the Commissioner or his/her designated representative. Except as provided in paragraph (2), the provisions of T.C.A. § 4-5-322 are applicable to judicial review proceedings.
- (2) Judicial Review of Child Support Administrative Decisions.
 - (a) Except as provided in subparagraph (b), the judicial review of the administrative hearing decisions of child support cases heard by the Department of Human Services under T.C.A. § 36-5-1003 shall be conducted by the court having jurisdiction of the support

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order provided by T.C.A. § 4-5-322, not by the court in which the petitioner resides or the Chancery Court of Davidson County, Tennessee as applicable to petitions for judicial review in contested cases involving other programs administered by the Department of Human Services.

- (b) Venue for Petitions for Judicial Review in Child Support Cases When No Previous Support Order Exists or an Out-of-State Order is Being Enforced by the Department of Human Services.
 - 1. If any administrative action of the Department involving the Title IV-D child support program is not based upon an existing order of support or paternity, the party seeking judicial review shall file the Petition for Review of the Department's actions in the chancery court of the county of the person's residence, or the county where an entity was served with an administrative subpoena or was notified of a request for information.
 - 2. If the Department is enforcing any order of a Title IV-D agency of any other state and there has been no assumption of jurisdiction of the support order by a Tennessee court, the Petition for Judicial Review shall be filed in the county of the residence of the person in Tennessee against whom the request, administrative order or administrative subpoena is issued or the county where an entity was served with an administrative order, administrative subpoena or was notified of a request for information.
- (c) No judicial review may result in the forgiveness of any child or spousal support arrearages.
- (d) The scope of judicial review of an administrative decision involving the child support program shall be limited to the review of the record of the Department's hearing as otherwise provided in T.C.A. § 4-5-322 for all other cases involving judicial review of agency administrative actions under the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-202, 4-5-322, 36-5-1003, 71-1-105(12) and 71-1-111.

1240-5-10-.03 CLERICAL MISTAKES.

- (1) Prior to any appeal being perfected by either party to Chancery Court or to such other court with jurisdiction to conduct a judicial review, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions may be corrected by the hearing official at any time on the initiative of either the hearing official or on motion of any party and after such notice, if any, as the hearing official may require.
- (2) The entry of a corrected order will not affect the dates of the original appeal time period.

Authority: T.C.A. §§ 4-5-202, 4-5-219 and 71-1-105(12).

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CHAPTER 1240-5-12 ADOPTION OF RULES

AMENDMENTS

Chapter 1240-5-12, "Adoption of Rules", is amended by deleting the Chapter in its entirety and by substituting instead, the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-12 ADOPTION OF RULES

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1240-5-12-.01	Proposal of Rules.
1240-5-12-.02	Legal Authorization for Rules and Procedure for Rulemaking.
1240-5-12-.03	Public Access to Rules and Regulations.
1240-5-12-.04	Petition For Rules.

1240-5-12-.01 PROPOSAL OF RULES.

- (1) The Department shall adopt such rules as it deems necessary to secure satisfactory compliance with the provisions of any state or federal statutes, regulations or waivers for any programs that are within the responsibilities, authority and duties of the Department of Human Services.
- (2) The Commissioner shall cause to be prepared a notice of the proposal of such rules, or of any amendments or repeals of existing rules which shall be published as required by law; provided, public necessity or emergency rules that may be authorized by law shall not require publication of the notice prior to their implementation upon approval by the Attorney General and Reporter, but such rules shall comply with all other notice and hearing provisions that may be necessary to make those rules permanent that are required by law subsequent to the implementation of the public necessity or emergency rules. .

Authority: *T.C.A. §§ 4-5-202, 4-5-207 and 71-1-105(12).*

1240-5-12-.02 LEGAL AUTHORIZATION FOR RULES AND PROCEDURE FOR RULEMAKING.

The Department of Human Services' rules will be promulgated in accordance with the requirement of Title 4, Chapter 5 of the Tennessee Code Annotated, the provisions of state or federal laws, regulations or waivers governing the operation of the Department's programs and the rules of the Secretary of State's Administrative Procedures Division regarding the procedures for promulgating regulations for agencies of the State of Tennessee.

Authority: *T.C.A. §§ 4-5-202 and 71-1-105(12).*

1240-5-12-.03 PUBLIC ACCESS TO RULES AND REGULATIONS.

- (1) The Department shall keep at its principal office, or publish on its website, a complete and current set of rules and regulations of the Department and its rules shall constitute public records.

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- (2) It shall be the duty of the Department to keep a supply of copies of its rules and to furnish printed copies of such rules upon the request of any interested persons. The Department may charge a reasonable fee for providing copies as provided in T.C.A. § 4-5-218 and Tennessee Department of Human Services Rules, Chapter 1240-9-1.

Authority: T.C.A. §§ 4-5-202, 4-5-218 and 71-1-105(12).

1240-5-12-.04 PETITION FOR RULES.

Except where the right to petition for a rule is restricted by statute to a designated group or except where the form or procedure for such petition is otherwise prescribed by statute, any municipality, corporation or any five (5) or more persons having an interest in a rule may petition an the Department of Human Services requesting the adoption, amendment or repeal of such rule. The petition shall follow the requirements of T.C.A. § 4-5-201.

Authority: T.C.A. §§ 4-5-201 and 71-1-105(12).

CHAPTER 1240-5-14 INTENTIONAL PROGRAM VIOLATIONS

AMENDMENTS

Rule 1240-5-14-.06, Court Imposed Disqualifications, is amended to replace the obsolete section of the Tennessee Code Annotated contained in the Authority section for the rule with the new section of the Tennessee Code Annotated, so that as amended, the Authority for the rule shall read:

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-5-314 and 7 C.F.R. § 273.16 (f) and (g).

CHAPTER 1240-5-15 AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS

AMENDMENTS

Chapter 1240-5-15 is amended to insert the word “Families First” in the title, in the place of “AFDC”, so that as amended, Chapter 1240-5-15 shall read as follows:

CHAPTER 1240-5-15 FAMILIES FIRST ADMINISTRATIVE DISQUALIFICATION HEARINGS

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-3-120 and 71-3-151–71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.

Rule 1240-5-15-.01, Disqualification Hearings For Intentional Program Violations, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, Rule 1240-5-15-.01 paragraph (1) through (3) shall read as follows:

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1240-5-15-.01 DISQUALIFICATION HEARINGS FOR INTENTIONAL PROGRAM VIOLATIONS.

- (1) The Department shall conduct administrative disqualification hearings for individuals accused of intentional program violations in accordance with the requirements outlined in this Chapter.
- (2) An Administrative Disqualification Hearing shall be initiated by the Department in cases in which the Department has sufficient evidence to substantiate that an individual has committed one or more acts of intentional program violation as defined by Rule 1240-1-53-.01.
- (3) The Department may initiate an Administrative Disqualification Hearing regardless of the current eligibility of the individual.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-3-120 and 71-3-151 – 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.

Rule 1240-5-15-.02, Advance Notice of Hearing, is amended to replace the obsolete Authority section under the Rule, so that as amended, the Authority section under Rule 1240-5-15-.02 shall read as follows:

Authority: T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151–71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.

Rule 1240-5-15-.03, Disqualification Hearings Procedures, is amended to replace the obsolete Authority section under the Rule, so that as amended, the Authority section under Rule 1240-5-15-.03 shall read:

Authority: T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151 - 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.

CHAPTER 1240-5-16 CODE OF CONDUCT

AMENDMENTS

State Rule 1240-5 is amended by adding a new Chapter 1240-5-16, “Code of Conduct”, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-16 CODE OF CONDUCT

1240-5-16-.01. CODE OF JUDICIAL CONDUCT. Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all hearing officials of the State of Tennessee. However, any complaints regarding any individual hearing official’s conduct under the code shall be made to the chief hearing official or other comparable entity with supervisory authority over the hearing official, and any complaints about the chief hearing official shall be made to the appointing authority.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 4-5-321 and 71-1-105(12).

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The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-40)