

## **921 KAR 2:055. Hearings and appeals.**

RELATES TO: KRS Chapter 13B, 23A.010, 45.237, 199.892, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 9857-9858q, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 199.8994, 205.231(5), 42 U.S.C. 602, 8624

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS 199.8994(1) requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), the State Supplementation Program (SSP), or an applicant or a recipient of the Child Care Assistance Program (CCAP).

### **Section 1. Hearing Information.**

(1) A participant shall be informed of:

- (a) The right to a hearing;
- (b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and
- (c) Who may represent the participant in a hearing, as established in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken that affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

### **Section 2. Request for a Hearing.**

(1) An individual shall request a hearing by:

- (a) Submitting a written request; or
- (b) Making an oral request.

(2) The hearing request may be:

- (a) Submitted to the local Department for Community Based Services office; or
- (b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2, Frankfort, Kentucky 40601.

(3) The reason for the hearing shall be included in the hearing request.

### **Section 3. Timeframe for Hearing Request.**

(1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

- (a) Forty (40) days of the date of the advance notice of adverse action;
- (b) Thirty (30) days of the notice of:
  - 1. Denial of an application; or
  - 2. Decrease or discontinuance of an active case; or
- (c) The time period the action is pending if the hearing issue is a delay in action.
- (2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.
- (3) An appellant may be granted good cause by the cabinet:
  - (a) For:
    - 1. A delay in requesting a hearing;
    - 2. A delay in requesting a continuation of benefits;
    - 3. Failure to appear for a hearing; or
    - 4. Postponement of a scheduled hearing; and
  - (b) If the appellant:
    - 1. Was away from home during the entire filing period;
    - 2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
    - 3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
    - 4. Had a household member who was seriously ill;
    - 5. Was not at fault for the delay of the request, as determined by the hearing officer;
    - or
    - 6. Did not receive the notice.

#### Section 4. Continuation of Assistance Program Benefits.

- (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.
- (2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:
  - (a) Ten (10) days of the date on the notice of adverse action; or
  - (b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.
- (3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.
- (4) If the action taken by the agency is upheld, continued, or reinstated benefits shall be:
  - (a) Considered overpayments as defined in KRS 205.211; and
  - (b) Collected in accordance with KRS 45.237.

#### Section 5. Hearing Notification.

- (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch, shall acknowledge a hearing request.
- (2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:
  - (a) Hearing process, including the right to case record review prior to the hearing;
  - (b) Right to representation;
  - (c) Availability of free representation by legal aid or assistance from other organizations within the community; and
  - (d) Time and location of the hearing.
- (3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

#### Section 6. Withdrawal or Abandonment of Request.

- (1) The appellant may withdraw a hearing request prior to the:
  - (a) Hearing; or
  - (b) Final order being issued if the hearing has already been conducted.
- (2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:
  - (a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
  - (b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

#### Section 7. Appellant's Hearing Rights.

- (1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.
- (2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:
  - (a) Not associated with the original action; and
  - (b) Agreeable to both the appellant and the cabinet if:
    1. The hearing involves medical issues; and
    2. The hearing officer considers it necessary.
- (3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:
  - (a) Be in writing; and
  - (b) Specify the reason for the denial.

#### Section 8. Postponement of a Hearing.

- (1) An appellant shall be entitled to a postponement of a hearing if the:
  - (a) Request for the postponement is made prior to the hearing; and
  - (b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.
- (2) The hearing officer shall decide if a hearing is postponed.
- (3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

#### Section 9. Conduct of a Hearing.

- (1) A hearing shall be:
  - (a) Scheduled by the hearing officer; and
  - (b) Conducted in accordance with KRS 13B.080 and 13B.090.
- (2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.
- (3) To secure all pertinent information on the issue, the hearing officer may:
  - (a) Examine each party or witness who appears; and
  - (b) If necessary, collect additional evidence from a party.
- (4)
  - (a) If consent is obtained from each party to the appeal and from each party required to testify under oath, a telephonic hearing may be conducted.
  - (b) Parties to a telephonic hearing shall:
    1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and
    2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

- a. Are introduced as evidence into the hearing record; and
  - b. Have not been supplied to the opposing party prior to the hearing.
- (5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

#### Section 10. A Recommended Order.

- (1) After the hearing has concluded, the hearing officer shall draft a recommended order in accordance with KRS 13B.110 that:
  - (a) Summarizes the facts of the case;
  - (b) Specifies the:
    - 1. Reasons for the recommended order; and
    - 2. Address to which a party in the hearing may send an exception to the recommended order;
  - (c) Identifies the:
    - 1. Findings of fact;
    - 2. Conclusions of law;
    - 3. Supporting evidence; and
    - 4. Applicable state and federal regulations; and
  - (d) Addresses the parties' arguments.
- (2) A copy of the recommended order shall be sent simultaneously to the:
  - (a) Appellant or representative; and
  - (b) Department for Community Based Services, Division of Family Support.
- (3) A recommended order shall become a final order for an administrative hearing upon review and acceptance by the agency head, in accordance with KRS 13B.120(2), unless a written exception is filed pursuant to Section 11 of this administrative regulation.

#### Section 11. Written Exceptions and Rebuttals.

- (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception in accordance with KRS 13B.110(4) with the secretary or the secretary's designee.
- (2) A written exception or rebuttal shall:
  - (a) Be filed within fifteen (15) days of the date the recommended order was mailed;
  - (b) Be based on facts and evidence presented at the hearing;
  - (c) Not refer to evidence that was not introduced at the hearing; and
  - (d) Be sent to each other party involved in the hearing.

#### Section 12. Final Order.

- (1) The secretary or the secretary's designee shall issue a final order in accordance with KRS 13B.120.
- (2) The secretary or the secretary's designee may reverse the decision in subsection (1) of this section if the following criteria are met:
  - (a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the secretary or the secretary's designee decision; and
  - (b) Within twenty (20) days of the hearing officer's decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the secretary or the secretary's designee an award letter for benefits based on disability including:
    - 1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;
    - 2. Federal Old-Age, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;
    - 3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;
    - 4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or

5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(3) A party aggrieved by the decision of the secretary or the secretary's designee may pursue judicial review of the decision in accordance with KRS 13B.140 to 13B.160.

#### Section 13. Payments of Assistance.

(1) Payments of assistance shall be made within ten (10) days of the receipt of a final order and shall include:

- (a) The month of application; or
- (b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order.

#### Section 14. Limitation of Fees.

(1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

- (a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;
- (b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the secretary or the secretary's designee;
- (c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or
- (d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

- (a) Appellant and legal counsel agree to the fee; and
- (b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

- (a) Be the responsibility of the counsel or agent; and
- (b) Not be deducted from the benefits provided to an appellant.

(2 Ky.R. 239; Am. 3 Ky.R. 218; eff. 8-4-1976; 6 Ky.R. 152; eff. 10-3-1979; 8 Ky.R. 1193; eff. 6-25-1982; 9 Ky.R. 1249; eff. 6-1-1983; 11 Ky.R. 296; eff. 9-11-1984; 15 Ky.R. 2314; 16 Ky.R. 35; eff. 8-5-1989; 1039; eff. 1-12-1990; 22 Ky.R. 2153; eff. 7-5-1996; 24 Ky.R. 985; 1533; 1684; eff. 2-17-1998; Recodified from 904 KAR 2:055, 10-30-1998; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 33 Ky.R. 138; 421; eff. 9-1-2006; 36 Ky.R. 1548; 2079-M; eff. 4-2-2010; TAm eff. 6-14-2010; 39 Ky.R. 1324; eff. 3-8-2013; 40 Ky.R. 2369; 41 Ky.R. 69; 280; eff. 9-5-2014; 42 Ky.R. 597; 1239; eff. 11-18-2015; 45 Ky.R. 1835, 2738, 2925; eff. 5-3-2019.)