**Section 105.60 Appeals**

Any person who is adversely affected by a decision of the Department in resolving a request for reconsideration under Section 105.20(c) or Section 105.200(d) may appeal that decision to the Director as provided under this Section.

a) Director's Designee

The Director may designate any person qualified to be an administrative law judge for the Department to act in the Director's stead under this Section. Any person designated shall have all powers and duties of the Director under this Section, except for the power to designate a representative of the Department under subsection (c). Any person designated may be disqualified for bias or conflict of interest upon the motion of a party.

b) Filing an Appeal

An appeal must be filed with the Director within 30 days from the date the CMS decision is received. A decision shall be deemed to be received on the date of actual receipt by the appellant or 2 days after the date of mailing, whichever is earlier.

1) An appeal does not need to be in any particular form, but:

A) must be in writing, dated and signed by the appellant or the authorized officer or agent of the appellant;

B) must set forth specific facts showing why the decision of the Department appealed from is erroneous; and

C) may include any documentation that is material and relevant to the appeal.

2) An appeal may be filed by mail, in which case it shall be deemed to be filed on the date of the postmark stamped by the United States Postal Service on the envelope in which it was mailed.

3) The appellant shall serve a copy of the appeal on all parties named in the appeal no later than the last date for filing the appeal.

4) Upon motion of the appellant showing good cause, the Director may extend the time within which to file an appeal.

c) Department Representative

CMS shall be the appellee to appeals under this Section, and shall be represented by the chief administrator of the State OA or a designee of that person or of the Director. The CMS representative for an appeal shall not be a person designated by the Director under subsection (a) with regard to the appeal.

d) Preliminary Review

The Director shall review an appeal for timeliness and completeness as provided under subsection (b).

* 1. The Director shall dismiss the appeal if it is untimely and/or incomplete.
  2. The Director may allow the appellant to cure any defects and re-file the appeal within the time period established by the Director. A re-filed appeal shall be subject to preliminary review as provided under this subsection (d).

e) Review of Merits

If an appeal is timely and complete, the Director may review the merits of the appeal on its face.

1) The Director shall review any documentation included with the appeal, and may conduct an investigation if warranted under the circumstances.

A) An investigation may include, without limitation, requests for information from the parties and an informal conference with the parties. An informal conference shall be conducted and controlled by the Director. The parties shall not have the right at an informal conference to present evidence or argument or to ask questions of the Director or any other person in attendance, but shall have the right to be represented by counsel.

B) Any information obtained by the Director from an investigation shall not be evidence at a hearing under this Section, and shall not be considered by the Director when reaching a decision under subsection (n), unless the information is entered into evidence in the record at the hearing.

2) The Director may order any appropriate disposition provided under subsection (n) if the Director concludes after review under this subsection (e) that substantial justice was not done by the decision of CMS.

f) Notice of Hearing

Unless the Director has ordered a disposition under subsection (e), the Director shall issue a notice of hearing to all parties no later than 30 days after the date the appeal was filed. The Director may extend the time for issuing the notice of hearing if warranted under the circumstances. The Director shall provide notice to all parties of any extension.

1) A notice of hearing shall be mailed to all parties no less than 10 days before the date of the hearing, but may be mailed less than 10 days before the date of the hearing if all parties agree on the record.

2) The notice of hearing shall include the time and date of the hearing and shall identify the parties, the issues on appeal and the CMS decision appealed from.

3) If the notice of hearing requires any parties to appear at the hearing in person, the notice of hearing shall include the place where the hearing shall be held.

4) If the notice of hearing requires any parties to appear at the hearing by telephone, the notice of hearing shall include instructions about how the parties should:

A) advise the Director of the telephone number where they may be called at the time of the hearing;

B) submit documents to the Director for consideration at the hearing; and

C) arrange the appearance of witnesses by telephone at the hearing.

g) Continuances

A request for a continuance must be in writing and must set forth facts showing why the continuance would be granted. A continuance requested by fewer than all the parties shall be granted only for good cause shown. A continuance requested by all the parties shall be considered and granted or denied by the Director. The Director may enter a continuance on his or her own motion.

h) Burden of Proof

The burden is on the appellant to prove by a preponderance of the evidence that the CMS decision appealed from is erroneous.

i) Withdrawal of Appeal

An appellant may voluntarily withdraw an appeal at any time without penalty by filing a signed written notice with the Director. The appellant shall serve a copy of the notice of voluntary withdrawal on all other parties.

j) Manner of Hearing

Hearings shall be conducted by telephone unless the Director requires the parties to appear in person.

1) Parties scheduled to appear at a hearing by telephone must designate a telephone number for the Director to call at the time of the hearing, and must answer the Director's call to that telephone number at the time of the hearing. A party who does not comply with either of these requirements shall be deemed to have not appeared at the hearing.

2) Parties scheduled to appear at a hearing in person must appear at the place of the hearing on the date and time of the hearing as designated in the notice of hearing. A party who does not comply with this requirement shall be deemed to have not appeared at the hearing.

3) Parties scheduled to appear at a hearing by telephone must provide the Director with all documents they want considered at the hearing at least 5 days before the hearing, and must provide copies of those documents to the other parties at least one day before the hearing.

4) The Director may require some, but not all, parties to appear at a hearing in person. If the Director so requires, the other parties may, but are not required to, appear at the hearing in person.

5) A party may request to appear in person at a hearing. If the Director grants the request, the other parties may appear at the hearing in person or by telephone as they choose, unless the Director requires them to appear in a particular manner.

6) The Director may allow any witness to appear at any hearing in person or by telephone. The Director may require any witness to appear at any hearing in person, but in doing so the Director shall weigh the expense and inconvenience to the witness caused by testifying in person with the benefit to the Director of receiving the testimony in person.

7) Hearings involving the in-person appearance of a person shall be conducted at the Department's offices in Springfield, Illinois, or at another location designated by the Director.

k) Failure to Appear

Failure of the appellant to appear at a hearing as provided under subsection (j) shall result in dismissal of the appeal. Failure of any other party to appear at a hearing as provided under subsection (j) shall result in an appropriate sanction, including without limitation, imposition of a disposition under subsection (n) favorable to the appellant.

l) Conduct of Hearing

All hearings are subject to the requirements of this Section and the Illinois Administrative Procedure Act [5 ILCS 100]. The Director shall conduct and control the hearing, which shall be limited to the factual and legal issues presented on the appeal.

1) A record shall be kept of all proceedings before the Director.

2) The Director shall have all powers and duties of an administrative law judge under Illinois law not inconsistent with this Section.

3) All parties have the right to be represented by counsel, to present testimony and other evidence material relevant to the issues on appeal, and to ask questions of any person who testifies at the hearing.

4) The Director may allow the parties to make opening and/or closing statements.

5) The Director may ask questions of any person appearing at the hearing, may enter any material and/or relevant evidence into the record on his or her motion or the motion of a party, and shall ensure that all parties have a full and fair opportunity to be heard.

6) The technical rules of evidence do not apply to hearings under this Section. The Director may accept any material evidence that is relevant to the issues on appeal. The Director shall determine the credibility of the witnesses and the evidence. The Director may accept hearsay as evidence, but, if hearsay is accepted, the hearsay nature of the evidence shall be considered when the Director weighs the evidence. The Director is not required to rule on any objection to the introduction of evidence, but any objection shall be noted and made part of the record.

7) The Director may exclude any person from the hearing who becomes abusive or disruptive. The hearing shall continue without the participation of the excluded person, and the Director shall render a decision based on the evidence in the record.

m) Post-Hearing Memoranda

The Director may allow or require the parties to submit post-hearing memoranda addressing any hearing issues identified by the Director.

n) Decision of the Director

The Director shall issue a decision based on the preponderance of the credible evidence in the record, and may take the arguments of the parties into consideration.

1) The Director's decision shall include a statement of the issues presented, findings of fact and conclusions of law, and the Director's conclusions.

2) The Director shall enter a disposition of the appeal by remanding with instructions, revising, reversing or sustaining the CMS decision appealed from.

3) The Director's decision shall be the final administrative decision of the Department on the matter of the appeal.