**Section 117.145 Hearings and appeals**

a) If the Department denies an individual's application for participation in the programs included in this Part, the Department shall give written notice within 30 days to:

1) The person who signed the application for participation in the Home-based Support Services Program; or

2) The parent for the Family Assistance Program.

b) The notice shall inform the individual of the right to appeal the decision and shall describe the appeal procedure.

c) The person who receives the notice may appeal the Department's denial within 20 days after receipt of the Department's written notice by mailing a written appeal request of the Department (see Sections 2-13 and 3-15 of the Home-Based Support Services Law). All appeal requests shall be sent to:

Hearings and Appeals Unit

Department of Human Services

401 Stratton Building

Springfield, IL 62765.

d) The Department may arrange pre-hearing conferences prior to scheduling a hearing if, in the opinion of the hearing officer, such conferences could develop factors not included in the Department's master case record, could clarify the facts or issues to be determined at the hearing or could result in a resolution of the case without a formal hearing. The individual is not required to participate in such a conference; if the individual does participate, he or she may be represented by the person of his or her choice. If the appellant and the Department agree, the appeal may be terminated at the pre-hearing conference.

e) The Department shall send by certified mail a notice stating the date, time, and place of the hearing to the address given on the individual's appeal request not later than 60 days after receiving the notice of appeal, unless the appeal is terminated at the pre-hearing conference. Hearings shall be scheduled at a time and place to be determined by the Department. The place selected shall be an appropriate location, with a view to geographic grouping of the cases to be heard, to keep travel at a minimum for all participants.

f) The individual requesting the appeal of the Department shall appear personally and may bring such witnesses as may be deemed necessary and may be represented by a person of his or her own choice.

g) A hearing officer duly authorized by the Secretary shall conduct the hearing as follows:

1) The hearing shall be tape or stenographically recorded.

2) The hearing shall be officially opened when its purpose has been stated and governing authorities have been cited.

3) The hearing officer shall present his or her credentials.

4) The hearing officer shall swear in those who are to testify as witnesses, including the appellant and others appearing on his or her behalf, the Department's representative or representatives, and identify them for the record by name and title.

5) The appellant shall be given preference as to the order of appearances by agreement as to the format of the hearing, as a result of a preliminary conference between both parties. If agreeable, the Department's case shall be recited first into the record for the purpose of developing a basis for the hearing. All documents, in support of such testimony, shall be numbered and offered into evidence as the Department's exhibits. Leave to substitute copies of such documents shall be sought, so the originals may be retained in the Department's master case record file.

6) The common law rules of evidence shall not be enforced in the conduct of the hearing (see Section 10-40 of the Illinois Administrative Procedure Act [5 ILCS 100/10-40]). The hearing officer may ask and receive answers to such questions as are pertinent and proper for a fair determination of the case. Exhibits may be received as part of the evidence and shall be numbered in order according to whether they are the Department's or the appellant's exhibits.

7) Upon completion of the Department's case, cross examination of the Department may be held if desired, whether by the appellant or his or her attorney, if so represented.

8) The appellant shall then state, either directly, or on examination by the counsel, the reason for requesting an appeal of the denial of the application, and shall submit documents to substantiate allegations made by him or her, or as a rebuttal of the Department's allegations. These exhibits shall be numbered and identified for record purposes as applicant's exhibits. The presiding hearing officer shall have complete authority for determining what testimony or evidence is relevant and admissible into the record, either by the Department or the appellant.

9) After all direct testimony has been completed and all evidence by both the Department and the appellant is in, cross-examination may again be held, if so desired.

10) When there is no further testimony, the hearing shall be adjourned.

h) Within five working days after the hearing, the hearing officer shall render his or her written decision as to whether the Department presented substantial evidence that the individual did not meet the criteria for eligibility set out in Section 117.200 or Section 117.300. Substantial evidence is such evidence as a reasonable person can accept as adequate to support a conclusion. If the hearing officer finds there was substantial evidence to justify the Department's decision, he or she shall deny the appeal. The hearing officer's decision shall contain findings of facts and conclusions. Copies of the decision shall be sent to the appellant and to the Department. The appellant shall be informed that he or she may appeal the hearing officer's decision by requesting a review by the Secretary within 10 days after the receipt of the appeal. The request must be made in writing to the Secretary.

i) If an appeal is requested, the Secretary shall review the hearing officer's decision and the evidence submitted at the hearing. Within 20 working days after receipt of the request for review, the Secretary shall issue a written decision upholding or reversing the hearing officer's decision. The Secretary shall uphold the decision if he or she determines that the procedures set out in this Section were followed and that the decision was supported by substantial evidence. Copies of the Secretary's decision shall be sent to the appellant and the Department.

j) *The Department's denial of an appeal shall constitute a final administrative decision. Final administrative decisions shall be subject to judicial review exclusively as provided in the Administrative Review Law, as now or hereafter amended, except that any petition for judicial review of a final administrative decision by the Department under this* *subsection* *shall be filed within 30 days after receipt of notice of the Department's final administrative decision. The term "administrative decision" has the meaning ascribed to it in Section 3-101 of the Code of Civil Procedure*. (Section 2-13 of the Home-Based Support Services Law and Section 3-15 of the Family Assistance Law)