

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-05-03
FAIR HEARING REQUESTS**

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1240-05-03-.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.
 - (a) Except as provided in subparagraph (b) below, the appellant or his/her representative may request a hearing by any clear expression, oral or written.
 - (b) Exceptions requiring appeals to be submitted in writing:
 1. 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.;
 2. Child support-related appeals as required by Title 36, Chapter 5 of the Tennessee Code Annotated;
 3. 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;

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4. Child care agency appeals of report card assessments pursuant to Chapter 1240-04-07;
 5. Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;
 6. Summer Food Service Program and Child and Adult Care Food Program appeals as provided in State Rule 1240-05-08-.01(8) and (9); and
 7. Tennessee Blind Enterprises appeals as provided in State Rule 1240-05-03-.03(1)(j)2.
- (5) The Appeals and Hearings Division may process an informal resolution of an appeal as provided in State Rule 1240-05-03-.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 1240-05-03-.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, 71-1-132, 71-3-502, and 71-3-509; Chapter 1240-04-07; 7 C.F.R. § 273.15; 45 C.F.R. § 205.10; and 42 C.F.R. §§ 431.220 and 431.221. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-05-03-.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; and
 - (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:
 1. In the Families First Program (including Refugee Cash Assistance) and the Food Stamp Program a minimum of ten (10) days in advance before the date of intended action; and

(Rule 1240-05-03-.02, continued)

2. In the Medicaid Program under Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), including TennCare Standard, a minimum of ten (10) days in advance before the date of intended action; provided, however, any determinations to discontinue, terminate, suspend or reduce TennCare/Medicaid services, including TennCare Standard, must also comply with any other of these rules, or any applicable rules of the TennCare Bureau regarding notices relating to discontinuance, termination, suspension or reduction of TennCare/Medicaid services.
- (b) Advance written notification of intended action in Vocational Rehabilitation Services cases is governed by State Rule 1240-05-01-.05(2) - (4).
 - (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. §§ 71-2-406 and 71-2-408 and Chapter 1240-07-10.
 - (e) Notice of administrative actions affecting licenses of child care agencies shall be provided pursuant to T.C.A. § 71-3-509 and Chapter 1240-04-05 and Chapter 1240-05-13.
 - (f) The notices of action for the Child and Adult Care Food Program are governed by the Federal regulation at 7 C.F.R. Part 226.6.
 - (g) The notices of action for the Summer Food Service Program are governed by the Federal regulation at 7 C.F.R. Part 225.
 - (h) For the Adult and Community Service Programs listed in these rules at 1240-05-03-.03(1)(a) part 1, notice of action or notice of intended action shall be provided a minimum of ten (10) days in advance, unless required to be otherwise under Federal or State statute or regulation.
 - (i) Notice of intended action in the Tennessee Business Enterprises Program shall be provided a minimum of ten (10) days in advance, unless required to be otherwise under Federal or State statute or regulation.
 - (j) Notice of intended action to discontinue, terminate, suspend, or reduce assistance or services or to take administrative actions involving persons subject to the Department's jurisdiction in any other programs, shall be given a minimum of ten (10) days in advance before the date of intended action, unless the notice is required to be otherwise under Federal or State statute or regulation or court order.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 36-5-701 et seq., 36-5-1001 – 1003, 71-1-105(12), 71-2-401 et seq., 71-3-154, 71-3-509, 71-4-508, 71-4-610, 71-5-106, 71-5-110, and 71-5-305; 7 U.S.C. §§ 2014, 2015, 2020(e)(10); 20 U.S.C. § 107b(6) and 107d-1; 29 U.S.C. § 722(a)(5) and (c)(2); 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 651 et seq.; 42 U.S.C. § 1397; 42 U.S.C. §§ 1396 et seq.; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624; 42 U.S.C. § 9901; 7 C.F.R. § 225.13 (b)(1), 226.6(k)(5)(i), and 226.6(l)(2); 7 C.F.R. § 273.13(a)(1); 34 C.F.R. § 361.57(b)(2)(iv) and (b)(4); 34 C.F.R. § 395 et seq.; 42 C.F.R. § 431.211; 45 C.F.R. § 205.10(a)(4)(i)(A); 45 C.F.R. § 400.54; and 10 C.F.R. § 440.1.

(Rule 1240-05-03-.02, continued)

Administrative History: Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-05-03-.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/TennCare Medicaid eligibility reform disenrollment appeals. (State Rule 1240-05-03-.03(1)(I)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;
- (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

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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 1240-05-08-.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 1240-05-08-.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 1240-04-07, 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.

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

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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, 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 1240-05-01-.05, will be allowed thirty (30) calendar days after the date of notification of the Informal Administrative 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 1240-05-01-.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 1240-06-11-.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

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manager's receipt of an administrative review decision issued by the Director of Services for the Blind Division pursuant to rule 1240-06-11-.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 1240-06-11-.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 1240-05-08-.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(b).
 - 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 1240-05-08-.01(8), and not the Uniform Administrative Procedures Act.
- (l) TennCare Standard and TennCare Medicaid Appeals.
 - 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.

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- (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.
 - (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), part 3 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);

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- (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, will be processed in accordance with State Rules 1200-13-13-.02(6) and 1200-13-13-.12, and the Rules of the Department of Human Services, as applicable. 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.

(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 1240-05-03-.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 1240-05-03-.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.

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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 1240-05-03-.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) for the TennCare Medicaid and TennCare Standard Programs, assistance or services may be reinstated or continued pending appeal; provided, however, State Rule 1240-05-03-.03(1)(l)3(iii) and (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 1240-05-03-.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 is governed under State Rule 1240-05-01-.05(5) and State Rule 1240-05-01-.05(10)(b).
- (f) Continuation of services in Summer Food Service Program appeals is governed under 7 C.F.R. § 225.13(11) and State Rule 1240-05-08-.01(8).

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- (g) Continuation of services in Child and Adult Care Food Program appeals is governed under 7 C.F.R. § 226.6(k)(10) and State Rule 1240-05-08-.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 is governed under 45 C.F.R. § 400.54.
- (j) Continuation of services in appeals for other Programs administered by the Department is 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), (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), and 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. **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed July 10, 1980; effective August 25, 1980. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed January 20, 1984; effective February 19, 1984. Amendment filed August 30, 1985; effective November 12, 1985. Amendment filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-05-03-.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.

(Rule 1240-05-03-.04, continued)

- (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 1240-05-03-.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). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed April 30, 1979; effective July 30, 1979. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-05-03-.05 GROUP HEARINGS. The Department may respond to a group of individual hearing requests by conducting a single group hearing where the sole issue is a State or Federal law or policy or a change in State or Federal law or policy. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his/her own case or be represented by his/her authorized representative.

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). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-05-03-.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.

(Rule 1240-05-03-.06, continued)

- (3) Any waiver of the time limits in State Rule 1240-05-03-.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. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007.

1240-05-03-.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.
- (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 1240-05-06-.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. **Administrative History:** Original rule filed February 26, 2007; effective May 12, 2007.