

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

**CHAPTER 1240-05-05
THE HEARING OFFICIAL**

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1240-05-05-.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). **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.

1240-05-05-.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;
 - (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.

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

- (2) Except for issues of subject matter jurisdiction, no hearing official, 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 without objection of the parties.
- (3) Pursuant to T.C.A. § 36-5-101(f)(1) and 42 U.S.C.S § 666 (a)(9)(C), a hearing official is not authorized to forgive or retroactively modify 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, 36-5-101(f)(1), 71-1-105(12), 71-1-111, 71-5-105, and 71-5-109; 7 C.F.R. § 273.15(g); 42 U.S.C.S § 666 (a)(9)(C); 42 C.F.R. § 431.220 and 42 C.F.R. § 431.221; and 45 C.F.R. § 205.10(a)(5)(iii). **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, 1983; effective March 16, 1983. amendment filed February 26, 2007; effective May 12, 2007.

1240-05-05-.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 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 1240-05-14 and 1240-05-15.)

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

- (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.
 - (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.

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

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

1240-05-05-.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 1240-05-04-.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 1240-05-08-.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 1240-05-08-.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.

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