

Arizona Title 6. Economic Security Chapter 5. Department of Economic Security Social Services Article 75. Appeal and Hearing Procedures for Adverse Action Against Family Foster Homes, Adoption Agencies, Family Child Care Home Providers, and Persons Listed on the Child Care Resource and Referral System

A.A.C. T. 6, Ch. 5, Art. 75, Refs & Annos

A.A.C. R6-5-7501

R6-5-7501. Definitions

The following definitions apply in this Article.

1. "Adverse action" means:

a. Denial, suspension, or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and

b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.

2. "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children, Youth, and Families and the Child Care Administration.

3. "Adoption agency" has the meaning ascribed to "agency" in A.R.S. § 8-101(2).

4. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).

5. "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.

6. "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.

7. "Child Care Resource and Referral System," which is sometimes referred to as "CCR& R," means the child care provider information system which the Department administers under A.R.S. § 41-1967.

8. "Department" means the Arizona Department of Economic Security.

9. "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.

Current through March 31, 2013.

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10. "Family child care home provider" has the meaning prescribed in R6-5-5201(29).

11. "Foster parent" has the meaning prescribed in A.R.S. § 8-501(A)(5).

12. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges adverse action.

13. "Licensee" means a person:

- a. Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
- b. Applying for certification as, or certified as, a family child care home provider; or
- c. Listed on the Child Care Resource and Referral System.

14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed under A.R.S. § 41-1992(A).

15. "Person" means a natural person, partnership, joint venture, company, corporation, firm, association, society, or institution.

A.A.C. R6-5-7502

R6-5-7502. Entitlement to a Hearing; Appealable Action

A. A licensee who disputes adverse action may obtain an administrative hearing to challenge the action as provided in this Article.

B. The following actions are not appealable:

1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
2. Failure to clear a fingerprint check or criminal history check;
3. Imposition of noncompliance status as prescribed in R6-5-7035;
4. Imposition of a corrective action plan as prescribed in R6-5-5818;
5. Removal of a child from a placement;

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6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and

7. Imposition of a provisional license as prescribed in A.R.S. § 8-509(D).

C. Findings made in a Child Protective Services (“CPS”) investigation are not appealable under this Article. A person may appeal findings made in a CPS investigation of a licensee as prescribed in A.R.S. § 8-546.12.

A.A.C. R6-5-7503

R6-5-7503. Computation of Time

A. In computing any time period,

1. The term “day” means a calendar day;

2. The term “work day” means Monday through Friday, excluding Arizona state holidays;

3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and

4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.

B. A document mailed by the Department is deemed given to the addressee on the date mailed to the addressee’s last known address. The mailing date is presumed to be the date shown on the document, unless the facts show otherwise.

A.A.C. R6-5-7504

R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions

A. Except as otherwise provided in R6-5-5010(A) and R6-5-5227, a person who wishes to appeal an adverse action shall file a written request for hearing with the Administration within 20 days of the date on the notice or letter advising the person of the adverse action. The Administration shall provide a form for this purpose, and, upon request, shall help an appellant fill out the form.

B. An appellant shall include the following information in the request for hearing:

1. Name, address, and telephone number, and, if applicable, telefacsimile number of the person subject to the adverse action;

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2. Identification of the Administration initiating the adverse action;
3. A description of the adverse action which is the subject of the appeal;
4. The date of the notice of adverse action; and
5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

C. The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (B), so long as the request contains sufficient information for the Department to determine the identity of the appellant and the issue on appeal.

D. A request for hearing is deemed filed:

1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
2. On the date actually received by the Department, if not mailed as provided in subsection (D)(1).

E. The Department may determine that a document was timely filed if the sender of the document can demonstrate that the delay in submission was due to any of the following reasons:

1. Department error or misinformation,
2. Delay or other action by the United States Postal Service, or
3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.

F. When the Office of Appeals receives a request for hearing that was not timely filed, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excused as provided in subsection (E).

G. An appellant whose appeal is denied as untimely may petition for review as provided in R6-5-7518.

A.A.C. R6-5-7505

R6-5-7505. Administration: Transmittal of Appeal

An Administration that receives a request for appeal shall send the Office of Appeals a copy of the request and the adverse action notice within two work days of receipt of the request.

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A.A.C. R6-5-7506

R6-5-7506. Stay of Adverse Action Pending Appeal

A. The Department shall not carry out the adverse action until the time for appeal has run, except as otherwise provided in subsection (C), and in the following circumstances:

1. The appellant expressly waives the delay of action; or

2. The appellant

a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice, and

b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice.

B. If an appellant timely appeals an adverse action as provided in R6-5-7504, the Department shall not carry out the adverse action until a hearing officer issues a decision affirming the adverse action, except as otherwise provided in subsection (C), and in the following circumstances:

1. The appellant expressly waives the delay of action;

2. The appellant

a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice; and

b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice;

3. The appeal challenges an action that is not appealable according to R6-5-7502(B);

4. The appellant withdraws the request for hearing; or

5. The appellant fails to appear for the hearing.

C. The Department may summarily suspend a license, a certificate, or registration on the CCR & R, as provided in A.R.S. § 41-1064(C).

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A.A.C. R6-5-7507

R6-5-7507. Hearings: Location; Notice; Time

A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness to appear telephonically.

B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing as follows:

1. For appeals of adverse action against a foster parent, within 10 days of the date the Department receives the appellant's request for hearing, as required by A.R.S. § 8-506; and

2. For all other appeals, no earlier than 20 days from the date the Department receives the appellant's request for hearing.

C. The Office of Appeals shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is scheduled within the 10-day period specified in subsection (B)(1). For hearings scheduled within the 10-day period, the Office of Appeals shall notify the parties telephonically and send written notice at the earliest date practicable.

D. The notice of hearing shall be in writing and shall include the following information:

1. The date, time, and place of the hearing;

2. The name of the hearing officer;

3. A general statement of the issues involved in the case;

4. A statement listing the parties' rights, as specified in R6-5-7511; and

5. A general statement of the hearing procedures.

A.A.C. R6-5-7508

R6-5-7508. Rescheduling the Hearing

A. An appellant may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed. Good cause exists where circumstances beyond the appellant's reasonable control make it difficult or burdensome for the appellant to attend the hearing on the scheduled date.

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B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five work days before the scheduled hearing date. The Office of Appeals may deny an untimely request. Emergency circumstances mean circumstances

1. Beyond the reasonable control of the party;
2. Which did not arise until after the five-day period; and
3. Which could not reasonably have been anticipated.

C. When the Office of Appeals reschedules a hearing under this Section or R6-5-7514, the Office of Appeals shall notify all interested parties, in writing, prior to the hearing. The 20-day notice requirement in R6-5-7507(C) does not apply to rescheduled hearings.

A.A.C. R6-5-7509

R6-5-7509. Hearing Officer: Duties and Qualifications

A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.

B. The hearing officer shall:

1. Administer oaths and affirmations;
2. Regulate and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
3. Ensure that all relevant issues are considered;
4. Exclude irrelevant evidence from the record;
5. Request, receive, and incorporate into the record, relevant evidence;
6. Upon compliance with the requirements of R6-5-7511, subpoena witnesses or documents needed for the hearing;
7. Open, conduct, and close the hearing;
8. Rule on the admissibility of evidence offered at the hearing;

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9. Direct the order of proof at the hearing;

10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:

a. Disqualify himself or herself from the case;

b. Continue the hearing to a future date or time;

c. Prior to the entry of a final decision, reopen the hearing to take additional evidence;

d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article; and

e. Exclude non-party witnesses from the hearing room; and

11. Issue a written decision resolving the appeal.

A.A.C. R6-5-7510

R6-5-7510. Change of Hearing Officer; Challenges for Cause

A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit which shall include:

1. The case name and number;

2. The hearing officer assigned to the case; and

3. The name and signature of the party requesting the change.

B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the scheduled hearing date.

C. Unless a party is challenging a hearing officer for cause as provided in subsection (D), a party may request only one change of hearing officer.

D. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.

E. A party who brings a challenge for cause shall file a request as provided in subsection (A) and send a copy

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of the request to all other parties. The request shall explain the reason why the assigned hearing officer is not impartial or disinterested.

F. The hearing officer being challenged for cause may hear and decide the challenge unless:

1. A party specifically requests that another hearing officer make the determination, or
2. The assigned hearing officer disqualifies himself or herself from the decision.

G. The Office of Appeals shall transfer the case to another hearing officer when:

1. A party requests a change as provided in subsections (A) through (C), or
2. A hearing officer is removed for cause as provided in subsections (D) through (F).

H. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

A.A.C. R6-5-7511

R6-5-7511. Subpoenas

A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall first attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-5-7512(2).

B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence.

C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:

1. The case name and number;
2. The name of the party requesting the subpoena;
3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
4. A description of any documents or physical evidence to be subpoenaed, including the title, appearance, and location of the item, and the name and address of the person in possession of the item; and

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5. A description of the party's efforts to obtain the witness or evidence by voluntary means.

D. A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled hearing date.

E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is cumulative.

F. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their state employment, by regular mail, hand-delivery, or state courier service.

A.A.C. R6-5-7512

R6-5-7512. Parties' Rights

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in this Article;
2. The right to copy, before or during the hearing, any documents in the Department's file on the appellant, and documents the Department may use at the hearing, except documents shielded by the attorney-client or work-product privilege, or as otherwise prohibited by federal or state confidentiality laws;
3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-5-7510;
4. The right to request subpoenas for witnesses and evidence as provided in R6-5-7511;
5. The right to present the case in person or through an authorized representative, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31(a);
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-5-7518 and R6-5-7520, if dissatisfied with an Office of Appeals' decision.

A.A.C. R6-5-7513

R6-5-7513. Withdrawal of an Appeal

A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement

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expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose. An appellant may also orally withdraw an appeal on the open record.

B. Upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or a statement of withdrawal made on the record, the Office of Appeals shall dismiss the appeal.

A.A.C. R6-5-7514

R6-5-7514. Failure to Appear; Default; Reopening

A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:

1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
2. Rule summarily on the available record; or
3. Adjourn the hearing to a later date and time.

B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals, before the scheduled time of hearing, that the appellant cannot attend the hearing, due to good cause, and still desires a hearing or wishes to have the matter considered on the available record.

C. No later than 10 days after a scheduled hearing date at which a party failed to appear, the non-appearing party may file a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.

D. The hearing officer may decide the issue of good cause on the available record or may set the matter for briefing or for hearing.

E. If the hearing officer finds that the party had good cause for non-appearance, the hearing officer shall reopen the proceedings and schedule a de novo hearing with notice to all interested parties as prescribed in R6-5-7508(C).

F. Good cause exists where the non-appearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

A.A.C. R6-5-7515

R6-5-7515. Hearing Proceedings

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A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.

B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.

C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).

D. The Office of Appeals shall tape record all hearings or record the hearing by other stenographic means. The Department need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.

E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.

F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing.

G. The hearing officer shall call the hearing to order and dispose of any pre-hearing motions or issues.

H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.

I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence. Unless the hearing officer allows a longer period of time, a statement shall not exceed three minutes.

J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.

K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal and shall exclude any irrelevant evidence.

L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

A.A.C. R6-5-7516

R6-5-7516. Hearing Decision

A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing, and the applicable law. The 60-day time limit is extended for any delay caused by the appellant.

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B. The hearing decision shall include:

1. Findings of fact concerning the issue on appeal;
2. Citations to the law and authority applicable to the issue on appeal;
3. A statement of the conclusions derived from the controlling facts and law, and the reasons for the conclusions;
4. The name of the hearing officer;
5. The date of the decision; and
6. A statement of further appeal rights and the time period for exercising those rights.

C. The Office of Appeals shall mail a copy of the decision to each party's representative, or to the party if the party is unrepresented.

A.A.C. R6-5-7517

R6-5-7517. Effect of the Decision

A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective on the mailing date of the hearing officer's decision. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.

B. If the hearing officer reverses the Administration's decision to take adverse action, the Administration shall not take the action unless and until the Appeals Board or Arizona Court of Appeals issues a decision affirming the adverse action.

A.A.C. R6-5-7518

R6-5-7518. Further Administrative Appeal

A. A party may appeal an adverse decision issued by a hearing officer to the Department's Appeals Board, as prescribed in A.R.S. § 41-1992(C) and (D), by filing a written petition for review with the Office of Appeals within 15 days of the mailing date of the hearing officer's decision.

B. The petition for review shall:

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1. Be in writing,
2. Describe why the party disagrees with the hearing officer's decision, and
3. Be signed and dated by the party or the party's representative.

C. The party petitioning for review shall mail a copy of the petition to all other parties.

D. The Office of Appeals shall have the proceedings of the hearing below transcribed for the Appeals Board.

A.A.C. R6-5-7519

R6-5-7519. Appeals Board

A. The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D) and A.R.S. § 23-672.

B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information would help in deciding the appeal. The Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required, or any further issues to be considered.

C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Board.

D. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The Board's decision shall specify the parties' rights to further review and the time for filing a request for review.

A.A.C. R6-5-7520

R6-5-7520. Judicial Review

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.