

# Virginia Department of Social Services



**Appeals & Fair Hearings Unit**

**Procedure Manual**

**2011**



## Table of Contents

Part I	Introduction	8
	A. Purpose of the Appeals and Fair Hearings Unit	8
	B. Definitions	8
	C. Personnel	10
Part II	Benefits and Services Appeals and Fair Hearings	11
	A. Right of Appeal	11
	1. Appellant	11
	2. Grounds for Appeal	11
	B. Request for a Fair Hearing	12
	1. Who May Request	12
	2. Benefits and Services Program Appeals	12
	3. SNAP Program Appeals	12
	4. Local Agency To Assist Appellant with Appeal	13
	C. Validation of an Appeal	13
	1. Receipt of Appeal Request By Appeals and Fair Hearings Unit	13
	2. Validation	13
	3. Determination By Hearing Officer	14
	D. Scheduling the Appeal Hearing	14
	1. Notice of Hearing	14
	2. Notice That Hearing Will Be Held By Teleconference	14
	3. Rescheduling	14
	E. Hearing Procedure	14
	1. Summary of Facts	14
	2. Travel	16
	3. Rights of the Appellant	16
	4. Rights of the Local Agency	16
	5. Admissible Evidence	16
	6. Standard of Proof	16
	F. Responsibilities and Duties of the Hearing Officer	16
	G. Hearing Decision	17
	1. Record for Decision	17
	2. Basis for Decision	17
	3. Decision to Be Rendered Within 60 Days	17
	4. Decision Is Final and Binding	17
	5. Review of the Decision	17
	a. Right of Review	17
	b. Appeals Review Panel	18
	H. Agency Compliance	19
	1. Implementation of the Decision	19
	2. Exception to Implementation Within 10 Working Days	19
	3. Follow Up By Hearing Officer	19
	I. Automated Appeals Tracking System (AATS)	19

	1. Hearing Officer to Update AATS	19
	2. Use of AATS By Hearing Officers	19
Part III	Child Protective Services Appeals	19
	A. Right of Appeal	19
	1. Appellant	19
	2. Grounds for Appeal	20
	B. Appeal Process and Statutory Authority	20
	1. Local Agency Level	20
	2. Local Conference	20
	3. State Administrative Hearing	20
	4. Circuit Court	20
	C. Validation of an Appeal	21
	1. Receipt of Appeal Request By Appeals and Fair Hearings Unit	21
	2. Acknowledgment	21
	3. Validation	21
	4. Timeliness of Appeal	21
	5. Determination of Validity By CPS Program Support Technician	21
	6. Assignment to Hearing Officer	22
	D. Scheduling the Appeal Hearing	22
	1. Scheduling of Date	22
	2. Timeliness of Hearing	22
	3. Waiver of Hearing	22
	4. Rescheduling	23
	E. Subpoenas	23
	1. Subpoena Requests	23
	2. Good Cause	23
	3. Hearing Officer to Grant/Deny Request	23
	4. Service Fee	23
	5. Expert Witnesses	23
	6. Deposition	23
	7. Juvenile and Domestic Relations District Court	23
	F. Hearing Procedure	23
	1. Investigative Record	23
	2. Special Needs	24
	3. Pre-Hearing Conference	25
	4. Agency Presence at Administrative Hearing	25
	5. Hearing to Be Recorded	25
	6. Authority of the Hearing Officer	25
	7. Rules of Evidence	25
	8. Standard of Proof	25
	9. Weighing the Evidence	25

	10. Attendees	26
	11. Hearing Procedure	26
	12. Testimony Under Oath	26
	13. Witnesses	26
	14. Child Witnesses	26
	15. Hearing Order	27
	16. Agency Opening Statement	27
	17. Holding The Record Open	27
	18. Remand	27
G.	Telephonic Hearings	28
	1. Telephonic, Video Conference, and Face-To-Face Hearings	28
	2. Evidence	28
H.	Responsibilities and Duties of the Hearing Officer	28
I.	Hearing Decision	28
	1. Record for Decision	28
	2. Basis for Decision	29
	3. Decision to Be Rendered Within 60 Days	29
	4. Content of Decision	29
	a. Authority	29
	b. Procedural History	29
	c. Summary of Evidence	29
	d. Applicable Statutory And Regulatory Provisions	29
	e. Analysis	29
	f. Findings of Fact	29
	g. Decision	29
	h. Right of Review	29
	5. Decision Holdings	30
	6. Reconsideration	30
J.	Automated Appeals Tracking System (AATS)	30
K.	On-Line Automated Services Information System (OASIS)	30
	1. CPS Support Technician to Notify Central Registry	30
	2. OASIS to Be Updated	31
Part IV	Child Support Enforcement Appeals	31
A.	Right to Appeal	31
	1. Appellant	31
	2. Grounds For Appeal – NCP	31
	3. Other Appeals	32
B.	Request for an Administrative Appeal	32
	1. Who May Request	32
	2. Child Support Enforcement Appeal	32
C.	Validation of Appeal	33
	1. Receipt of Appeal Request By Appeals and Fair Hearings Unit	33

	2.	Validation	33
	3.	Determination By Hearing Officer	33
D.		Scheduling the Administrative Hearing	33
	1.	Scheduling of Hearing Date	33
	2.	Notice of Hearing	34
	3.	Hearing May Be Held By Teleconference	34
	4.	Rescheduling	34
	5.	Abandonment	34
E.		Hearing Procedure	34
	1.	Hearing	34
	2.	Summary of Facts	35
	3.	Travel	35
	4.	Hearing Attendees	35
	5.	Continuances	35
	6.	Rights of Appellant	35
	7.	Rights of District Office	35
	8.	Admissible Evidence	36
	9.	Standard of Proof	36
F.		Responsibilities and Duties of the Hearing Officer	36
G.		Hearing Decision	37
	1.	Record for Decision	37
	2.	Basis for Decision	37
	3.	Decision to Be Rendered Within 45 Days	37
	4.	Decision Is Final and Binding	37
	5.	Appeal of the Decision	38
H.		Automated Appeals Tracking System (AATS) and Automated Program to Enforce Child Support (APECS)	38
	1.	Hearing Officer to Update AATS	38
	2.	Use of AATS and APECS by Hearing Officers	38
Part V		Administrative Disqualification Hearings	38
A.		Definitions	38
	1.	Administrative Disqualification Hearing	38
	2.	Intentional Program Violation	38
B.		Standard of Proof	38
	1.	Standard of Proof	38
	2.	Clear and Convincing	39
	3.	Examples	39
C.		Request For ADH	39
	1.	Certification of Evidence	39
	2.	Provision of Forms to Suspected Individual	39
	3.	Who May Request	40
	4.	Requirement for Request	40
D.		Waiver	40
	1.	Purpose of Waiver	40
	2.	Return of Waiver Form	40

	3.	Local Agency to Forward Waiver	40
	4.	Signed Waiver Not Returned	41
E.		Scheduling The ADH	41
	1.	Assignment to Hearing Officer	41
	2.	Scheduling	41
	3.	Notice	41
	4.	Time Line	42
F.		Postponement	42
	1.	Requests for Postponement	42
	2.	Hearing Officer May Limit Postponements	42
G.		Failure To Appear	42
	1.	ADH May Be Held Without Individual	42
	2.	Rescheduling For Good Cause	42
	3.	Burden of Proof	42
	4.	Decision Not Valid	43
H.		The Hearing	43
	1.	Persons Present At Hearing	43
	2.	Hearing Officer Presides	43
	3.	Rules of Evidence	43
	4.	Hearing May Be Conducted by Teleconference	43
	5.	Local Agency	43
	6.	Responsibilities of The Hearing Officer	43
I.		Opportunities of the Individual	44
J.		The Decision	44
	1.	Clear and Convincing Evidence	44
	2.	Decision Must Identify Supporting Evidence	44
	3.	Right to Appeal	44
	4.	Timeline	45
	5.	Implementation of the Decision	45
	6.	Non-Fraud Recovery	45
Part VI.		Administrative Review	45
	A.	Authority	45
		1. Right of Appeal to Commissioner	45
		2. Action by Commissioner On Appeal	46
		3. Finality of Decision of Commissioner	46
	B.	Purpose	46
		1. Not Similar to Judicial Review	46
		2. Purpose Is to Examine Policy	46
		3. Internal Agency Mechanism	46
	C.	Administrative Review Panel	46
		1. Organization	46
		2. Responsibility for Administrative Review Process	47
	D.	Requesting a Review	47
		1. Who May Request	47
		2. When Review May Be Requested	47

E.	Procedure	47
1.	Acknowledge Receipt	47
2.	Forward Hearing Record	47
3.	Panel Review	47
4.	Conclusion of Administrative Review	48
F.	Reporting	48
Part VII.	Record Retention Policy	48
A.	Child Protective Services Appeal Records	48
B.	Benefits and Services and Child Support Enforcement Appeal Records	48
Appendix I: Child Protective Services Appeal Fact Sheet		52
Appendix II: Division of Child Support Enforcement Appeal Fact Sheet		57
Appendix III: Administrative Disqualification Hearing Fact Sheet		61

## **PART I. INTRODUCTION**

### **A. PURPOSE OF THE APPEALS AND FAIR HEARINGS UNIT**

The role of the Appeals and Fair Hearings Unit is to ensure that individuals who believe that the local agency has taken inappropriate action in the application of policy or law have an impartial fact-finder. A hearing officer will review the case, hear the appellant's concerns and make a decision in the case. When policy or law has not been correctly applied, it is the Unit's responsibility to ensure that the agency is made aware of its improper action and corrects the error.

The Appeals and Fair Hearings Manual is a summary of the appeal procedures for the programs administered by the Virginia Department of Social Services. The Manual is not, however, all-inclusive, and the controlling policy remains that set forth in the appropriate program policy manual. Please refer to the appropriate program policy manual for specific exceptions or deviations from general policy.

### **B. DEFINITIONS**

The following words and terms, when used in this manual, have the meanings set forth below:

**AATS:** Automated Appeals Tracking System. The AATS computer program is used to track Benefits and Services (B&S), Child Protective Services (CPS) and Division of Child Support Enforcement (DCSE) cases.

**APECS:** Automated Program to Enforce Child Support.

**Administrative Disqualification Hearing:** An impartial review by a hearing officer of an individual's actions involving an alleged fraudulently committed "intentional program violation" (IPV) for the purpose of rendering a decision of guilty or not guilty of committing an IPV.

**Administrative Hearing:** A formal hearing conducted by a hearing officer that gives the appellant an opportunity to contest an action taken by a local agency.

**Benefits and Services Section:** The Benefits and Services Section hears appeals pertaining to the Supplemental Nutrition Assistance Program (SNAP) (benefit), TANF(benefit), general relief (benefit), auxiliary grants (benefit), refugee programs (benefit), energy assistance (benefit), child day care (benefit), adoption subsidies (service), and home based services (service).

**Central Registry:** The Central Registry is a subset of the On-line Automated Services Information System (OASIS) and is the name index with identifying information of

individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the Department.

**Child Protective Services Section:** The Child Protective Services Section hears appeals pertaining to the disposition reached by a local social service agency in the investigation and disposition of an allegation of abuse or neglect of a child.

**Child Support Enforcement Section:** The Child Support Enforcement Section hears appeals pertaining to certain administrative actions taken by the Division of Child Support Enforcement Programs to establish and enforce a support obligation.

**Clear and Convincing Evidence:** Proof which results in reasonable certainty of the truth of the ultimate fact in controversy. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.

**Commissioner:** The head of the Virginia Department of Social Services.

**CP:** In child support enforcement cases, the CP is the Custodial Parent.

**Founded:** In CPS cases, a founded disposition is a disposition in which the local agency has determined that the abuse or neglect occurred.

**Hearing Officer:** An impartial person charged by the Commissioner to hear appeals and decide if a local agency followed policy and procedure.

**Intentional Program Violation (IPV):** An intentional act, as defined more specifically in the appropriate policy manual, by an individual in an effort to obtain SNAP and/or TANF benefits to which the person, household, or assistance unit is not entitled, or to use SNAP benefits in a way forbidden by law.

**Local Agency:** The social services department for each county, city or town throughout the Commonwealth charged with administering public assistance and social service programs in that city, county, town or combined area.

**NCP:** In child support enforcement cases, the NCP is the Non Custodial Parent.

**OASIS:** On-Line Automated Services Information System that supports family services programs (foster care, adoptions and child protective services). Part of the system is responsible for collecting and maintaining information regarding incidents of child abuse and neglect involving parents or other caretakers.

The CPS subset of OASIS includes non-identifying statistical information, the Central Registry, and data accessed only by the Department and local departments consisting of non-purged investigation and family assessment information. The Virginia

Department of Social Services maintains a central registry pursuant to § 63.2-1502 (11) and § 63.2-1514(B) of the *Code of Virginia*.

**Preponderance of the Evidence:** A “preponderance of the evidence” means that the evidence as a whole shows that the fact sought to be proved is more probable than not. It is evidence that is more convincing than the opposing evidence.

**Relevant Evidence:** Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**TANF:** Temporary Assistance to Needy Families Program. This program provides time-limited cash assistance for needy families.

**Toll Free Appeal Request Telephone Number:** A request to appeal a local decision in a SNAP or TANF case may be made orally by calling toll free 1-800-552-3431.

**Unfounded:** In CPS cases, an unfounded disposition is a disposition in which the local agency has not determined by a preponderance of the evidence that the abuse or neglect occurred.

**Validation:** The process by which an appeal request is reviewed to determine whether it is valid. This determination is made by ensuring that it meets the requirements of the applicable policy for valid appeals (such as timeliness).

## **C. PERSONNEL**

### **1. Program Manager**

The Program Manager oversees the operation of the Appeals and Fair Hearings Unit.

### **2. Hearing Officers**

All appeals are heard by hearing officers. Hearing officers are impartial persons charged by the Commissioner to hear appeals and decide if local agencies followed policy and procedure in making a decision.

There are three CPS hearings officers. Two are located in Richmond, one is located in the Eastern Regional Office. The majority of the CPS cases are heard face-to-face.

There are five Benefits and Services hearing officers. Three are located in Richmond, one is located in the Eastern Regional Office and one is located in the

Piedmont Regional Office. Approximately 95% of the benefits and services appeals are heard by telephone

There are three Child Support Enforcement hearing officers. They are located in Richmond. Approximately 90% of the child support enforcement appeals are heard by telephone.

### **3. Program Support Technicians**

There are two Program Support Technicians located in Richmond who provide administrative and clerical support to the hearing officers. One program support technician is dedicated to CPS and one is dedicated to DCSE.

### **4. Office Manager**

An Office Manger, located in Richmond, provides administrative and clerical support to the hearing officers of the B&S section, supervises the program support technicians, and oversees the overall function of the unit.

## **PART II. BENEFITS AND SERVICES APPEALS & FAIR HEARINGS**

### **A. RIGHT OF APPEAL**

1. **Appellant.** Any applicant or recipient of benefits or services who has requested an appeal, or on whose behalf an appeal request has been made.
2. **Grounds for appeal.** An applicant or recipient of benefits or services may appeal a local agency action for the reason that:
  - a. A claim or an application for benefits or services was denied or,
  - b. The individual is aggrieved by an agency action affecting the individual's entitlement to or receipt of benefits or services, or
  - c. The agency failed to act within specified time standards

This language does not preclude any grounds for appeal provided by policies, regulations, or other authority related to the specific program being appealed.

## B. REQUEST FOR A FAIR HEARING

1. **Who may request.** The request for a fair hearing may be made by the applicant or recipient or by a person acting on behalf of the applicant or recipient. A relative, friend or an attorney may act as the applicant's or recipient's authorized representative.
2. **Benefits and Services program appeals.** A request for an appeal from any local agency action must be made:
  - a. Orally or in writing (depending upon the specific program guidelines), and
  - b. Not more than thirty (30) days (except for SNAP benefits) following receipt by appellant of the written notice informing appellant of the action which is the basis for the appeal. The appeal is considered timely if it is postmarked by the 31<sup>st</sup> day following the date of the agency's notice. Additionally, if the appellant can show that he had less than 30 days in which to appeal, a hearing may be granted in the interest of justice.
3. **SNAP benefit appeals.** An appeal may be requested for any "adverse action" by the local agency, including loss of benefits, which occurred in the prior ninety (90) days. "Adverse action" includes a denial of a request for restoration of any SNAP benefits lost more than 90 days, but less than a year, prior to the request.

An appellant may request a hearing at any time during the certification period if dissatisfied with the current level of benefits. The "certification period" is the period during which policy specifies that the appellant is eligible for benefits. The "certification period" may differ according to the appellant's situation and applicable policy. A SNAP appeal request may be made by any clear expression, oral or written, to the local agency, a hearing officer, the toll free appeal request telephone number, or the State agency.

If the amount of a claim (an agency determination of overpayment) was not established by a fair hearing or a court, appellant will have 90 days from the date of initial notification of the claim to appeal the amount of the claim. An appeal request regarding a claim may also be made within 90 days if, after initial notification, the amount of the claim is changed other than by repayment on the original amount.

4. **Local agency to assist appellant with appeal.** The local agency must not prejudice or limit the appellant's right to appeal an agency decision. The local agency must assist the appellant in submitting an appeal or preparing appellant's case, if necessary. Local agencies have an

affirmative duty to provide information and referral services to help appellant make use of any legal services available in the community.

## **C. VALIDATION OF AN APPEAL**

**1. Receipt of appeal request by Appeals and Fair Hearings Unit.** All Benefits and Services appeal requests must be directed to the Appeals and Fair Hearings Unit, Department of Social Services, 801 East Main Street, Richmond, Virginia 23219-2901. When the Appeals and Fair Hearings Unit receives a request for an appeal in a Benefits and Services case, the case will be assigned to the hearing officer designated by the Program Manager.

**2. Validation.** The hearing officer's first duty is to validate the appeal. The Office Manager prepares a validation form, which is submitted to the appropriate local agency for required validation information. A copy of the request for an appeal with the validation form will be forwarded to the local agency.

The local agency must specify (1) the action taken by the agency, (2) the date of the notice of the action, and (3) whether or not benefits have been continued during the appeal process. Additionally, the local agency must provide a copy of the Notice of Action (NOA). The local agency must return the validation form and Notice of Action to the hearing officer within five (5) working days. If the validation form is not returned within 5 working days, the hearing officer will contact the local agency and instruct the local agency to complete and return the validation form.

The hearing officer will review the local agency's Notice of Action, the date that it was sent to the appellant, the date the appellant's appeal was postmarked and/or received by the Appeals and Fair Hearings Unit, and the action being appealed, to determine whether the appeal is valid.

**3. Determination by hearing officer.** If the hearing officer determines that the appeal request is valid, a hearing will be scheduled. The local agency and appellant will be notified of the hearing date in writing. The hearing officer will order continuation of benefits, if the agency has not already taken action to do so, where required.

If the appeal is determined to be invalid, the hearing officer will issue written notification to both the appellant and the local agency. The letter will provide an explanation of the reason for the determination, and advise that an administrative appeal hearing cannot be granted.

## D. SCHEDULING THE APPEAL HEARING

1. **Notice of hearing.** The hearing officer will provide written notification of the hearing date to the appellant, the appellant's representative, if any, and local agency. The notice will include information about the appellant's appeal rights.

The hearing must be scheduled and conducted at a time, date, and place convenient to appellant – usually at the local agency. Written notice of the hearing date must be given to the local agency and the appellant at least 10 days prior to the hearing.

2. **Notice that hearing will be held by teleconference.** The administrative hearing is usually conducted by teleconference. The scheduling notice will advise the appellant that the hearing will be held by teleconference. Face-to-face hearings will be granted only upon request and when required by the circumstances of the case.
3. **Rescheduling.** When an appellant, for good cause as determined by the hearing officer, indicates that the scheduled date is not convenient, the hearing date may be rescheduled. The time limit for action on the decision may be extended for as many days as the hearing is postponed. The hearing officer has the authority to set a date beyond which the hearing will not be delayed.

## E. HEARING PROCEDURE

1. **Summary of Facts.** Upon receiving notification of the scheduled hearing, the local agency must prepare a Summary of Facts of the case.
  - a. The Summary of Facts should include all relevant information about the action being appealed.
  - b. The Summary of Facts should provide a logical, chronological sequence of the events – to include specific dates, agency requests for verification, etc. – which led up to the action taken. The writer should assume that the reader is not familiar with the facts of the case or the program policy.
  - c. If the action taken involves a calculation of benefits, a description should be included explaining how specific figures (income, expenses, deductions, etc.) and policy were applied to determine the benefit amount. If the figures applied in the calculation are disputed, the reasons underlying the dispute must also be addressed. ADAPT screens showing the benefit calculation must be included.

- d. Copies of all relevant documents must be attached and submitted with the Summary of Facts. This includes documents submitted by the appellant, notices, checklists, letters, verifications, evaluation forms, worksheets, assistance plans, ADAPT or other system print outs, and any other material relating to the action being appealed.
- e. The Summary of Facts must include the applicable manual provision or law. Both the language and correct citation must be included.
- f. If more than one worker was involved in the action taken, each worker should either prepare a separate Summary of Facts or the workers should prepare the Summary of Facts jointly.
- g. For TANF cases involving a **DCSE non-cooperation determination**, the DCSE worker must assist in the preparation of the Summary of Facts, provide relevant documentation, and participate in the hearing.
- h. The Summary of Facts, including all attachments, must be signed and sent to the appellant, the appellant's representative, if any, and the hearing officer.
- i. The Summary of Facts and all documentation must be mailed in sufficient time so that the hearing officer and the appellant **receive** it at least five days prior to the hearing.
- j. If the appellant does not receive the Summary of Facts at least five days prior to the hearing, the hearing officer has the discretion to reschedule the hearing to allow the appellant an opportunity to review the Summary.

2. **Travel.** The local agency is responsible for assuring that appellant has transportation to the hearing if he is unable to make his/her own travel arrangements. The appellant must contact the agency in advance concerning any transportation needs.
3. **Rights of the Appellant.** Appellant or his/her representative must be given the opportunity to:
  - a. examine all documents and records which are used at the hearing;
  - b. present the case;
  - c. bring witnesses;
  - d. establish pertinent facts and advance arguments; and,
  - e. question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
4. **Rights of the Local Agency.** The local agency will have the opportunity:
  - a. to clarify or modify its statements contained in the Summary of Facts,
  - b. to question appellant and appellant's witnesses on the salient issue(s), and
  - c. to examine all documents submitted by appellant or his/her representative.
5. **Admissible evidence.** The strict rules of evidence do not apply in the administrative hearing. Only relevant evidence, however, will be admissible at the hearing. Relevant evidence is evidence related to the issue(s) being appealed. The only issue(s) that will be considered at the hearing are those enumerated by the appellant when the appeal was requested or those raised by the local agency as a basis for its action or inaction. The hearing officer will not consider any other evidence or issues.
6. **Standard of proof.** There is a legal presumption that the agency acted in accordance with law and policy and the burden of proof is on the appellant to demonstrate agency error.

## **F. RESPONSIBILITIES AND DUTIES OF THE HEARING OFFICER**

### **Duties of the hearing officer at the hearing:**

1. Identify those present for the record;
2. Provide an opening statement to explain the purpose of the hearing and the procedure that will be utilized throughout the hearing;
3. Ensure that all relevant issues are considered;
4. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised;

5. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;
6. Explain right of further review;
7. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to appellant and the local agency;
8. Hear and weigh the evidence

**Duties of the hearing officer following the hearing.** The hearing officer will issue a written decision following the hearing, within the required timeframe.

## **G. HEARING DECISION**

1. **Record for decision.** An official report containing the substance of the hearing, together with findings, and conclusions of the hearing officer, and all papers filed in the proceeding, will constitute the record for decision.
2. **Basis for decision.** The decision of the hearing officer shall be based exclusively on the evidence, documentary or testimonial, introduced at the hearing, and on all applicable policies, regulations, and laws.
3. **Decision to be rendered within 60 days.** The decision of the hearing officer shall be rendered within 60 days following the date the appeal request is received, except where a postponement has been requested. In that instance, the time limit will be extended for as many days as the hearing was postponed. In an Administrative Disqualification Hearing (ADH), the decision shall be rendered within 90 days of the date the appellant is notified in writing that the ADH has been scheduled.
4. **Decision is final and binding.** The decision of the hearing officer will be final and binding when mailed to the appellant and the local agency. The decision must be implemented by the local agency within 10 working days of the date of the decision, regardless of whether review of the decision has been requested.
5. **Review of the decision.** Appellant, and/or appellant's representative, and the local agency must be given written notice of the right to request a review of the decision of the hearing officer. The agency cannot request judicial review. Standard notice language will be contained in all decisions as follows:

- a. Right of Review.

As provided in § 63.2-519 of the *Code of Virginia*, a person aggrieved by the decision of the hearing officer may seek further review of said

decision, by the appropriate Circuit Court, in accordance with Article 5 of the Administrative Process Act, Va. Code § 2.2-4025, *et seq.*

As provided by rules 2A:2 and 2A:4 of the Supreme Court of Virginia, You have Thirty (30) Days from the date of the service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to provide notice of your intent to appeal this decision to circuit court. Notice of your intent to file an appeal with the circuit court must be made in writing and sent to: Commissioner, Virginia Department of Social Services, 801 East Main Street, Richmond, VA 23219. Please be aware that although your notice to the Virginia of Department of Social Services of your intent to appeal is required however you must file a petition in circuit court in order to prefect your appeal. You will not receive correspondence nor will your benefits continue as a result of sending a notice of appeal as this decision is the final administrative action.

- b. Public Assistance Cases: *Appeals Review Panel*. The Commissioner has also established an Appeals Review Panel to review administrative hearing decisions in cases involving public assistance such as SNAP and TANF upon the request of either the applicant or the local board. The purpose of the panel is to make recommendations to the Commissioner regarding whether changes are needed in future policy or in the conduct of future hearings. Please note that the Appeals Review Panel cannot change the decision of the hearing officer. It may only make recommendations to the Commissioner about future changes in policy or procedure. If you wish to appeal the decision of the hearing officer, you must appeal to the appropriate Circuit Court within the appropriate time periods outlined above. A request for review by the Appeals Review Panel will not toll the time periods required for perfecting an appeal to Circuit Court. If you wish to request a review of the hearing officer's decision by the Appeals Review Panel, you must do so within 10 days of receiving the hearing officer's decision by writing to:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

The Appeals review panel does *not* review cases involving appeals of actions in service cases such as adoption subsidy and home based services.

## H. AGENCY COMPLIANCE

1. **Implementation of the decision.** The local agency must ensure that administrative action to implement the hearing officer's decision is taken no later than 10 working days following the date of the decision. After corrective action is taken, the local agency representative must notify the appellant and the hearing officer in writing that the agency has complied with the decision.
2. **Exception to implementation within 10 working days.** The local agency is not required to implement the hearing officer's decision within 10 working days if:
  - a. Appellant was required to provide additional information in order to determine the amount of any restoration; or
  - b. The agency elects to implement the decision in a SNAP appeal effective in the household's normal cycle, provided that the issuance will occur within 60 days from the household's request for the hearing.
3. **Follow up by hearing officer.** If written notification of compliance is not received by the hearing officer within 10 working days, the hearing officer will contact the local agency and instruct the agency to submit a written statement that the agency has complied with the decision.

## I. AUTOMATED APPEALS TRACKING SYSTEM (AATS)

1. **Hearing officer to update AATS.** The hearing officer will ensure that AATS is regularly updated and contains correct information, including the appellant's correct name and address, date of case closure, correct disposition and statement of the issue(s). Hearing officers must enter and update appeals data by the 5<sup>th</sup> working day of each month.
2. **Use of AATS by hearing officers.** Hearing officers will use AATS to monitor and manage cases and to assure timely disposition of appeals.

## PART III. CHILD PROTECTIVE SERVICES APPEALS

### A. RIGHT OF APPEAL

1. **Appellant.** An appellant is a caretaker against whom a founded disposition has been made by a local agency. Dispositions are made when a local agency believes that the caretaker committed an act or failed to commit an act, which either resulted in an injury to a child or could have resulted in an injury to a child.

2. **Grounds for appeal.** An appeal may be requested only by an individual against whom an investigation has resulted in a “founded” disposition. A “founded” disposition is a disposition in which the local agency has determined by a preponderance of the evidence that the abuse or neglect occurred. A “preponderance of the evidence” means that the evidence as a whole shows that the fact sought to be proved is more probable than not.

## **B. APPEAL PROCESS AND STATUTORY AUTHORITY**

Section 63.2-1526 of the *Code of Virginia* creates the Child Protective Services appeal process. Each level of the appeal process is designed to provide the appellant a progressively more formal means to challenge the founded disposition of the local social services agency in a CPS case.

1. **Local Agency Level.** Prior to the local agency rendering a disposition, the subject of the report or complaint may consult with the local department to hear and refute evidence collected during the investigation. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, sharing the evidence prior to the court hearing is prohibited. 22 VAC 40-705-120(D).
2. **Informal Local Conference.** An informal local conference is conducted by the director of the local social services agency, or his designee. An appellant may request a local conference to present evidence and testimony to refute the disposition. The local conference must be stayed if criminal charges are pending against the appellant for the same conduct and the same victim as involved in the CPS investigation.
3. **State Administrative Hearing.** The next level is the administrative hearing conducted by a state Department of Social Services hearing officer. The appellant may request a state level hearing (1) if the results of the informal local conference were not satisfactory to the appellant; (2) if the results of the informal local conference were not provided to the appellant within the prescribed time frame; or (3) if the agency did not hold a local conference after requested to do so.
4. **Circuit Court.** An appellant may appeal a state administrative hearing officer’s decision to the circuit court with jurisdiction over the locality where the initial action occurred. The rules governing an appeal to circuit court are contained in Article 5 of the Administrative Process Act and in Rules 2A: 2 and 2A: 4 of the Rules of the Virginia Supreme Court.

## C. VALIDATION OF AN APPEAL

1. **Receipt of appeal request by Appeals and Fair Hearings Unit.** All CPS appeal requests must be made to the Appeals and Fair Hearings Unit, Department of Social Services, 801 East Main Street, Richmond, Virginia 23219-2901. Only the alleged abuser or neglector, or an attorney acting on their behalf, may request an appeal. The CPS Program Support Technician will validate the case before it is assigned to a hearing officer.
2. **Acknowledgement.** The appellant or his counsel and the local agency will receive written acknowledgement that the appeal request was received.
3. **Validation.** Before the case is assigned to a hearing officer, the CPS Program Support Technician must establish that:
  - a. The local agency made a “Founded” disposition against the individual noting the appeal, and the appellant requested a local conference within 30 days of receiving the local agency’s decision; and
  - b. A local conference was conducted, a disposition was rendered, and the appellant requested an appeal to the Commissioner within 30 days of receiving the local conference decision, or
  - c. The local agency failed to conduct a local conference or render a decision within the prescribed timeframe. If the local department refuses the request for amendment or fails to act within forty-five (45) days after receiving such request, the person may, within 30 days thereafter, petition the Commissioner, who shall grant a hearing.
4. **Timeliness of appeal.** An appeal will be considered timely if it is postmarked within 30 days of the appellant’s receipt of the agency’s disposition or local conference decision.
5. **Determination of validity by CPS Program Support Technician.** The CPS Program Support Technician will review OASIS to determine whether a local conference took place and the date of the letter advising the appellant of the result of the conference. The Program Support Technician will call the local agency to determine the date on which the local conference decision was received by the appellant. If the local agency has not entered this information in OASIS, the CPS Program Support Technician will call the local agency to determine the necessary information. Based upon this information, the CPS Program Support Technician will determine whether the appeal request is timely. The CPS Program Support Technician will enter the case in AATS. All appeal requests, whether they are valid or invalid, will be entered into AATS.

Validation Hearing: In the event that the appellant alleges that he/she did not receive notification of the “founded” disposition or notification of the local conference decision, the CPS Program Technician will assign the case to a Hearing Officer for the purpose of scheduling a hearing on the limited issue of whether or not the Appellant’s request for a state level hearing was made in a timely manner.

6. **Assignment to Hearing Officer.** The CPS Program Support Technician will assign valid appeals to a hearing officer based on the location of the case and the local agency involved. CPS administrative hearings which involve local agencies in the Eastern Region of the state are heard by the CPS Hearing Officer located in the Eastern Regional Office in Virginia Beach. The two remaining CPS Hearing Officers, who are located in the Home Office in Richmond, conduct administrative hearings which involve local agencies in the Central Region, Northern Region, Piedmont Region and Western Region of the state. Cases are assigned among the two Home Office Hearing Officers on a rotating basis. The vast majority (90%) of CPS cases are heard face to face.

The CPS Program Support Technician will notify appellants in writing if their appeal request is invalid and will specify why the appeal was invalidated.

#### D. SCHEDULING THE APPEAL HEARING

1. **Scheduling of date.** Once the appeal is deemed valid, a date will be set for the hearing. All parties will be notified in writing of the date, time and location of the hearing. A CPS Appeals fact sheet will be sent with the initial letter notifying the parties of the appeal.
2. **Timeliness of hearing.** The administrative hearing will be conducted within 45 days of the date of the validation and assignment of the case to the hearing officer unless the appellant or the agency waives the right to have the administrative hearing held within 45 days or there are delays due to subpoena requests, depositions, or scheduling conflicts.
3. **Waiver of hearing.** The appellant may waive the right to a face-to-face hearing and request that the hearing officer base the decision on the local agency record. The appellant may submit a written statement in lieu of oral testimony. The local agency will be provided a copy of the appellant’s statement and an opportunity to respond in writing. The appellant will be provided with a copy of the local agency’s statement. The hearing officer will render a decision based upon the record within 60 days of receiving the full record.

4. **Rescheduling.** The hearing officer has the discretion to reschedule a hearing for good cause at the request of either the appellant or the local agency. The hearing officer will notify the appellant and the local agency by letter that the administrative hearing has been rescheduled, noting the new time and date. The hearing officer may also continue the hearing to a later date.

## E. SUBPOENAS

1. **Subpoena requests.** Subpoena requests must be submitted to the hearing officer at least 30 days prior to the scheduled hearing. Subpoena requests must be made to the hearing officer in writing, and a copy of the request must be sent to the opposing party.
2. **Good cause.** The letter requesting the subpoena must set forth good cause for each subpoena requested and must include a complete address, including the city or county where the address is located, where the witness or the custodian of the requested document(s) may be served.
3. **Hearing officer to grant/deny request.** After reviewing the request and any objections made by the opposing party, the hearing officer will rule on the subpoena request, and, if the request is granted, issue the subpoena.
4. **Service fee.** Before the hearing officer forwards the subpoena to a sheriff for service, the hearing officer must receive a check for the service fee of \$12.00 per subpoena from the appellant. There is no fee for service of subpoenas requested by the local agency. The check must be made payable to the appropriate sheriff. In the alternative, the requesting party may ask that the subpoena be forwarded to the requester for service.
5. **Expert witnesses.** The party who subpoenas a professional or expert witness is responsible for payment of any fee to that witness.
6. **Deposition.** If a witness fails to appear for a deposition, a subpoena may be requested to compel attendance at a rescheduled deposition or at the hearing.
7. **Juvenile and domestic relations district court.** Upon petition, the juvenile and domestic relations district court has the power to enforce a subpoena or to review a hearing officer's refusal to issue a subpoena.

## F. HEARING PROCEDURE

1. **Investigative Record.** Upon receiving notification of a state level hearing, the local agency must forward its investigative record to the hearing officer

within 21 days of the receipt of the appeal notification letter. A cover letter must be attached to the investigative record which lists the specific contents of the record. The local agency must send a copy of the cover letter to appellant or appellant's counsel.

- a. The hearing officer will notify the appellant in the acknowledgment letter that the local agency is forwarding the investigative record to the hearing officer.
- b. The hearing officer will notify the appellant in the acknowledgment letter that the appellant may obtain a copy of the investigative file by sending a written request to the local agency.
- c. The investigative record consists of: (1) the edited version of the investigation narrative, if one has been prepared for the appellant (redacting protected information), (2) any documents upon which the local agency relied in making the disposition, (3) correspondence with the appellant, and (4) the summary and results of the local conference. Photographs, audiotapes and videotapes that are part of the investigative record may be held by the local agency until they are introduced as evidence at the hearing, or copies may be forwarded with the rest of the case record. The hearing officer may not base her decision on any information that has not been given to both sides. The locality is required, upon the written request of the appellant, to provide the appellant all information used in making its determination.
- d. Under the Government Data Collection and Dissemination Practices Act, §§ 2.2-3800 – 2.2-3809 of the *Code of Virginia*, the appellant may request to see all personal information contained in the investigative record. This includes all medical and psychological information. A person's mental health records may not be personally reviewed, however, when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Virginia Code § 32.1-127.1:03(F) and the Virginia Freedom of Information Act, § 2.2-3705.5 of the *Code of Virginia*.
- e. The identity of the complainant is protected by federal regulation and may be redacted (edited) from the investigative record. See § 63.2-1526 of the *Code of Virginia*, 42 USC § 5101 et seq., and 45 CFR Part 1340.

2. **Special needs.** The appellant must advise the hearing officer of any special needs upon receipt of the letter scheduling the administrative hearing, including the need for a foreign language interpreter.

3. **Pre-hearing conference.** The hearing officer may hold a pre-hearing conference to resolve procedural issues such as the number of witnesses who will be permitted to testify. Both the appellant and the local agency will be present at the pre-hearing conference. Ex parte (one party only) communications with the hearing officer are strictly prohibited.
4. **Agency presence at administrative hearing.** The local agency may rest its case upon the submission of the investigative record to the hearing officer. Local agency representation at the administrative hearing, however, may strengthen the local agency's case by clarifying the reasoning for its disposition, refuting information presented by the appellant, and offering additional relevant evidence. A representative of the local agency may also question the appellant's witnesses at the administrative hearing.
5. **Hearing to be recorded.** The hearing officer will make an audio tape of the hearing. The recording generally is not transcribed unless the case is appealed to circuit court, although a copy of the recording will be provided to either party upon written request. Either party may employ a court reporter to transcribe the hearing at their own expense. If a court reporter transcribes the hearing, the court reporter's transcript will serve as the official record of the hearing. Either party may tape the hearing.
6. **Authority of the hearing officer.** The hearing officer has complete authority over the hearing, including the authority to limit the number of witnesses and to require that evidence be relevant to the CPS disposition.
7. **Rules of evidence.** Formal rules of evidence do not apply. Only relevant evidence will be admitted. The hearing officer has the authority to decide whether challenged evidence is relevant and will be admitted. The hearing officer will accept all relevant evidence from either party, even if the evidence was not available to the local agency during its investigation.
8. **Standard of proof.** The burden of proof is on the agency to show, by a preponderance of the evidence, that child abuse and/or neglect has occurred. A "preponderance of the evidence" means that the evidence as a whole shows that the fact sought to be proved is more probable than not. It is evidence that is more convincing than the opposing evidence.
9. **Weighing the evidence.** The hearing officer will assign weight to all evidence presented at the hearing. The hearing officer will evaluate the credibility of witnesses and the reliability of documentary and real evidence. The hearing officer will evaluate any corroborative evidence in evaluating the assertions of the parties.

10. **Attendees.** As the representative of the local agency, a party to the hearing, the investigative worker may be present at the hearing. The city/county attorney may also attend the hearing. Local agency staff not involved in the case, such as CPS supervisors, directors, or new workers, may attend the hearing as observers if the appellant does not object. Witnesses are not considered parties to the hearing and are not permitted to be present in the hearing except while testifying.
11. **Hearing procedure.** The hearing officer will explain the hearing procedure on the record before the hearing begins. The local agency and the appellant have the right to offer the testimony of witnesses, to offer up to 5 depositions, and to submit documents previously subpoenaed.
12. **Testimony under oath.** The hearing officer will administer an oath to any person who testifies at the hearing.
13. **Witnesses.** The appellant and the local agency may request witnesses be present at the administrative hearing. The hearing officer has the authority to compel the attendance of witnesses through the issuance of subpoenas. The alleged victim and siblings of the alleged victim cannot be subpoenaed, deposed or required to testify at the administrative hearing. The hearing officer may limit the number of witnesses, particularly character witnesses, who will testify. In out-of-family cases, the parents of alleged victim children may be called as local agency witnesses, provided that their testimony is relevant. The parents of alleged victim children are not, however, parties to the administrative hearing. The hearing officer will advise the parents that they are not parties to the administrative hearing, they may not sit through the administrative hearing, and they will not be given an opportunity to question the appellant or other witnesses at the hearing.
14. **Child witnesses.** Children generally are not permitted to testify at the administrative hearing. Exceptions will be made at the discretion of the hearing officer, who will determine whether allowing the child to testify would be in the best interest of that child. Before the child will be permitted to testify, the hearing officer may speak with the child alone to determine the child's overall ability and willingness to testify. The hearing officer may alter the format of the hearing to accommodate a child witness. Some of the factors that the hearing officer will weigh in making a determination of whether a child should be permitted to testify include:
  - a. whether the case involves an in-family or out-of-family abuse allegation;
  - b. the age of the child;
  - c. whether the child was a victim or a witness;
  - d. the mental capabilities/functioning of the child;

- e. the demeanor of the child;
  - f. the type of abuse alleged;
  - g. whether the child is willing to testify and whether the child's parent/guardian is willing for the child to testify.
- 15. Hearing order.** The hearing will generally follow this order:
- a. Introductory statement and identification of attendees by hearing officer;
  - b. Agency opening statement (may be waived);
  - c. Appellant's opening statement (may be waived);
  - d. Presentation of the agency's case and questions of any agency witnesses by the appellant;
  - e. Presentation of appellant's case and questions of any witnesses for the appellant by the agency representative;
  - f. Agency closing statement (may be waived);
  - g. Appellant's closing statement (may be waived).
- 16. Agency opening statement.** The local agency's opening statement will generally be made by the investigating worker, the investigating worker's supervisor, or counsel for the agency. The opening statement should include the disposition(s) made, the name(s) and age(s) of the child(ren), a summary of the investigation including the specific evidence relied upon by the local agency, and the date and result of the local conference.
- 17. Holding the record open.** The administrative hearing record is usually closed at the end of the hearing. At the request of either party, however, the hearing officer may hold the record open to receive additional evidence for up to fourteen (14) days following the hearing. The hearing officer will make a determination during the hearing as to what evidence will be received after the administrative hearing and the parties will be notified of the date that the record will be closed and after which no further evidence will be received. Any party who submits evidence to the hearing officer after the hearing must also provide a copy to the other parties to the hearing, unless the evidence is protected by statute.
- 18. Remand.** If the appellant presents information at the hearing that was not available to the local agency during its investigation and which may have resulted in a different disposition, the hearing officer may remand the case to the local agency for reconsideration. The local agency has 14 days to reconsider the case and notify the appellant and the hearing officer of its decision in light of the new evidence. If the local agency fails to amend the disposition to the appellant's satisfaction within 14 days the hearing officer will render a decision on the appeal. The hearing officer will not reconvene the administrative hearing. The decision to remand a case is at the discretion of the hearing officer and will be made only after the conclusion of the presentation of the appellant's case.

## **G. TELEPHONIC, VIDEOCONFERENCE AND FACE TO FACE HEARINGS**

- 1. Telephonic, videoconference and face-to-face hearings.** The administrative hearing may be conducted by teleconference, videoconference or face-to-face. The administrative hearing may be held telephonically or by videoconference at the discretion of the hearing officer or at the request of the appellant. If the appellant objects to holding the administrative hearing by teleconference, the administrative hearing will be held face-to-face or by videoconference. Telephonic and videoconference hearings are conducted with the appellant and the agency at one site (usually the local agency or a regional office) and the hearing officer at another site (usually the hearing officer's office).
- 2. Evidence.** If the hearing is conducted by telephone or videoconference, it is preferred that the parties provide the hearing officer with all documentary evidence prior to the hearing.

## **H. RESPONSIBILITIES AND DUTIES OF THE HEARING OFFICER**

At the hearing, the hearing officer will:

1. Identify those present for the record;
2. Provide an opening statement to explain the purpose of the hearing and the procedure that will be utilized throughout the hearing;
3. Ensure that all relevant issues are considered;
4. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised;
5. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;
6. Hear and weigh the evidence.

## **I. HEARING DECISION**

- 1. Record for decision.** An official report containing the substance of the hearing, together with findings, and conclusions of the hearing officer, and all papers filed in the proceeding, will constitute the record for decision.

2. **Basis for decision.** The decision of the hearing officer shall be based exclusively on the evidence, documentary or testamentary, introduced at the hearing, the agency's record, and on all applicable policy, regulation, and law.
3. **Decision to be rendered within 60 days.** A written decision will be sent by certified mail, return receipt requested, to the appellant within 60 calendar days of the close of the record. A copy of the decision will be sent to the local agency and appellant's counsel by first class mail.
4. **Content of decision.** The decision format will include:
  - a. Authority: This section states the statutory authority for the administrative appeals process.
  - b. Procedural history: This section provides a chronological account of the progress of the case.
  - c. Summary of evidence: This section provides a summary of the relevant evidence offered at the administrative hearing.
  - d. Applicable Statutory and Regulatory Provisions: Text of policy, regulations and statutes that are relevant to the disposition under appeal.
  - e. Analysis: This section contains the hearing officer's analysis of the evidence and the application of the relevant law and policy to the facts of the case, including weight to be given to all evidence submitted and conclusions drawn by the hearing officer.
  - f. Findings of Fact: In this section the hearing officer lists the facts considered in reaching the decision.
  - g. Decision: This section states the result of the appeal. If more than one disposition was appealed, the hearing officer will make a decision on each disposition.
  - h. Right of Review: Appellant, and/or appellant's counsel, must be given written notice of the right to request an appeal of the decision of the hearing officer to the appropriate circuit court. Only the appellant may appeal the hearing officer's decision. This section will be included only in those decisions that do not find for the appellant on every issue:

**Right of Review.** As provided by § 63.2-1526(B) of the *Code of Virginia*, a person aggrieved by the decision of the hearing officer

may seek further review of said decision, by the appropriate Circuit Court, in accordance with Article 5 of the Administrative Process Act, Virginia Code § 2.2-4025 et seq. As provided by Rule 2A:2 and 2A:4 of the Rules of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually receive this decision or the date it was mailed to you, whichever occurs first) within which to appeal this decision by filing a notice of appeal in writing with:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

In the event that this decision is served on you by mail, three (3) days are added to that period. Within thirty (30) days after filing the notice of appeal with the Commissioner, you must file a petition for appeal with the appropriate Circuit Court. You must ensure that the court's petition is served on the Commissioner before the appeal can proceed in Circuit Court.

5. **Decision holdings.** The hearing officer's decision will (1) sustain the agency's disposition; (2) amend the level of a "founded" disposition; or (3) reverse the disposition to "unfounded."
6. **Reconsideration.** The decision of the hearing officer is final and cannot be reopened or "re-heard" at the request of either party. The appellant may appeal to the appropriate circuit court; the local agency may not appeal the decision of the hearing officer.

#### **J. AUTOMATED APPEALS TRACKING SYSTEM (AATS)**

**CPS Program Support Technician to update AATS.** The CPS Program Support Technician will ensure that, for cases assigned to that hearing officer, AATS is regularly updated and contains correct information, including the appellant's correct name and address, date of case closure, correct disposition and statement of the issue(s). Updated appeals data must be entered by the 5<sup>th</sup> working day of the following month.

#### **K. ON-LINE AUTOMATED SERVICES INFORMATION SYSTEM (OASIS)**

1. **CPS Program Support Technician to notify the Central Registry.** The CPS Program Support Technician will notify appropriate staff of the outcome of the administrative hearing so that the Central Registry can be

updated to reflect the Hearing Officer's decision.

2. **OASIS to be updated.** OASIS will be updated to reflect an overturned or amended disposition, including amended levels of founded dispositions.

## **PART IV. CHILD SUPPORT ENFORCEMENT APPEALS**

### **A. RIGHT TO APPEAL**

1. **Appellant.** State and federal law require that the noncustodial parent (NCP) be given the right to contest and appeal certain administrative actions taken by the Division of Child Support Enforcement (DCSE) to establish and enforce a child support obligation. In addition, custodial parents (CP) have the right to appeal any action to establish or adjust a child support obligation. Either parent can request that his/her case be reviewed at any time.
2. **Grounds for appeal - NCP.** The NCP may appeal an action when:
  - a. Either parent may formally appeal any of the establishment provisions of an Administrative Support Order (ASO) including the determination of current support, arrearage, medical support, or income withholding;
  - b. the NCP is not satisfied with the decision of an administrative review that was conducted because of a federal Income Tax Offset, consumer reporting referral, or Comptroller Vendor Debt set off, or
  - c. the NCP may formally contest certain enforcement actions taken by DCSE, including:
    - (1) Notice of Proposed Action for a Mandatory Withholding of Earnings;
    - (2) Advance Notice of Lien on Virginia Court Orders;
    - (3) Notice of Intent to Report Information to Credit Reporting Agencies;
    - (4) Vendor Payment Intercept Notification;
    - (5) Federal Income Tax Intercept;
    - (6) State income Tax Intercept;
    - (7) Order to Withhold;
    - (8) Passport Denial
  - d. The NCP may appeal the actions of DCSE to enforce a support obligation only under the following conditions:

- (1) a mistake of fact in either the identity of the NCP or an error in the amount of current support or past due support;
- (2) whether the funds to be held are exempt from garnishment by law.

**3. Other Appeals.** When there is an appeal of an administrative enforcement action that has been taken on an interstate case and Virginia is the responding state, the hearing officer hears the case.

- a. Once the hearing has been held, the hearing officer sends the Administrative Hearing Decision (out of state) form to the parties.
- b. If either party does not agree with the decision of the hearing officer, he/she sends written notice to the Manager of Appeals and Fair Hearings Unit.
- c. The Manager of Appeals and Fair Hearings faxes the request for an appeal of the hearing officer's decision to the district office worker responsible for the case.
- d. Within five working days of receipt of written notice of the request for an appeal of the hearing officer's decision, the responsible worker:
  - (1) sends the Request for Registration of Foreign Support Order, and
  - (2) any other court forms necessary to take enforcement action to the juvenile court.
- e. The juvenile court notifies both parties that the order has been registered.

## **B. REQUEST FOR AN ADMINISTRATIVE APPEAL**

- 1. Who may request.** The request for an administrative hearing may be made by the NCP or by a person acting as the NCP's authorized representative. A relative, friend or an attorney may act as an authorized representative. An administrative appeal is a formal hearing that allows an NCP the opportunity to contest actions taken by DCSE.
- 2. Child Support Enforcement appeals.** The request for an administrative appeal must be made in writing not more than 10 calendar days after the service or waiver of service of the Administrative Support Order (ASO), Income Withholding/Notice of Proposed Action, Advance Notice of Lien-Virginia Court Orders, Notice of Consumer Reporting, Vendor Intercept Notification, Order to Withhold. The request to appeal the federal/state tax intercept notification letters must be made in writing not more than 30 calendar days from the date of notice. The CP has 15 days from the date of mailing of the ASO to appeal, which allows 5 days for first class mail delivery.

If the last day of an appeal period falls on a weekend or a holiday, the appellant has until close of business on the next business day to appeal. The postmark date on the envelope is used to determine the date of the appeal request.

### **C. VALIDATION OF APPEAL**

- 1. Receipt of appeal request by Appeals and Fair Hearings Unit.** All Child Support Enforcement appeals requests must be directed to the Appeals & Fair Hearings Unit, Department of Social Services, 801 East Main Street, Richmond, Virginia 23219-2901. When the Appeals & Fair Hearings Unit receives a request for an appeal in a Child Support Enforcement case, the case will be assigned to a hearing officer by the Hearings Manager.
- 2. Validation.** The hearing officer's first duty is to validate the appeal. An appeal request will be considered invalid when:
  - a. the NCP disputes paternity of the child after entry of a child support order or the expiration of the 60-day rescission period following a voluntary acknowledge of paternity;
  - b. the request for appeal was not filed in a timely manner; or
  - c. the appeal does not meet grounds as specified under those actions.
- 3. Determination by hearing officer.** The hearing officer will make a determination whether the appeal is valid or invalid. If the appeal is valid, the hearing officer will generate a Notice of Hearing scheduling a hearing, and render a decision, within 45 days from the postmark date of the appeal request, unless there are delays due to scheduling conflicts or a request for a continuance. The Notice will be sent at least 10 calendar days before the hearing is scheduled and will be sent to the CP and NCP. If the appeal is determined to be invalid, the hearing officer will issue an Administrative Appeal Ruling Letter on the Automated Program to Enforce Child Support (APECS) system stating that the appeal is invalid and that an administrative hearing therefore cannot be granted. The CP, NCP, and the district office will receive notification if the appeal is invalidated.

### **D. SCHEDULING THE ADMINISTRATIVE HEARING**

- 1. Scheduling of hearing date.** If the hearing officer determines that the appeal request is valid, the hearing officer will schedule an administrative appeal hearing and notify the NCP and CP of the hearing date by letter. The district office will be notified of the hearing date by APECS.

The hearing officer will include the Summary of Facts for Appeal and the Child Support Enforcement Appeals fact sheet with the Notice of Hearing.

2. **Notice of hearing.** Written notice of the hearing date must be given to the NCP and CP at least 10 days prior to the hearing.
3. **Hearing may be held by teleconference.** The administrative hearing may be conducted by teleconference.
4. **Rescheduling.** When appellant, for good cause, indicates that the scheduled date is not convenient, the hearing date may be rescheduled. The hearing officer has the authority to set a date beyond which the hearing will not be delayed.
5. **Abandonment.** An appeal is considered abandoned if the appellant fails to appear and does not contact the hearing officer to reschedule prior to the date and time of the hearing. If the appeal is abandoned, the support obligation is due and legally enforceable.
  - a. The hearing officer generates an Administrative Appeal Ruling Letter when the appeal request is abandoned. The hearing officer notifies the appellant in writing by certified mail when an appeal is considered abandoned.
  - b. The hearing officer attempts to serve the appellant with the Administrative Appeal Ruling Letter and sends a copy to the district office at the same time.
  - c. Workers proceed with the planned action once the hearing officer generates the Administrative Appeal Ruling Letter notifying the appellant that the appeal request is abandoned.
  - d. The appellant may contact the hearing officer and give a valid reason for not appearing. The hearing officer may schedule another hearing.
  - e. A hold is placed on the account on the date that the district office receives notification that another hearing has been scheduled.
  - f. If the hearing is rescheduled and the hearing officer's decision does not sustain the division's action, any money collected because of the action must be refunded.

## **E. HEARING PROCEDURE**

1. **Hearing.** Administrative hearings are conducted by hearing officers from the Department of Social Services Appeals & Fair Hearings Unit.

Administrative Hearings are conducted in either a telephonic or face-to-face format. Hearings are conducted in the district office where the CP resides unless another location is requested by the NCP.

2. **Summary of Facts.** The Summary of Facts is generated on APECS and mailed to the NCP and CP with the Notice of Appeal Scheduling Letter. The district office must forward to the hearing officer, at least 3 work days prior to the hearing, copies of appropriate documents such as: the Administrative Support Order, Obligation Calculation Worksheet, Financial Statements filed by both parents, court orders, CP Affidavit of Arrears, and fiscal records.
3. **Travel.** The NCP and CP are responsible for providing their own transportation to the hearing.
4. **Hearing Attendees.** The appellant and the worker or the worker's supervisor attend the administrative hearing. The following persons may also attend the administrative hearing:
  - a. the other parent;
  - b. legal counsel or authorized representatives;
  - c. the district office's legal counsel;
  - d. any witnesses; and
  - e. other persons at the hearing officer's discretion.
5. **Continuances.** The appellant may be granted a continuance of the hearing at the discretion of the hearing officer. The appellant can make a request for a continuance via telephone with a follow-up in writing.
6. **Rights of appellant.** Appellant or his representative must be given the opportunity to:
  - a. Examine all documents and records presented;
  - b. Present the case or have it presented by legal counsel or another person;
  - c. Bring witnesses to the hearing;
  - d. Establish pertinent facts and present arguments;
  - e. Defend or refute testimony or evidence presented, and
  - f. Cross-examine opposing witnesses
7. **Rights of district office.** The district office may withdraw their action prior to the hearing date if the case review reveals that the action taken was incorrect. The worker must notify the hearing officer that the action was withdrawn by sending a work list notification. The worker cannot cross-examine witnesses unless the representative is the district office's legal counsel.

The worker can request that the hearing officer ask certain questions if the appellant is not represented by counsel. The worker may question the appellant's attorney directly.

8. **Admissible evidence.** The strict rules of evidence do not apply in administrative hearings. Only relevant evidence, however, will be admissible at the hearing. Relevant evidence is evidence related to the issue(s) being appealed. The only issue(s) that will be considered at the hearing are those enumerated by the appellant when the appeal was requested or those raised by the district office as a basis for its action or inaction. The hearing officer will not consider any other evidence or issues. The hearing officer, at his/her discretion, may accept any evidence and reject evidence that is irrelevant, privileged, or repetitive.
9. **Standard of proof.** There is a legal presumption that the district office acted in accordance with law and policy. The burden of proof is on the appellant to demonstrate that the district office acted in error.

## **F. RESPONSIBILITIES AND DUTIES OF THE HEARING OFFICER**

**Duties of the hearing officer.** At the hearing, the hearing officer will:

1. Identify those present for the record;
2. Determine the parties' current mailing and residence addresses and advise the parties to report any changes of address to the worker or hearing officer immediately;
3. Provide an opening statement to explain the purpose of the hearing and procedure that will be utilized throughout the hearing and how the decision will be made;
4. Inform the appellant his/her representative and the worker of their rights.
5. Ensure that all relevant issues are considered;
6. The hearing officer may question any witnesses;
7. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised;
8. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing.
9. Explain right of further review;

10. Hear and weigh evidence;
11. Acknowledge a written request from appellant to withdraw the appeal request by certified mail, return receipt requested, to both parties;
12. Render a written decision within the required time frames unless otherwise waived by the appellant in writing. The decision will be based on whether the worker properly applied policy and procedures in effect at the time the action was taken. The hearing officer will sustain the worker's action if correct policy and procedures were followed or modified as appropriate. The hearing officer will reverse or amend the worker's action only if correct policy and procedures were not followed or if new evidence is presented.

If the hearing officer changes the amount of an ASP based on new evidence presented at the hearing, the hearing officer asks the appellant to sign a waiver of formal service or serve the decision on the appellant and sends a copy of the decision to the district office.

13. In a face-to-face hearing, the hearing officer may ask the appellant to sign a waiver of service and accept immediate service of the decision.
14. When a telephone hearing is conducted, the decision is sent certified mail to both parties. If the appellant does not claim the certified mail, a request for sheriff posting is initiated. If service is not successful, the information is routed to the district office for further service attempts.

## **G. HEARING DECISION**

1. **Record for decision.** An official report containing the substance of the hearing, together with findings, and conclusions of the hearing officer, and all papers filed in the proceeding, will constitute the record for decision.
2. **Basis for decision.** The decision of the Hearing Officer shall be based exclusively on the evidence, documentary or testimonial, introduced at the hearing, and on all applicable policy, regulation and law.
3. **Decision to be rendered within 45 days.** The decision of the Hearing Officer shall be rendered within 45 calendar days of the date the appeal was mailed, unless a continuance was granted. A copy of the decision is sent to the district office at the same time as the appellant.
4. **Decision is final and binding.** The decision of the hearing officer will be final and binding when mailed to the CP, NCP and district office.

5. **Appeal of the decision.** Appellant, and/or appellant's representative, and the district office must be given written notice of the right to file an appeal of the hearing officer's decision in the appropriate court. The appeal to court must be made within ten days of receipt of the hearing officer's decision.

#### H. **AUTOMATED APPEALS TRACKING SYSTEM (AATS) & AUTOMATED PROGRAM TO ENFORCE CHILD SUPPORT (APECS)**

1. **Hearing officer to update AATS.** The hearing officer will ensure that AATS is regularly updated and contains correct information, including the appellant's correct name, date of case closure and correct disposition. Hearing officers must enter and update appeals data by the 5<sup>th</sup> working day of each month.
2. **Use of AATS and APECS by hearing officers.** Hearing officers will use AATS and APECS to monitor and manage cases and to assure timely disposition of appeals. The hearing officer will update the APECS Event History File as appropriate.

### PART V. **ADMINISTRATIVE DISQUALIFICATION HEARINGS**

#### A. **DEFINITIONS**

1. **Administrative Disqualification Hearing (ADH).** An Administrative Disqualification Hearing (ADH) is an impartial review by a hearing officer of an individual's action involving an alleged intentional program violation (IPV) for the purpose of rendering a decision of guilty or not guilty of committing an IPV.
2. **Intentional Program Violation (IPV).** An IPV is an intentional act, as defined more specifically in the appropriate policy manual, by an individual in an effort to obtain SNAP and/or TANF benefits to which the person, household, or assistance unit is not entitled, or to use SNAP benefits in a way forbidden by law.

#### B. **STANDARD OF PROOF**

1. **Standard of Proof.** In order for a local agency to request an ADH, there must be clear and convincing evidence, which demonstrates the individual committed or intended to commit an IPV. The agency carries the burden of proof to establish an IPV.

- a. Failure on the part of an individual to report income or other household changes is not enough, standing alone, to establish clear and convincing evidence of an IPV.
  - b. The agency must prove, by clear and convincing evidence, that there was a program violation and that the program violation was committed with the intent to defraud the program. A program violation without proven intent to defraud does not amount to an IPV. Failure to report income or ownership of some asset is not enough to demonstrate fraud.
2. **Clear and Convincing.** Evidence which results in reasonable certainty of the truth of the ultimate fact in controversy. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the fact asserted is highly probable.
3. **Examples.** Examples of evidence include, but are not limited to, the following:
- a. Written verification of unreported income or resources received by the individual;
  - b. Verification that the individual understands the reporting responsibility by his/her signature under the rights and responsibilities section of the application/redetermination form or another form for this purpose;
  - c. An application/redetermination form or change form submitted during the period the IPV is alleged to have occurred which omits the information in question;
  - d. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual omits, or fails to report, the information in question.

## C. REQUEST FOR ADH

1. **Certification of evidence.** An Eligibility Supervisor or agency Director/Superintendent must review the evidence against the individual alleged to have committed the IPV to certify that the evidence warrants a referral for an ADH prior to requesting an ADH.
2. **Provision of forms to suspected individual.** Prior to submitting the Referral for Administrative Disqualification Hearing form to the Appeals & Fair Hearings Unit, the local agency must provide the *Notification of Intentional Program Violation* and *Waiver of Administrative Disqualification Hearing* forms and to the individual suspected of the IPV.

3. **Who may request.** The local agency may request an ADH be scheduled by submitting a written request to the:

Appeals & Fair Hearings Unit  
Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

4. **Requirement for request.** The request must include the following information:
  - a. Identifying information;
  - b. Summary of the allegation or allegations;
  - c. Summary of the evidence;
  - d. Copies of documents supporting the allegation or allegations; and
  - e. The referral must be signed and dated by the supervisor or local agency director.

#### **D. WAIVER**

1. **Purpose of Waiver.** The purpose of the waiver form is to advise a household member suspected of having committed an IPV that the right to a hearing may be waived but the disqualification penalty will be imposed if the waiver is signed. The individual suspected of an IPV may sign the form and (1) admit to the facts as presented and receive a disqualification penalty and reduction of benefits, or (2) not admit to the facts as presented but chose to sign the waiver and accept a disqualification penalty and reduction of benefits.
2. **Return of waiver form.** The waiver must be returned to the local agency within 10 days from the date notification is sent to the individual in order to avoid submission of the referral of ADH to the Appeals & Fair Hearings Unit for scheduling. If the signed waiver is received, no ADH will be scheduled and the disqualification will be imposed in accordance with policy.
3. **Local agency to forward waiver.** The local agency will forward a signed copy of the waiver, for federal reporting purposes, to:

**Appeals & Fair Hearings Unit**  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

4. **Signed waiver not returned.** If the executed waiver is not returned to the local agency within 10 days, the local agency must forward the *Referral for Administrative Disqualification Hearing* form to the:

Appeals & Fair Hearings Unit  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

The following information/documents must accompany the completed form:

- a. Identifying information as requested at the top of the form;
- b. Summary of the allegation(s);
- c. Summary of the evidence;
- d. Copies of documents supporting the allegation;
- e. The referral must be signed and dated by the Supervisor or local agency Director/Superintendent.

#### **E. SCHEDULING THE ADH**

1. **Assignment to hearing officer.** Upon receipt, the request for the ADH will be assigned to the hearing officer designated by the Program Manager.
2. **Scheduling.** The hearing officer will schedule a date for the ADH and provide written notice to the individual at least 30 days in advance of the date the ADH has been scheduled. The hearing officer will send the individual the *Advance Notice of Administrative Disqualification Hearing* form. If the notice is sent by first class mail and is subsequently returned as undeliverable, the hearing may still be held.
3. **Notice.** The notice in both TANF and SNAP ADHs will contain:
  - a. The date, time and place of the hearing;
  - b. The charge(s) against the individual;
  - c. A summary of the evidence, and how and where the evidence can be examined;
  - d. A warning that the decision will be based solely on information provided by the agency if the individual fails to appear at the hearing;
  - e. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

- f. A warning that a determination of IPV will result in disqualification periods as prescribed by law and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;
  - g. A listing of the individual's rights as set forth below;
  - h. A statement that the hearing does not preclude the State or Federal government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and
  - i. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.
4. **Time line.** The ADH is to be conducted and a decision rendered within 90 days of the date the individual is notified in writing that the ADH has been scheduled.

## F. POSTPONEMENT

1. **Requests for postponement.** The individual suspected of committing the IPV, or the individual's representative, may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. An ADH may not be postponed for more than a total of 30 days.
2. **Hearing officer may limit postponements.** The hearing officer may limit the number of postponements.

## G. FAILURE TO APPEAR

1. **ADH may be held without individual.** If proof of non-receipt of the ADH advance notice has not been received, the requirement to notify the individual alleged to have committed the IPV has been met. The ADH may be held even if the individual or representative subsequently can not be located or fails to appear without good cause.
2. **Rescheduling for good cause.** The individual has 10 days after the date of the scheduled ADH to present reasons indicating good cause for failure to appear. In SNAP ADHs, where good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.
3. **Burden of proof.** Even though the individual is not present or represented, the hearing officer must carefully consider the evidence and

determine if an IPV was committed based on “clear and convincing evidence”.

4. **Decision not valid.** If the individual is found to have committed an IPV but a hearing officer later determines that there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted. The hearing officer who originally ruled on the case may conduct the new hearing. The hearing officer must enter the good cause decision into the hearing record.

## H. THE HEARING

1. **Persons present at hearing.** Only persons directly concerned with the issue attend the ADH; this normally means a representative of the local agency and the individual alleged to have committed the IPV.
2. **Hearing officer presides.** The hearing officer presides and conducts the hearing informally.
3. **Rules of evidence.** The formal rules of evidence do not apply.
4. **Hearing may be conducted by teleconference.** The hearing may be conducted by teleconference and may be recorded.
5. **Local agency.** The local agency representative is responsible for presenting the agency’s case at the ADH. The agency’s representative has the same rights as the individual in the conduct of the hearing.
6. **Responsibilities of the hearing officer.** The hearing officer must:
  - a. Identify those present for the record;
  - b. Advise the individual or representative that he/she may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge or charges may be used against him in a court of law;
  - c. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of the individual to appeal the hearing officer’s decision to the circuit court;
  - d. Consider all relevant issues;
  - e. Request, receive and make part of the record all evidence determined necessary to render a decision;
  - f. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

- g. Advise the local agency to obtain a medical assessment at local agency expense if the hearing officer considers it necessary in a TANF ADH; and
- h. Within 90 days of the date the individual is notified in writing that an ADH has been scheduled, the hearing officer shall conduct the hearing, arrive at a decision and notify the individual and local agency of the decision.

## I. THE INDIVIDUAL

**Opportunities of the individual.** The individual alleged to have committed an IPV must be given adequate opportunity to:

- a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. If requested, the agency shall provide a free copy of the portions of the case file that are relevant to the hearing;
- b. Present his/her case or have it presented by legal counsel or another person;
- c. Bring witnesses;
- d. Advance arguments without undue interference;
- e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and
- f. Submit evidence to establish all pertinent facts and circumstances in the case.

## J. THE DECISION

1. **Clear and convincing evidence.** The hearing officer is responsible for rendering a decision based on clear and convincing evidence.
2. **Decision must identify supporting evidence.** The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.

The decision must specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations and respond to reasoned arguments made by the individual or the individual's representative.

3. **Right to appeal.** The hearing officer shall notify the individual of the right to appeal the hearing officer's decision to the appropriate circuit court. No further administrative appeal procedure exists after an adverse ADH.

A subsequent fair hearing decision cannot reverse the determination of IPV made by the hearing officer.

4. **Timeline.** The hearing officer must render the decision within 90 days of the date of the Advance Notice of ADH.
5. **Implementation of the decision.** Upon receipt of the decision from a hearing officer finding the individual guilty of an IPV, the local agency must inform the individual of the disqualification by sending the individual the *Notice of Disqualification for Intentional Program Violation* form. The notice must inform the individual of the reason for the disqualification and the effective date of the disqualification.
6. **Non-fraud recovery.** If the individual is found not guilty of committing an IPV, no disqualification will be imposed and any overpayment or overissuance must be handled by the local agency as a non-fraud recovery.

## **PART VI. ADMINISTRATIVE REVIEW**

### **A. AUTHORITY**

1. **Right of appeal to commissioner.** Section 63.2-517 of the *Code of Virginia* sets forth the right of appeal to the Commissioner, and states:

Any applicant or recipient aggrieved by any decision of a local board in granting, denying, changing or discontinuing public assistance, may, within thirty days after receiving written notice of such decision, appeal the decision to the Commissioner.

Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for a review of the same by the Commissioner.

The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review by an applicant for or recipient of public assistance concerning any decision of a local board. The Commissioner shall establish an appeals review panel to review administrative hearing decisions upon the request of either the applicant or the local board. Such panel will determine if any changes are needed in the conduct of future hearings, or to policy and procedures related to the issue of the administrative appeal, and periodically report its findings to the Commissioner.

2. **Action by Commissioner on appeal.** Section 63.2-518 of the *Code of Virginia* states:

The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or evidence produced at the hearing, reports of investigations of the local board and local superintendent or of investigations made or caused to be made by the Commissioner, or any facts which the Commissioner may deem proper to enable him to decide fairly the appeal or review.

3. **Finality of decision of Commissioner.** Section 63.2-519 of the *Code of Virginia* states:

The decision of the Commissioner shall be final and binding and considered a final agency action for purposes of judicial review of such actions pursuant to the provisions of the Administrative Process Act.

## **B. PURPOSE**

1. **Not similar to judicial review.** Administrative review is not similar to judicial review in that the decision of the hearing officer is not subject to change or modification.
2. **Purpose is to examine policy.** The purpose of administrative review is to present an opportunity for benefits and and/or services program staff to examine and analyze the application of current benefits and/or services program policy and procedure to specific case facts and to determine whether current policy should be changed.
3. **Internal agency mechanism.** The administrative review process is an internal agency mechanism designed to afford the applicable program the opportunity to review hearing officer decisions to determine whether clarification or changes to program policy need to be made or statewide training to local agencies needs to take place.

## **C. ADMINISTRATIVE REVIEW PANEL**

1. **Organization.** The Administrative Review Panel will be comprised of two members: a policy specialist from the respective program category of the appeal and the Appeals and Fair Hearings Program Manager.

2. **Responsibility for Administrative Review process.** The Appeals and Fair Hearings Program Manager has overall responsibility for the operation of the panel and the timely review of cases, including monitoring the response time of the program specialist and quality control reviewer.

#### D. REQUESTING A REVIEW

1. **Who may request.** An applicant or recipient of benefits may request an administrative review. The Appeals review panel does not review cases involving appeals of actions in service cases such as adoption subsidy and home based services. A local agency may also request an administrative review.
2. **When review may be requested.** The applicant, recipient or local agency must request an administrative review in writing within 30 days of receiving the hearing officer's decision. The hearing officer's decisions contain standard language informing parties of the procedure for requesting an administrative appeal. The request must be directed to the Hearings Manager of the Virginia Department of Social Services, 801 East Main Street, Richmond Virginia 23219-2901

#### E. PROCEDURE

1. **Acknowledge Receipt.** The Appeals and Fair Hearings Program Manager will send an acknowledgment letter to the individual or local agency requesting the review within fourteen (14) days of receiving the request for administrative review. The letter will state that requester will receive no further information concerning the administrative review and advise the requester that he may seek judicial review as provided by § 63.2-519 of the *Code of Virginia*.
2. **Forward hearing record.** The Appeals and Fair Hearings Program Manager will forward the hearing record to the Program Manager of the appropriate program, who will assign the case to a specialist, and the Quality Control Unit Program Manager, who will assign the case to a reviewer, within 14 days of receiving the request for an Administrative Review.
3. **Panel Review.** The policy specialist must return the case record with written comments, if applicable, of the hearing officer's decision in the prescribed format to the Appeals and Fair Hearings Program Manager within 14 days of receiving the request to review the hearing officer's decision. The comments will contain any appropriate recommendations based on the decision of the hearing officer and the facts of the case on review.

4. **Conclusion of administrative review.** The administrative review process will be concluded within 45 days from the date of the receipt of the request for administrative review.

## **F. REPORTING**

**Report to division head.** The Appeals and Fair Hearings Program Manager will report recommendation(s) resulting from the review to the respective division head. Any recommendations for changes in the conduct of hearings or recommendations for changes in policy or procedure must be conveyed in writing to the respective division head and/or hearing officers within 60 days of the request for the administrative review. The reporting criteria will include:

1. Name of party requesting administrative review;
2. Name of other party or locality;
3. Date administrative review request was received;
4. Date acknowledgement letter was sent to requester;
5. Name of each entity to which case was referred for review;
6. Date case was referred to each reviewing entity;
7. Date review was completed by each reviewing entity.

## **PART VII. RECORD RETENTION POLICY**

### **A. Child Protective Services Appeal Records**

1. All CPS appeal records and case files are destroyed after one year from the date of the hearing officer's decision.
2. All CPS hearing transcripts are destroyed after one year from the date of the hearing officer's decision except in cases where there is a circuit court appeal pending, in which case the record is purged when the final court decision is received by the Appeals Unit.

### **B. Benefits and Services and Child Support Enforcement Appeal Records**

1. All benefits & services and child support enforcement appeal records and case files are retained for three years from the date of the hearing officer's decision.
2. All benefits & services and child support enforcement appeal transcripts are retained for three years from the date of the hearing officer's decision.

## APPENDIX I: CHILD PROTECTIVE SERVICES SECTION APPEAL FACT SHEET

*Virginia Code § 63.2-1526 establishes the hearing procedure for Child Protective Services (CPS) appeals. Virginia Code § 63.2-100 defines an “abused or neglected child.” Virginia Code § 63.2-1505 sets forth the investigative and reporting responsibilities of local agencies. Virginia Administrative Code (VAC), beginning at 22 VAC 40-705-10, describes the regulations pertaining to CPS appeals and the responsibilities of local agencies.*

**NO WEAPONS OF ANY TYPE ARE PERMITTED IN THE HEARING ROOM. THIS DOES NOT INCLUDE WEAPONS CARRIED BY LAW ENFORCEMENT OFFICERS APPEARING IN THE COURSE OF THEIR DUTIES.**

*Note: Information contained herein applies only to State level administrative hearings*

### **BEFORE THE HEARING General Matters**

- The case is assigned to a hearing officer, who will schedule a hearing within **45 days** of receipt of the request, unless there are delays due to subpoena requests, depositions, or scheduling conflicts.
- Upon the **written request** of the appellant to the local agency, the agency must furnish copies of all information used in making its determination, except information protected by statute or regulation. The Hearing Officer’s decision may not be based on information not provided to the appellant.
- The Hearing Officer must base his/her decision on information that was provided to both the local agency and the appellant.
- The locality is required, upon the written request of the appellant, to provide to the appellant all information upon which the local agency relied in making its determination. The local agency shall **not** release:
  - a. The name of the complainant or person making the report;
  - b. Information that may endanger the well-being of a child;
  - c. The identity of any collateral witnesses or any other person if disclosure may endanger their life or safety;
  - d. Information prohibited from disclosure by state or federal law or regulation. See § 63.2-1526(A) of the Code of Virginia.
- Both parties, or their counsel, will be **notified in writing** of the date, time and location of the hearing. The appellant is responsible for ensuring that the hearing officer has a current and correct address for receiving correspondence.
- The hearing may be held at the local agency, a nearby agency, a DSS Regional Office, or at another agreed-upon location.

- The hearing may be conducted by **telephone conference call** or **in person**. However, if either party objects to a telephone hearing, the hearing will be conducted in person.
  - An appellant requiring special assistance or an accommodation, such as foreign language or sign interpretation, must notify the hearing officer as soon as possible.
  - Requests for sign language interpretation must be made through the Hearing Officer.
  - The Appellant must advise the Hearing Officer of any change of address.
  - The Appellant is to make appropriate arrangements for child care as no children will be allowed in the hearing.
  - The hearing may be rescheduled once, for good cause, as determined by the hearing officer, if the request is made in advance (except in an emergency).
  - A prehearing conference may be held in order for the hearing officer to address preliminary matters such as the number of witnesses who will be allowed to testify.
- Both the agency and the appellant have the right to depose witnesses and request the issuance of subpoenas either for documents or to compel the attendance of witnesses to testify at the hearing.<sup>1</sup>

## Depositions

Both the agency and the appellant may depose up to five witnesses. The number of witnesses to be deposed will be determined by the hearing officer. The party deposing a witness must bear the expense of the deposition. Neither the agency nor the appellant may depose:

- A. The child victim;
- B. The child victim's siblings;
- C. A party to the hearing.

- The party deposing a witness must give the witness and the opposing party reasonable **notice** of the date, time and location of the deposition, and send the hearing officer a copy of the notice.
- The opposing party may attend the deposition and question the individual being deposed.
- The hearing officer will not authorize the taking of a deposition where, in their judgment, the deposition is sought for the purpose of harassment, is not reasonably calculated to lead to relevant evidence, or is cumulative.
- Either party may enter any deposition taken into evidence at the hearing or prior to the hearing. The submitting party must provide a deposition summary of relevant testimony.

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<sup>1</sup> A deposition is testimony taken under oath outside of the hearing. A transcript is made of the deposition and submitted to the hearing officer prior to or at the hearing. A subpoena is a written command to appear and give testimony or to produce documents related to the investigation.

## **Subpoenas**

- Requests for subpoenas to compel witnesses to attend the hearing must be submitted **in writing** to the hearing officer and a copy sent to the opposing party.
- **Subpoena requests must be submitted thirty days before the scheduled hearing.** The request must set forth **good cause** for each subpoena requested and must include a complete address where the witness may be found.
- After reviewing the request and any objections made by the opposing party, the hearing officer will rule on the subpoena request and, if the request is granted, issue the subpoena.
- Before the hearing officer will forward the subpoena to a sheriff for service, the hearing officer must receive a check for the **service fee** of \$12 per subpoena. The check must be made payable to the appropriate sheriff. In the alternative, the requesting party may ask that the subpoena be forwarded to the requester for service.
- The party who subpoenas a professional or expert witness is responsible for payment of any fee to that witness.
- If a witness fails to appear for a deposition, a subpoena may be requested to compel attendance at a rescheduled deposition or at the hearing.
- Upon petition, the **juvenile and domestic relations district court** has the power to **enforce** a subpoena or to **review** a hearing officer's refusal to issue a subpoena.
- The hearing officer will not issue any subpoena where, in their judgment, the subpoena is sought for the purpose of harassment, is not reasonably calculated to lead to relevant evidence, or is cumulative.

## **Subpoenas for Medical Records**

Requests for Subpoenas for Medical Records must include a copy of the Notice to Individual in accordance with Va. Code Ann. § 32.1-127.1:03.

## **THE HEARING**

- The hearing will be recorded. A copy of the recording of the hearing will be provided to either party upon written request. Either party may employ a court reporter to transcribe the hearing. Either party may tape the hearing.
- The hearing officer has complete authority over the hearing, including the authority to limit the number of witnesses and to require that evidence be relevant to the CPS disposition.
- The hearing officer may stop the hearing if he or she believes a participant to be under the influence of illegal drugs or is intoxicated.
- The hearing officer may stop the hearing if participants become verbally abusive and fail to follow the hearing officer's directives with regard to their behavior.
- Formal rules of evidence do not apply. Only relevant evidence will be admitted.
- The hearing officer will explain the hearing procedure on the record before the hearing begins.

- The local agency and the appellant have the right to offer the testimony of witnesses, to offer up to 5 depositions, and to submit documents previously subpoenaed.
- The hearing officer will administer an oath or affirmation to any person who testifies at the hearing.

The hearing will generally follow this order:

1. Introductory statement and introduction of attendees by hearing officer;
  2. Agency opening statement (may be waived);
  3. Appellant's opening statement (may be waived);
  4. Presentation of the agency's case and questions by appellant;
  5. Presentation of the appellant's case and questions by the agency;
  6. Agency closing statement (may be waived);
  7. Appellant's closing statement (may be waived).
- The hearing officer may hold the record open to receive additional evidence for up to 14 days following the hearing at the request of either party.
  - A written decision will be sent by certified mail, return receipt requested, to the appellant within 60 calendar days of the close of the record. The agency and appellant's counsel will be sent copies of the decision by first class mail.

#### **AFTER THE HEARING**

- The hearing officer will notify the **Central Registry, a subsection of OASIS (On-Line Automated Services Information System)** of the decision. The decision will be mailed to the Appellant via certified mail and to the Agency via courier or first class mail. If applicable, the decision will also be forwarded to counsel for the Appellant and counsel for the Agency.
- If as a result of the final appeal the original disposition is amended, the parents of the involved child(ren) and all others who received notification initially will be notified **by the local agency.**
- An appellant who is dissatisfied with the decision of the hearing officer may appeal to the appropriate circuit court. The **appeal process** is governed by Part 2A of the Rules of the Supreme Court of Virginia. The Hearing Officer's decision will contain instructions concerning the appeal process under the section entitled "Right of Review."
- In the event of an appeal to circuit court, the Department will prepare a transcript from the tape recording of the hearing as part of the record. In cases where the appellant employed a court reporter, the court reporter will prepare the hearing transcript.

## APPENDIX II: DIVISION OF CHILD SUPPORT ENFORCEMENT APPEAL FACT SHEET

*Code of Virginia § 63.2-1942* establishes the administrative hearing procedure in child support enforcement cases. *Code of Virginia § 63.2-1943* provides that from the decision of the hearing officer there shall be an appeal *de novo* to the juvenile and domestic relations district court of the jurisdiction wherein the appellant resides. The Setoff Debt Collection Act appears in *Code of Virginia §58.1-520* through *§ 58.1-535*.

Preparation is crucial to the presentation of your case at the hearing. The hearing officer is impartial and comes to the hearing knowing only what the agency has presented in its summary of facts. The quality of the presentation by both the district office and the customer at the hearing is very important to the case. It is important that the participants present all of the information that the hearing officer needs to render a decision. Besides weighing the testimony of the participants and the evidence, the hearing officer will be evaluating the credibility of the witnesses. Do the witnesses appear to be informed? Can they document what they say happened? Is their explanation logical? Do they cite policy to support their position?

The Child Support Enforcement Section hearing officers have compiled the following list of suggestions to help you prepare to present your case:

### A. Requesting an Administrative Appeal

- An administrative appeal is a formal hearing that allows an appellant the opportunity to contest actions taken by the Division of Child Support Enforcement.
- A request for an appeal from an action of the Division of Child Support Enforcement must be made in writing and mailed to the Virginia Department of Social Services, Appeals and Fair Hearings Unit, 801 East Main Street, Richmond, Virginia 23219-2901

### B. Before the Hearing

- The Hearings Manager will assign the appeal to a hearing officer. If the hearing officer determines that the appeal is valid, the hearing officer will schedule the hearing within 45 days from the postmark date, unless there are delays due to scheduling conflicts or a request for a continuance.
- The custodial parent, noncustodial parent, and their counsel, if any, will be notified in writing of the date, time and location of the hearing. The appellant is responsible for providing the hearing officer with a current, correct mailing address. The district office will be notified of the hearing date, time and location through the work list.
- The hearing will be held at the district office where the custodial parent resides, unless the hearing officer approves other arrangements.

- The appellant may request a telephonic hearing by contacting the hearing officer either in writing or by telephone.
- The appellant is responsible for providing his/her own transportation to the hearing.
- An appellant who requires special assistance or an accommodation must notify the hearing officer as soon as possible.
- The district office representative must submit the case documents to the hearing officer no later than three workdays before the hearing.

### **C. Rescheduling/Failure to Appear**

- The hearing may be rescheduled once, for good cause as determined by the hearing officer, if the request is made in advance. The appellant may initially make the request for a continuance by telephone or in writing. The hearing officer has discretion to reschedule a hearing in the case of an emergency.
- An appeal request is considered abandoned if the appellant fails to appear and does not contact the hearing officer to reschedule prior to the date and time of the hearing.
- If the appellant fails to appear and does not contact the hearing officer prior to the hearing date to reschedule, the appellant may contact the hearing officer after the hearing date and give a valid reason for not appearing. The hearing officer may schedule another hearing but is not required to do so.
- If the appeal is abandoned the support obligation is due and legally enforceable.

### **D. The Hearing**

- If appellant has requested a telephonic hearing, the appellant is responsible for placing the call to the hearing officer.
- The hearing officer has complete authority over the hearing, including the authority to limit the number of witnesses and to require that the evidence be relevant to the issue being appealed.
- Formal rules of evidence do not apply at the hearing. Only evidence that is determined by the hearing officer to be relevant to the issue being appealed will be admissible.
- Either party may record the hearing.
- The hearing officer will record the hearing if the issue on appeal involves state or federal tax intercepts or vendor actions.
- The hearing officer will make a preliminary statement explaining the hearing procedure before the hearing begins.
- The hearing will generally follow this order:

1. Introductory statement and introduction of attendees by hearing officer;
  2. Presentation of the district office's case;
  3. Questions by appellant;
  4. Presentation of the appellant's case;
  5. Questions by the district office;
  6. District office's closing statement (may be waived);
  7. Appellant's closing statement (may be waived).
- The appellant has the right to:
    1. Examine all documents and records used by the district office in determining the support obligation with the exception of information protected by the Government Data Collection and Dissemination Practices Act;
    2. Present the case or have it presented by legal counsel or another person;
    3. Bring witnesses to the hearing;
    4. Advance arguments without undue interference at the hearing;
    5. Question or refute all pertinent facts and circumstances in the case;
    6. Submit evidence to establish pertinent facts and circumstances.
  - The hearing officer may hold the record open to receive additional evidence or clarify facts at the request of either party.

#### **E. Hearing Protocol**

- The parties should be ready to begin the hearing at the scheduled time with all witnesses present.
- The parties should direct their comments to the hearing officer.
- The parties should not engage in argument with the other side.
- During the presentation of the district office's case, the appellant should make notes of rebuttal statements to make when it is the appellant's turn to speak. During the presentation of the appellant's case, the district office representative should make notes of rebuttal statements to make when it is the district office representative's turn to speak.
- While listening to the district office's witness testify, the appellant should make notes of questions to ask when it is the appellant's turn to question the witness.
- While listening to the appellant's witness testify, the district office representative should make notes of questions to ask when it is the district office representative's turn to question the witness.
- During the hearing the parties should remember to address everyone present by their appropriate title and their last name.

## **F. Hearing Officer's Decision**

- A written decision will be sent to all parties by certified mail, return receipt requested, within 45 calendar days of the date of the appeal request, unless a continuance was granted. A copy of the decision will be sent to the district office once proof of service is received. If unable to serve the parties PST forwards a copy of the decision to the District Office and request that they attempt service by private process server.
- If the hearing took place in person, rather than by telephone, the hearing officer may request a waiver of service by certified mail and may personally serve the decision on the parties. If service of the decision is made personally at the time of the hearing, the district office will send a copy of the decision, by certified mail, to the custodial parent if the custodial parent is not present at the hearing.

## **G. Appeal from the Hearing Officer's Decision**

- The appellant and/or custodial parent may appeal the hearing officer's decision to the appropriate Juvenile Domestic Relations Court within 10 calendar days of receipt of the hearing officer's decision.
- In cases involving the Set-Off Debt Collection Act and vendor actions, the appellant and/or custodial parent may appeal the hearing officer's decision to the appropriate Circuit Court. When a case is appealed to Circuit Court the Appeals and Fair Hearings Unit will prepare a transcript from the tape recording of the hearing for the record on appeal.

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## **H. Responsibilities of the District Office**

- District office staff must review the case to determine whether:
  1. Appropriate policy was followed;
  2. additional information is needed by the hearing officer; or
  3. copies of appropriate documents such as the ASO, Notice of Proposed Action for Mandatory Withholding of Earnings, Obligation Worksheets, court orders, affidavit of arrears and relevant documentation need to accompany the summary of facts.
- The district office must place a hold on the account until all appeals have been exhausted.
- The district office may withdraw their action prior to the hearing date if its case review reveals that action taken was incorrect.
- The district office will be notified of the hearing date through the worklist generated by APECS.
- The district office must attend the administrative hearing and be prepared to explain the Commonwealth's actions according to policy and procedure.
- The district office must comply with the decision of the hearing officer.
- The district office must generate a worklist to the hearing officer indicating compliance with the decision.

## **APPENDIX III: ADMINISTRATIVE DISQUALIFICATION HEARING FACT SHEET**

Administrative Disqualification Hearing (ADH) refers to an impartial review by a hearing officer of an individual's action involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

Intentional Program Violation (IPV) refers to any action by an individual for the purpose of establishing or maintaining the family's eligibility for TANF or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

IPV refers to any action by an individual who intentionally made a false or misleading statement to the local agency, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to which the household is not entitled; or committed any act that constitutes a violation of the Food Stamp Act, Food Stamp Regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or authorization to participate cards.

### **A. General Duties of the Local Agency**

Before referring a case for ADH, a local agency has a duty to:

- Ensure and document that a clear and full explanation is given to the applicant or recipient of the eligibility requirements for the type of assistance he is requesting or receiving;
- Ensure and document that the applicant or recipient has been advised of his responsibility to give complete and accurate information related to his eligibility and to report promptly and fully any changes in his circumstances;
- Ensure and document that the applicant or recipient has been advised of the provisions of the law with respect to giving false information knowingly or deliberately withholding information that would affect his eligibility for assistance or the amount of assistance; and
- Ensure that the worker has fully explained what types of changes in circumstances would have an effect on the grant.

### **B. Evidence/Standard of Proof**

- In order for a local agency to request an ADH, there must be clear and convincing evidence which demonstrates the individual committed or intended to commit an IPV.
  1. Failure on the part of an individual to report income or other household changes is not enough, standing alone, to establish clear and convincing evidence of an IPV.

2. The agency must prove by clear and convincing evidence that there was a program violation and that the program violation was committed with the intent to defraud the program. A program violation without proven intent to defraud does not amount to an IPV. Failure to report income or ownership of some asset is not enough to demonstrate fraud.
  3. The agency carries the burden of proof to establish an IPV.
- "Clear and convincing" proof is defined as proof which results in reasonable certainty of the truth of the ultimate fact in controversy. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.<sup>1</sup>
  - Examples of evidence to establish an IPV include:
    1. Written verification of unreported income or resources received by the individual;
    2. Verification that the individual understands his reporting responsibilities by signature on the application/redetermination form or some other form;
    3. An application, monthly report or change report submitted during the period the IPV is alleged to have occurred that omits the information in question; and
    4. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual failed to report the information in question.

### **C. Local Agency Referral**

- The local agency shall request an ADH be scheduled by submitting a written request to:

Appeals and Fair Hearings Unit, Benefits and Services Section  
 Virginia Department of Social Services  
 801 East Main Street  
 Richmond, Virginia 23219.

- The request must include the following information:
  1. Identifying information;
  2. Summary of the allegation or allegations;
  3. Summary of the evidence;
  4. Copies of documents supporting the allegation or allegations;
  5. Documentation that the individual was provided a waiver and refused to sign the waiver;
  6. The referral must be signed and dated by the supervisor or local agency director.
  - 7.

#### **D. Notice/Waiver of Notice**

- In an ADH hearing involving a TANF program issue, the hearing officer will schedule a date for the ADH and provide written notice to the individual at least 30 days in advance of the date the ADH has been scheduled.
- In an ADH hearing involving a Food Stamp program issue, the hearing officer will schedule a date for the ADH and provide written notice to the individual at least 30 days in advance of the date the ADH has been scheduled.
  1. If proof of receipt of the advance notification of the ADH or refusal to accept the notice have been received, the requirement to notify the individual alleged to have committed the IPV has been met.
  2. Without sufficient evidence that the advance notification was received or refused, the ADH is not to be held.
- The notice in both TANF and Food Stamp program ADHs will contain:
  1. The date, time and place of the hearing;
  2. The charge(s) against the individual;
  3. A summary of the evidence, and how and where the evidence can be examined;
  4. A warning that the decision will be based solely on information provided by the agency if the individual fails to appear at the hearing;
  5. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
  6. A warning that a determination of IPV will result in disqualification periods as prescribed by law and a statement of which penalty the state agency believes is applicable to the case scheduled for a hearing;
  7. A listing of the individual's rights as set forth below;
  8. A statement that the hearing does not preclude the State or Federal government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and
  9. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

#### **E. Location of Hearing**

- The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing the IPV.

#### **F. Postponement**

- The individual suspected of committing the IPV, or the individual's representative, may request a postponement of the ADH if the request for

postponement is made at least 10 days in advance of the date of the scheduled hearing.

- A TANF ADH may not be postponed for more than a total of 30 days.
- The hearing officer may limit the number of postponements.

### **G. Failure to Appear**

- The ADH can be held even if the individual or the individual's representative cannot be located or fails to appear without good cause.
- The individual has 10 days after the date of the scheduled ADH to present reasons indicating good cause for failure to appear.
- In Food Stamp Program ADHs, where good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.
- If the individual is found to have committed an IPV, but a hearing officer later determines that there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted.
- The hearing officer who conducted the original hearing may conduct the new hearing.
- The hearing officer shall enter the good cause decision into the hearing record.

### **H. Participation**

- A pending ADH shall not affect the individual's right to participate in the Food Stamp Program or TANF Program.
- The local agency may not disqualify an individual until the hearing officer finds that the individual has committed an IPV.
- This does not, however, preclude the local agency from reducing, suspending or terminating assistance for other reasons.

### **I. The Hearing**

- Even if the individual is not present at the hearing, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.
- Only persons directly concerned with the issue attend the ADH; this normally means a representative of the local agency and the individual alleged to have committed the IPV.

## **J. Duties of the Hearing Officer**

- The hearing officer shall:
  1. Identify those present for the record;
  2. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge or charges may be used against him in a court of law;
  3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of the individual to appeal the hearing officer's decision to circuit court;
  4. Consider all relevant issues. Even if the individual is not present, the hearing officer is to carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence;
  5. Request, receive and make part of the record all evidence determined necessary to render a decision;
  6. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and
  7. Advise the local agency to obtain a medical assessment at local agency expense if the hearing officer considers it necessary in a TANF ADH.
  8. Within 90 days of the date the individual is notified in writing that an ADH has been scheduled, the hearing officer shall conduct the hearing, arrive at a decision and notify the individual and local agency of the decision.

## **K. Opportunities of the Individual**

- The individual alleged to have committed an IPV shall be given adequate opportunity to:
  1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to establish the alleged IPV, shall be made available;
  2. Present his own case or have it presented by legal counsel or another person;
  3. Bring witnesses;
  4. Advance arguments without any undue influence;
  5. Question or refute any testimony or evidence, including the opportunity to confront and examine witnesses; and
  6. Submit evidence to establish all pertinent facts and circumstances in the case.

#### **L. The Decision**

- The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the facts as presented in the hearing.
- The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.
- The hearing officer shall prepare a written report of the hearing, which shall include findings, conclusions, decisions, and appropriate recommendations.
- The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations and respond to reasoned arguments made by the individual or the individual's representative.

#### **M. Notification of Decision**

- The hearing officer shall notify the individual of the decision in writing and of the individual's right to appeal the hearing officer's decision to the appropriate circuit court.
- If the individual is found guilty of committing an IPV, the written decision shall advise the individual that disqualification shall occur.

#### **N. Reversal**

- No further administrative appeal procedure exists after an adverse ADH.
- The determination of IPV made by a hearing officer cannot be reversed by a subsequent fair hearing decision.
- The individual, however, is entitled to seek relief in a court having appropriate jurisdiction.