



ADMINISTRATIVE RULES OF MONTANA



37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION

- (1) If a party is aggrieved by an adverse proposal for decision, a request for review may be made by filing notice of appeal in accordance with this rule.
- (2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:
 - (a) Temporary Assistance for Needy Families (TANF);
 - (b) food stamps;
 - (c) Medicaid;
 - (d) developmental disabilities services;
 - (e) Low Income Energy Assistance Program (LIEAP);
 - (f) Low Income Weatherization Assistance Program (LIWAP);
 - (g) refugee assistance;
 - (h) mental health services plan; and
 - (i) Healthy Montana Kids (HMK).
- (3) The notice of appeal must be received by the Office of Fair Hearings within 15 days of the date of mailing of the proposal for decision.
- (4) The following procedures apply in a board of public assistance review of a proposal for decision:
 - (a) Parties may file briefs no later than ten days before the meeting of the board for review, except that reply briefs may be filed within five days after actual receipt of an initial brief.
 - (i) Copies of all briefs shall be served upon all parties.
 - (ii) An original and four copies of each brief shall be filed with the Board of Public Assistance, P.O. Box 202953, Helena, MT 59620-2953.
 - (b) Oral arguments to the board are permitted at the board hearing.
 - (c) The board's review and decision must comply with the provisions of 2-4-621, MCA. For purposes of 2-4-621, MCA, the board shall be considered the "agency", but this rule shall not be construed to confer upon the board any authority to determine department policy.

- (d) The board may not consider or make a part of the record any evidence not admitted in evidence by the hearing officer for purposes of the hearing. If the admission or consideration of additional evidence is necessary to the decision, the matter shall be remanded to the hearing officer for additional proceeding as ordered by the board.
- (5) Except as otherwise provided by department rule, in all cases not specified in (2), the notice of appeal must be made to the department director in accordance with 2-4-621, MCA. The review shall be conducted and decided by the director or the director's designee.
- (6) A notice of appeal of a matter appealed to the director may be made in writing to the Director, Department of Public Health and Human Services, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The request must be received by the director within 15 days of the mailing of the proposal for decision.
- (7) The proposal for decision prepared by the hearing officer is the final agency decision, without further action by the board, the director or the director's designee, unless a request for review is received within 15 days of the date of mailing of the proposal for decision. The 15 day time limit may be extended if a party can show good cause but in no event shall the period of time be extended beyond 45 days.
- (8) If a request is received within the specified time period, the board, the director, or the director's designee shall consider the proposal for decision, the exceptions filed, briefs or oral argument presented, and the record of the hearing, and shall:
 - (a) notify the parties and, if applicable, the local office, regional office, central office, or other interested person of the decision; and
 - (b) notify the claimant or provider or other party of his right to judicial review.

Authorizing statute(s): 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

Implementing statute(s): 52-2-704, 53-2-201, 53-2-606, 53-4-1004, 53-4-1009, 53-4-1105, MCA

History: NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; AMD, 1985 MAR p. 943, Eff. 7/12/85; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2007 MAR p. 47, Eff. 1/12/07; AMD, 2010 MAR p. 2217, Eff. 10/1/10.