



ADMINISTRATIVE RULES OF MONTANA



37.62.965 DISMISSAL OF CONTESTED CASE OR WITHDRAWAL OF HEARING REQUEST

- (1) The CSSD or a CSSD staff attorney may ex parte dismiss a contested case proceeding at any time prior to entry of a final decision and order. A copy of the ex parte dismissal shall be served on all parties served with a contested case notice. The OALJ shall vacate any hearing that may be pending in the case. A dismissal under this rule is without prejudice and the CSSD may initiate a new contested case proceeding at any time.
- (2) A party requesting a hearing may withdraw the request at any time prior to or during the hearing. Prior to the hearing the request must be withdrawn in writing; during the hearing the request may be withdrawn orally with the ALJ.
 - (a) If the reason for the dismissal or withdrawal is based on an agreement between the parties that settles the contested case, the dismissal or request to withdraw will be made according to ARM 37.62.959.
 - (b) Except as provided for in (2)(a), when the OALJ or the presiding ALJ receives a request to withdraw, the ALJ will vacate the hearing provided that no other party has also requested a hearing in the same case. If no other party has requested a hearing, before vacating the hearing the ALJ will give the other parties an opportunity to request a hearing. If no party accepts this opportunity, the ALJ will vacate the hearing and the matter will be resolved as a default of the pending contested case notice or, if applicable, by stipulation. If another party requests or has requested a hearing, the request to withdraw will be deemed denied; the contested case will proceed to hearing and to a final decision and order based on the testimony and arguments of the parties who appear and participate at the hearing.
 - (c) If a party who has requested a hearing fails to appear at a scheduled hearing, the presiding ALJ may, unless prohibited by a statute, deem the party's request for hearing to be withdrawn. When a request is deemed withdrawn, the ALJ will proceed as provided in (2)(b).
 - (d) When a scheduled hearing is vacated as a result of a failure in (2)(c), the ALJ, upon a showing of good cause by the requesting party, may revive the withdrawn hearing request and schedule a hearing. The request to revive must be made in writing within 10 days after the hearing was vacated and must explain in detail why the requesting party was unable to appear at a scheduled hearing.
- (3) A scheduled hearing and a final decision and order may be vacated and dismissed at any time by the ALJ upon a showing that the CSSD did not or does not have jurisdiction over the subject matter of the hearing or the final decision and order.

Authorizing statute(s): 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA

Implementing statute(s): 2-4-201, 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

History: NEW, 2000 MAR p. 3547, Eff. 12/22/00; AMD, 2020 MAR p. 966, Eff. 5/30/20.