

TITLE 470 DIVISION OF FAMILY RESOURCES

NOTE: Under IC 12-1-1-1, the name of the State Department of Public Welfare is changed to Division of Family and Children, effective January 1, 1992.

NOTE: Under P.L.234-2005, SECTION 197, the name of the Division of Family and Children is changed to the Division of Family Resources, effective July 1, 2005.

ARTICLE 1. GENERAL ADMINISTRATIVE RULES

Rule 1. Definitions

470 IAC 1-1-1 Definitions

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 12-7-2

Sec. 1. Definitions. The definitions of the following terms as used in these rules and regulations [470 IAC] unless a different meaning appears from the context, are the same as set forth in Section 1 of The Welfare Act of 1936, as amended: "state department", "state board", "administrator", "county department", "county board", "county director", "public welfare", "grant-in-aid", "applicant", "recipient", "assistance", "dependent child", "child welfare services", "crippled child" and "warrant". (*Division of Family Resources; Definitions; filed Mar 27, 1946, 11:30 am: Rules and Regs. 1947, p. 1771; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

Rule 2. County Departments of Public Welfare

470 IAC 1-2-1 Delegation of rights, powers and duties by county board (Repealed)

Sec. 1. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-2 Reports to state welfare department (Repealed)

Sec. 2. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-3 Claims against county welfare department; authorization (Repealed)

Sec. 3. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-4 Vacancy in position of county welfare director; acting director (Repealed)

Sec. 4. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-5 Effective dates of salary increases for employees of county welfare departments; eligibility for reimbursement (Repealed)

Sec. 5. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-6 Prompt payment of salaries due employees; waiver (Repealed)

Sec. 6. (*Repealed by Division of Family and Children; filed Apr 30, 1997, 9:00 a.m.: 20 IR 2412*)

470 IAC 1-2-7 Confidential nature of assistance records; disclosure

Authority: IC 12-13-5-3
Affected: IC 12-13-7-3; IC 12-13-7-4

Sec. 7. Confidential Nature of Assistance Records. The case records and other information concerning applicants and recipients of assistance, under the Welfare Act of 1936, as amended, are confidential and their disclosure or use shall be confined to purposes directly connected with the administration of assistance.

Sec. 1(k), Welfare Act; Sec. 1, Ch. 349, Acts 1945; Burns 52-1001.
Sec. 5(f), Welfare Act; Sec. 3, Ch. 349, Acts 1945; Burns 52-1104.
Sec. 14, Welfare Act; Sec. 14, Ch. 3, Acts 1936; Burns 52-1113.
Sec. 14a, Welfare Act; Sec. 2, Ch. 200, Acts 1947; Burns 52-1113a.
Sec. 93, Welfare Act; Sec. 1, Ch. 321, Acts 1951; Burns 52-1262.
Sec. 93a, Welfare Act; Sec. 1, Ch. 321, Acts 1951; Burns 52-1262a.
Sec. 93b, Welfare Act; Sec. 1, Ch. 321, Acts 1951; Burns 52-1262b. (*Division of Family Resources; Title 1, Ch 1, Reg 1-107; filed Aug 21, 1951, 1:48 pm; Rules and Regs. 1952, p. 371; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-2-8 Fixing amount of official bonds of directors of public welfare

Authority: IC 12-13-5-3
Affected: IC 12-19-1-6

Sec. 8. Fixing Amount of Official Bonds of County Directors of Public Welfare. Official bonds of county directors of public welfare upon appointment are hereby fixed as follows:

- (a) In counties having a population of less than 100,000 according to the last United States Census \$5,000.
- (b) In counties having a population of 100,000 or more according to the last United States Census \$10,000.

Sec. 20, Welfare Act; Sec. 2, Ch. 288, Acts 1951; Burns 52-1119 (*Division of Family Resources; Title 1, Ch 1, Reg 1-108; filed Jun 2, 1952, 10:30 am; Rules and Regs. 1953, p. 238; filed May 22, 1987, 12:45 pm: 10 IR 2276, eff Jul 1, 1987; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

Rule 3. Personnel

470 IAC 1-3-1 Use and disclosure of personal information; limitations

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 4-1-6

Sec. 1. Use and Disclosure of Personal Information. The use and disclosure of information concerning a data subject of a personal information system maintained by the Indiana state department of public welfare is limited to purposes directly connected with:

- (1) The administration of the plan or program approved under parts A, B, C or D of title IV or under titles II, X, XIV, XVI, XIX, or XX or the federal Social Security Act or the supplemental security income program established under title XVI of the federal Social Security Act;
 - (2) Any investigations, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and
 - (3) The administration of any other federal or federally assisted program which provides assistance, in cash or in-kind, or services, directly to individuals on the basis of need;
- These safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State or local) of any information that identifies by name or address any such applicant or recipient;
- (4) The use and disclosure of personal information concerning a data subject shall be limited to the purposes described in

this regulation unless otherwise ordered by a court of competent jurisdiction.

IC 12-1-2-2(c) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]

IC 12-1-2-3(f) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.] (Division of Family Resources; Title 1, Ch 2, Reg 1-201; filed Nov 14, 1977, 8:49 am: Rules and Regs. 1978, p. 746; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA)

470 IAC 1-3-2 Access to personal information by a data subject; written request; inspect and receive records

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 4-1-6-2; IC 4-1-6-3

Sec. 2. Access to Personal Information by a Data Subject. Unless otherwise prohibited by law, upon written request on a form approved by the Indiana state department of public welfare and upon furnishing proper identification, a person who is a data subject of a personal information system maintained by the state department of public welfare may inspect and receive, at reasonable standard charges for document search and duplication, all personal information about the data subject. If the requested documents contain information concerning any individual other than the data subject, the Indiana state department of public welfare may delete this information from that which is made available to the data subject.

Upon such request, the Indiana state department of public welfare shall provide the data subject with the nature and the sources of the personal information provided to the data subject unless the confidentiality of such sources is required by statute. When requested, the Indiana state department of public welfare shall also provide the data subject with (1) the names and addresses of any party previously receiving personal information of a confidential nature about the data subject other than those parties with regular access authority, and (2) the date, nature and purpose of such disclosure.

IC 4-1-6-2

IC 4-1-6-3

IC 12-1-2-2(c) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]

IC 12-1-2-3(f) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.] (Division of Family Resources; Title 1, Ch 2, Reg 1-202; filed Nov 14, 1977, 8:49 am: Rules and Regs. 1978, p. 747; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA)

470 IAC 1-3-3 Correction and review of personal information by data subject; procedure

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 4-1-6-3

Sec. 3. Correction and Review of the Indiana State Department of Public Welfare's Personal Information System by a Data Subject. If a data subject of a personal information system maintained by the Indiana state department of public welfare gives written notice on a form approved by the Indiana state department of public welfare that he wishes to challenge, correct or explain information about him contained in the personal information system, the following procedures shall be followed:

- (1) The Indiana state department of public welfare shall investigate and record the current status of that personal information;
- (2) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, it shall be promptly corrected or deleted;
- (3) If the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred (200) words upon a form approved by the Indiana state department of public welfare setting forth his position;
- (4) Whenever a statement of dispute is filed, the Indiana state department of public welfare shall supply any previous party receiving personal information of a confidential nature about the data subject with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly mark that it is disputed and supply the statement of the data subject along with the information;
- (5) Following any correction or deletion of personal information the agency shall, at the request of the data subject, furnish

to parties, who previously received personal information of a confidential nature about the data subject, notification delivered to their last known address that the item has been deleted or corrected and shall require said parties to acknowledge receipt of such notification and furnish the data subject the names and last known addresses of all parties, previously receiving the uncorrected or deleted personal information about the data subject;

(6) A copy of this regulation shall appear on or accompany the DPW Form which allows data subject to request to inspect or review personal information on himself.

IC 4-1-6-3

IC 12-1-2-2(c) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]

IC 12-1-2-3(f) [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.] (Division of Family Resources; Title 1, Ch 2, Reg 1-203; filed Nov 14, 1977, 8:49 am: Rules and Regs. 1978, p. 748; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA)

470 IAC 1-3-4 Regular access authority to personnel records of state welfare department; limitation

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 4-1-6-2

Sec. 4. Regular Access Authority to Personnel Records of the Indiana State Department of Public Welfare. Except as otherwise provided by state or federal law or applicable State or federal regulation, regular access to personnel folders and employment related records concerning individual employees of the State Department of Public Welfare should be limited to the following persons: the employee or his authorized representative, the Administrator, the Personnel Officer and members of his staff, the Division Director and such other personnel as may exercise supervisory authority over the employee within the organizational structure of the Department.

IC 4-1-6-2

IC 12-1-2-2 [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.]

IC 12-1-2-3 [IC 12-1 was repealed by P.L.2-1992, SECTION 897, effective February 14, 1992.] (Division of Family Resources; Title 1, Ch 2, Reg 1-204; filed Nov 14, 1977, 8:50 am: Rules and Regs. 1978, p. 793; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA)

470 IAC 1-3-5 Employee working hours; lunch hour; time sheet (Repealed)

Sec. 5. (Repealed by Division of Family and Children; filed Oct 10, 1985, 9:38 am: 9 IR 212)

470 IAC 1-3-6 Employee illness or injury; report of absence from work (Repealed)

Sec. 6. (Repealed by Division of Family and Children; filed Oct 10, 1985, 9:38 am: 9 IR 212)

470 IAC 1-3-7 Leave without pay (Repealed)

Sec. 7. (Repealed by Division of Family and Children; filed Oct 10, 1985, 9:38 am: 9 IR 212)

Rule 4. Administrative Appeals

470 IAC 1-4-1 Purpose

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 12-13

Sec. 1. (a) It is the purpose of this rule to establish a uniform method of administrative adjudication within the division of

family and children in order to determine whether or not any action complained of was done in accordance with federal and state statutes, regulations, rules, and policies. As used in this rule, "policies" includes program manuals, administrative directives, transmittals, and other official written pronouncements of state or federal policy.

(b) This rule shall be construed in such a manner as to provide all parties with an adequate opportunity to be heard in accordance with due process of law. As used in this rule, "party" means:

- (1) a person or entity to whom the agency action is specifically directed;
- (2) the division of family and children; or
- (3) the county office of family and children.

(c) In the event that any provision of this rule is deemed to be in conflict with any other provision of federal or state statute, regulation, or rule that is specifically applicable to any program being appealed hereunder, then such other statute, regulation, or rule shall supersede that part of this rule in which the conflict is found. (*Division of Family Resources; 470 IAC 1-4-1; filed May 22, 1987, 12:45 p.m.: 10 IR 2277, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3073; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-2 Standing

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 2. (a) In the event that the rights, duties, obligations, privileges, or other legal relations of any person or entity are required or authorized by law to be determined by the division of family and children or any county office of family and children, then such person or entity may request, as provided for in section 3 of this rule, an administrative hearing under this rule. The person or entity requesting the hearing shall be known as the appellant.

(b) Unless otherwise provided for by law, only those persons or entities, or their respective attorneys at law, whose rights, duties, obligations, privileges, or other legal relations are alleged to have been adversely affected by any action or determination by the division of family and children or any county office of family and children, may request an administrative hearing under this rule. Any alleged harm to an appellant must be direct and immediate to the appealing parties and not indirect and general in character. (*Division of Family Resources; 470 IAC 1-4-2; filed May 22, 1987, 12:45 p.m.: 10 IR 2278, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3074; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-3 Filing an appeal; scheduling appeals

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 4-21.5; IC 12-13; IC 31-16-15

Sec. 3. (a) Any party complaining of any division action in accordance with this rule may file a request for an administrative hearing as provided in this section.

(b) Unless otherwise provided for by statute, regulation, or rule, appeal requests by recipients or applicants shall be filed in writing with the county office of the division of family resources or the office of hearings and appeals of the family and social services administration as provided on the notice of agency action. The appeal request must be received by close of business not later than:

- (1) thirty-three (33) days following the effective date of the action being appealed; or
- (2) thirty-three (33) days from the date of the denial notice;

whichever is later. Applicant and recipient appeal hearings shall be conducted at a reasonable time, date, and place.

(c) For purposes of this section, "close of business" means 4:30 p.m., local time, on a business day where the appeal is received. If the thirty-third day is a:

- (1) Saturday;
- (2) Sunday;
- (3) state holiday; or

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(4) day the office in which the act is to be done is closed during regular business hours; the appeal request must be received by the close of business the next business day. An appeal request received after close of business on the thirty-third day is untimely and invalid.

- (d) Unless otherwise provided for by statute, regulation, or rule, appeal requests by licensees or prospective licensees shall:
- (1) be filed in writing by the aggrieved party or its attorneys at law;
 - (2) set out each objection to the division's actions as well as cite the legal reasons therefor; and
 - (3) be delivered to the division of family resources by close of business within thirty-three (33) days after receipt of the initial notice upon which the appeal is premised.

Failure to state objections and the legal reasons therefor, in a timely manner, shall be deemed a waiver of such objections. Licensee appeal hearings will be conducted in Indianapolis, Indiana unless the appellant is otherwise notified.

(e) Appeals by Medicaid applicants and recipients concerning Medicaid eligibility or services shall be filed and conducted in accordance with rules promulgated by the office of the secretary of family and social services under 405 IAC. Medicaid provider appeals shall be filed and conducted in accordance with rules promulgated by the office of the secretary of family and social services under 405 IAC and the provisions of IC 4-21.5.

(f) All requests for income withholding appeals by child support obligors in Title IV-D cases shall be made and all income withholding appeal hearings shall be conducted in accordance with the provisions of IC 31-16-15. Child support income withholding hearings will be conducted in Indianapolis, Indiana, unless the obligor is otherwise notified.

(g) The division of family resources or the office of hearings and appeals of the family and social services administration, upon application of any party, or in its own discretion, may consolidate appeals to promote administrative efficiency. Hearings may only be consolidated in cases in which the sole issue involved is one of federal or state law or policy.

(h) Any party filing an appeal under this rule is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review prior to the filing of an appeal. Any issues not preserved in a timely manner within the interim review procedures are waived and shall not be an issue during the evidentiary hearing.

(i) The director of the division of family resources is responsible for the appointment of administrative law judges to conduct hearings under this rule. The division of family resources or the office of hearings and appeals of the family and social services administration will schedule evidentiary hearings and issue notices to the parties regarding the date, time, and location of the scheduled hearing.

(j) Continuance of a hearing will be granted only for good cause shown. An objection to a request for a continuance shall be considered before a continuance is granted or denied. Requests for a continuance shall be in writing and accompanied by adequate documentation of the reasons for the request. Good cause includes:

- (1) inability to attend the hearing because of a serious physical or mental condition;
- (2) incapacitating injury;
- (3) death in the family;
- (4) severe weather conditions making it impossible to travel to the hearing;
- (5) unavailability of a witness and the evidence cannot be obtained otherwise; or
- (6) other reasons similar to those listed in this section.

If the appellant is represented by counsel, the request for continuance must also include alternative dates for the scheduling of a new hearing. However, a new hearing may be scheduled without respect to the requested date if such date cannot be accommodated or confirmed with the requesting attorney within a reasonable time of the request. (*Division of Family Resources; 470 IAC 1-4-3; filed May 22, 1987, 12:45 p.m.: 10 IR 2278, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3074; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; filed Feb 17, 2012, 10:45 a.m.: 20120314-IR-470110725FRA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-4 Conduct and authority of administrative law judge

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 12-13

Sec. 4. (a) An administrative law judge's (ALJ) conduct shall be in a manner that promotes public confidence in the integrity and impartiality of the administrative hearing process. The ALJ who conducts a hearing is prohibited from:

- (1) consulting any party or party's agent on any fact in issue unless upon notice and opportunity for all parties to participate;
- (2) performing any of the investigative or prosecutorial functions of the agency in the administrative action heard or to be heard by him or her or in a factually related administrative or judicial action;
- (3) being influenced by partisan interests, public clamor, or fear of criticism;
- (4) conveying or permitting others to convey the impression that they are in a special position to influence the ALJ;
- (5) commenting publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or
- (6) engaging in financial or business dealings that tend to:
 - (A) reflect adversely on his or her impartiality;
 - (B) interfere with the proper performance of his or her duties;
 - (C) exploit the ALJ's position; or
 - (D) involve the ALJ in frequent financial business dealings with attorneys or other persons who are likely to come before the ALJ.

(b) An ALJ shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, or in which the ALJ's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision. Nothing in this subsection prohibits a person who is an employee of an agency from serving as an ALJ.

(c) The ALJ shall be authorized to:

- (1) administer oaths and affirmations;
- (2) issue subpoenas;
- (3) rule upon offers of proof;
- (4) receive relevant evidence;
- (5) facilitate discovery in accordance with the Indiana rules of trial procedure;
- (6) regulate the course of the hearing and conduct of the parties;
- (7) hold informal conferences for the settlement or simplification of the issues under appeal;
- (8) dispose of procedural motions and similar matters; and
- (9) exercise such other powers as may be given by the law relating to the particular program area under appeal.

(Division of Family Resources; 470 IAC 1-4-4; filed May 22, 1987, 12:45 p.m.: 10 IR 2278, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3075; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA)

470 IAC 1-4-5 Conduct of hearing; hearing decision

Authority: IC 12-13-2-3; IC 12-13-5-3

Affected: IC 12-13

Sec. 5. (a) The administrative law judge (ALJ) shall conduct the hearing in an informal manner and without recourse to the technical common law rules of evidence.

(b) The ALJ shall exclude from consideration irrelevant, immaterial, or unduly repetitious evidence.

(c) Every party shall have the right to submit evidence. In the event that an objection to evidence is sustained, the party proffering the evidence may make an offer of proof. Each party shall have the right to cross-examine the witnesses and offer rebutting evidence.

(d) Following the completion of the hearing, or after the submission of briefs by the parties (if briefing is permitted by the ALJ), the ALJ shall issue his or her decision in the matter concurrently to the parties. The decision shall be final unless a party requests agency review of the decision in accordance with this rule. The decision of the ALJ in a food stamp intentional program violation hearing or an aid to families with dependent children (AFDC) intentional program violation hearing is a final agency decision.

(e) The ALJ's decision shall:

- (1) include findings of fact;
- (2) specify the reasons for the decision; and
- (3) identify the evidence and statutes, regulations, rules, and policies supporting the decision.

(f) The findings of fact need not include a recitation of every piece of evidence admitted in the evidentiary hearing. Rather,

the findings should contain the basic facts that have formed the basis for the ALJ's ultimate decision. The decision must demonstrate a rational connection between the basic facts found by the ALJ and the ALJ's ultimate decision. The ALJ's decision must also cite the relevant laws upon which the ultimate decision is based, and relate the facts to the law. (*Division of Family Resources; 470 IAC 1-4-5; filed May 22, 1987, 12:45 p.m.: 10 IR 2279, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3076; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-6 Agency review

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 6. (a) Except for food stamp intentional program violation hearings and aid to families with dependent children intentional program violation hearings, any party who is not satisfied with the decision of the administrative law judge (ALJ) may request agency review of the decision within ten (10) days of receipt thereof in accordance with instructions issued with the decision.

(b) After receiving a request for agency review of a hearing decision, the division of family and children or the hearings and appeals section of the family and social services administration shall notify all parties when the decision will be reviewed. The agency review shall be completed by the division director or the director's designee. All such reviews shall be conducted upon the record, as defined in section 7 of this rule, except that a transcript of the oral testimony shall not be necessary for the review unless a party requests that one be transcribed at the party's expense.

(c) No new evidence will be considered during the agency review; however, any party wishing to submit a memorandum of law, citing evidence in the record, may do so pursuant to instructions issued by the division of family and children or the hearings and appeals section of the family and social services administration.

(d) The director of the division of family and children, or the director's designee, shall review the administrative law judge's decision to determine if the decision is supported by the evidence in the record and is in accordance with the statutes, regulations, rules, and policies applicable to the issues under appeal.

(e) Following the review of the director or designee, the director or designee shall issue a written decision:

- (1) affirming the decision of the ALJ;
- (2) amending or modifying the decision of the ALJ;
- (3) reversing the decision of the ALJ;
- (4) remanding the matter to the ALJ for further specified action; or
- (5) make such other order or determination as is proper on the record.

(f) The parties will be issued a written notice of the action taken as a result of the agency review. If the decision of the ALJ is reversed, amended, or modified, the director or designee shall state the reasons for the action in the written decision.

(g) The division of family and children or the hearings and appeals section of the family and social services administration shall distribute the written notice on agency review to:

- (1) all parties of record;
- (2) the ALJ who rendered the decision following the evidentiary hearing; and
- (3) any other person designated by the director or designee.

(*Division of Family Resources; 470 IAC 1-4-6; filed May 22, 1987, 12:45 p.m.: 10 IR 2279, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3076; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-7 Agency record; judicial review

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 4-21.5-3-33; IC 4-21.5-5; IC 12-13

Sec. 7. (a) The record of the administrative proceedings shall be that as defined in IC 4-21.5-3-33.

(b) If the appellant is not satisfied with the division's final action after agency review, he or she may file a petition for judicial

review in accordance with IC 4-21.5-5.

(c) The appellant is required to seek agency review prior to filing a petition for judicial review except in the case of food stamp intentional program violation hearings and aid to families with dependent children intentional program violation hearings. (*Division of Family Resources; 470 IAC 1-4-7; filed May 22, 1987, 12:45 p.m.: 10 IR 2280, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3077; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

470 IAC 1-4-8 Waiver; food stamp and aid to families with dependent children disqualification hearings

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 8. (a) Any individual who is alleged to have committed an intentional food stamp program or aid to families with dependent children (AFDC) program violation and who has received notice of the allegations and evidence against him or her may waive his or her right to an administrative hearing as provided in 7 CFR 273.16, pertaining to the food stamp program or 45 CFR 235.113 pertaining to the AFDC program.

(b) The individual alleged to have committed an intentional program violation shall be notified that he or she may waive his or her right to an administrative disqualification hearing, and the notice shall advise the individual of the consequences of waiving the right to an administrative disqualification hearing as provided in 7 CFR 273.16 or 45 CFR 235.113.

(c) The notice shall provide an opportunity for the accused to specify whether or not he or she admits to the allegations. (*Division of Family Resources; 470 IAC 1-4-8; filed May 22, 1987, 12:45 p.m.: 10 IR 2280, eff Jul 1, 1987; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3077; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235; readopted filed Oct 24, 2007, 11:25 a.m.: 20071121-IR-470070448RFA; readopted filed Aug 23, 2013, 3:36 p.m.: 20130918-IR-470130306RFA*)

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