



Ohio Administrative Code

Rule 5160-71-07 Chapter 119. hearings conducted under authority of section 5111.914 of the Revised Code: conduct of the hearing and adjudication order.

Effective: August 1, 2011

(A) Conduct of the hearing.

(1) The issuing state agency shall employ or contract with a hearing examiner to conduct all hearings initiated under authority of section 5111.914 of the Revised Code.

(2) The date, time, and place of any hearing under authority of section 5111.914 of the Revised Code is set by the issuing state agency or the hearing examiner. The hearing examiner shall provide written or electronic notice before the date of the hearing to all participants in the hearing and file a copy of the written notice in the record of the hearing.

(3) Subject to the prior approval of the hearing examiner, any appellant may choose to present the case entirely in writing provided that a written request is made by the appellant no later than fourteen business days before the date scheduled for the hearing. Any request to present the case entirely in writing must be filed with the hearing examiner. Any appellant who elects to present the case entirely in writing must do so in accordance with procedures ordered by the hearing examiner. The hearing examiner's order must be in writing and filed in the record of the hearing. In the event that the appellant elects to present its case in writing, the issuing state agency may elect to present its case entirely in writing. Nothing in this rule is to be construed as preventing the issuing state agency from compelling the attendance of the appellant or other witnesses at the hearing and questioning the appellant or other witnesses as if on cross-examination. Nothing in this rule is to be construed as preventing any appellant from examining any witnesses or evidence presented by the issuing state agency at the hearing.

(4) During the course of any hearing, the participants to the proceeding may enter into oral stipulations of fact, procedure, or the authenticity of documents that will be incorporated into the record and will bind the conduct of the participants. The hearing examiner conducting the case may require oral stipulations to be reduced to writing and submitted to the hearing examiner. The hearing examiner assigned to conduct a hearing has the power to rule on the admissibility of evidence or



testimony, but a participant may make objections to the rulings thereon. If the hearing examiner refuses to admit evidence or testimony, the participant seeking admission of same must make a proffer thereof and such proffer will be made a part of the record of the hearing. The hearing examiner may refer to the guidelines contained in the Ohio Rules of Evidence (7/1/2007) in making decisions on admissibility.

(B) Findings of fact, conclusions, recommendations, and objections.

(1) Upon the conclusion of any hearing, the hearing examiner shall prepare a written report of findings of fact, conclusions of law, and recommendations of departmental action to be taken in disposition of the case. The hearing examiner shall file the report, together with a complete record of the proceeding, with the issuing state agency within not more than forty-five days after the conclusion of the hearing, unless the parties agree to an extension of the time for the filing of the hearing examiner's report. Within five days of its completion, the issuing state agency shall send by certified mail, return receipt requested, to the appellant or the appellant's attorney, a copy of the hearing examiner's report. The report will be considered to have been mailed as of the date appearing on U.S. postal service form 3800 or any future equivalent postal service form. Also, on completion of the report and recommendation, the issuing state agency shall submit its hearing officer's report and recommendation and the complete record of proceedings, including all transcripts, to ODJFS for final adjudication.

(2) An appellant may file written objections to the hearing examiner's report with ODJFS. Any such objections must be received by ODJFS no later than ten days after the appellant receives the report. Any such objections must be filed with the depository agent of ODJFS. ODJFS may grant an extension of time to file objections if the appellant's written request for an extension is received by ODJFS no later than ten days after the appellant's receipt of the report. The date the appellant receives the hearing examiner's report is the date indicated on the U.S. postal service form 3800 or any future equivalent postal service form. The director will consider timely written objections before approving, modifying, or disapproving the recommendations of the hearing examiner.

(C) Final order of adjudication.

(1) Recommendations of the hearing examiner may be approved, modified, or disapproved by the



director. The director may remand the matter back to the issuing state agency to allow for additional testimony to be taken and permit the introduction of further documentary evidence. In those instances where the director modifies or disapproves the recommendations of the hearing examiner, the director will include the reasons therefore and incorporate them into the final order of adjudication.

(2) After the director has entered an order approving, modifying, or disapproving the hearing examiner's recommendation on the ODJFS journal of proceedings, the director will mail to the appellant and any attorney of record by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected. The director shall provide a copy of the order to the issuing state agency.

(D) Appeal of final adjudication order.

(1) Any appellant against whom a final order of adjudication is entered, pursuant to this rule, may appeal that order to the Franklin county court of common pleas.

(2) Any appellant desiring an appeal pursuant to this rule must file a notice of appeal with the depository agent of ODJFS and with the issuing state agency, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. The notice may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. In order to be determined filed with ODJFS, the notice of appeal must be received by ODJFS, as evidenced by an ODJFS date and time stamp, no later than fifteen days after the mailing to the affected party, as evidenced by U.S. postal service form 3800, or any future equivalent postal form, of the order to be appealed from. Appellant shall also file the notice of appeal with the court of common pleas no later than fifteen days after the mailing to the affected party, as evidenced by U.S. postal service form 3800, or any future equivalent postal form, of the order to be appealed from. In filing a notice of appeal with ODJFS, the issuing state agency or court, the notice that is filed may be either the original or a copy of the original notice.