



Ohio Administrative Code

Rule 5160-80-06 Rights and responsibility of the parties and hearing examiner.

Effective: June 13, 2016

(A) The appellant and the department or county department.

(1) The parties shall comply with the following service requirements:

(a) A certificate of service shall be attached to each filing with the depository agent attesting to service of a copy on the other party and the hearing examiner. Service is governed by rule 5 of the Ohio Rules of Civil Procedure

(www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf, March 8, 2016) except that any reference to court in rule 5 will be interpreted to refer to the depository agent.

(b) Only those brief, motions, memoranda, documents, and other filings filed with the depository agent shall be considered part of the hearing record. They must be filed with the depository agent within three days after service on the other party in the hearing.

(c) All briefs, memoranda, motions, and other filings shall be on eight-and-one half inch by eleven-inch paper and double-spaced.

(2) The appellant has the burden of proof by a showing of clear and convincing evidence that the amount determined for reimbursement of medical assistance paid by the department or county department on behalf of the medical assistance recipient should be different than set forth in division (G)(2) of section 5160.37 of the Revised Code.

(3) The parties shall engage in settlement discussions prior to the hearing, as directed by order of the hearing examiner. The settlement discussions shall occur no later than the document exchange required under paragraph (D) of rule 5160-80-05 of the Administrative Code.

(4) The parties may provide to the hearing examiner, at least seven calendar days prior to the hearing, a written statement of their position in the case in lieu of, or supplemental to, an opening



statement.

(5) The appellant and the department or county department shall, as ordered by the hearing examiner, prior to hearing exchange all proposed exhibits and other documents to be used at the hearing.

(6) If an appellants attorney seeks to have access at the hearing to the appellants medical assistance information or protected health information without the appellant being present and the attorney is not acting in the capacity as an authorized representative, the attorney must present written authorization signed by the appellant meeting the requirements of section 5160.45 of the Revised Code.

(7) The appellant and the department or county department shall have the opportunity to present their case. The hearing shall be conducted informally, and formal rules of evidence shall not apply. The parties shall have an adequate opportunity to:

(a) Present witnesses.

(b) Submit evidence to establish all pertinent facts and circumstances.

(c) Advance arguments.

(d) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(B) The hearing examiner

(1) Hearings shall be conducted by an impartial department hearing examiner who has no personal stake or involvement in the case and was not directly involved in the initial determination being appealed. The hearing examiner shall be under the direction and supervision of the department.

(2) All orders, reports, recommendations, and rulings issued by the hearing examiner shall be signed, dated, and filed with the depository agent. The depository agent shall make services of those filings on the parties.



- (3) The hearing examiner by order shall direct the parties to engage in settlement discussions and to report back the results of those discussions.
- (4) The hearing examiner shall have the general authority to regulate the course of the hearing and to issue orders governing the conduct of the hearing. This includes the authority to:
- (a) Administer oaths or affirmations, order the production of documents and the attendance of witnesses, call and examine witnesses in a reasonable and impartial manner, and determine the order in which the participants in the hearing present testimony and are examined in a manner consistent with essential fairness and justice.
 - (b) To rule on the admissibility of evidence, objections, motions, and to rule on procedural matters.
 - (c) To take such other actions as might be necessary to avoid unnecessary delay, prevent presentation of irrelevant or cumulative evidence, prevent argumentative, repetitious, or irrelevant examination or cross-examination, and to assure that the hearing proceeds in an orderly and expeditious manner.
- (5) The hearing examiner, at his or her discretion, may hold pre-hearing conferences for the purpose of resolving matters that can be resolved by the parties, including facilitation of a settlement, identifying the witnesses to be presented and the subjects of their testimony, discussing possible admissions or stipulations regarding the authenticity of records, identifying and marking exhibits, ruling on any procedural motions of the participants in the hearing, and discussing any other matters deemed appropriate by the hearing examiner for the thorough and expeditious preparation and disposition of the case.
- (6) A party may choose to present its case entirely in writing provided that a written notice is served on the other party and hearing examiner no less than fourteen calendar days before the date scheduled for the hearing. Any party who elects to present the case entirely in writing must do so in accordance with procedures ordered by the hearing examiner. In the event that one party elects to present its case entirely in writing, the other party may elect to present its case entirely in writing by providing written notice to the hearing examiner and other party no later than seven calendar days before the date scheduled for the hearing. Nothing in this rule shall be construed as preventing a



party from compelling the attendance of another party or other witnesses at the hearing or from questioning the party or other witnesses as if on cross-examination.

(7) The hearing examiner shall begin the hearing by having the recording equipment started and providing the following introductory information:

- (a) The name and role of the hearing examiner, the case name, and the appeal number.
- (b) How the hearing will be conducted, including the order of presentation and questioning.
- (c) The general time frame within which a decision will be issued.
- (d) Who will issue the decision.
- (e) How the parties will be notified of the decision.
- (f) Where the complete hearing record will be kept after the decision is issued.
- (g) The available appeal rights.

(8) The hearing examiner shall entertain and rule on any procedural matter prior to opening statements or the presentation of evidence.

(9) The hearing examiner shall record the name and role of each person in attendance and shall administer an oath or affirmation to all who intend to offer testimony.

(10) The hearing examiner shall regulate the order of presentation by the parties. Normally, as the party with the burden of proof, the appellants presentation will be made first, subject to questioning by the department or county department and the hearing examiner, followed by the departments or county departments presentation, subject to questioning by the appellant and the hearing examiner. The parties will then be allowed a brief closing statement.

(11) In regulating the conduct of the hearing, the hearing examiner is responsible for developing the



fullest possible record upon which to base all necessary findings of fact. Each party shall be treated fairly and impartially and given adequate opportunity to present its case. The hearing examiner has an affirmative obligation to assist an unrepresented appellant in understanding the nature of the matters at issue and how the hearing is to be conducted. The hearing examiner shall take an active part in questioning the parties and the evidence presented, insofar as that is necessary to develop the fullest possible record.

(12) After all relevant testimony and evidence has been presented, the hearing examiner shall determine whether a sufficient record has been developed upon which to make the decision. If not, the hearing examiner may order that the hearing be continued to a later date, permit the issuance of additional subpoenas (if there is a need for unanticipated, relevant testimony) or leave the record open for the submission of additional evidence.

(a) If the hearing is to be continued to a later date, the hearing examiner shall schedule the continuance at the earliest possible date and shall formally record the new date and time, as well as the specific purpose of the continuance. Notification of the parties at the hearing shall be followed by the issuance of a hearing scheduling notice to the parties.

(b) If the record is to be left open to allow the submission of additional documentary evidence, the hearing examiner shall formally record the nature and purpose of the additional evidence and shall establish the earliest possible realistic deadline for its submission to the hearing examiner and for response by the parties to that submission.

(c) Additional evidence submitted pursuant to the deadline shall be forwarded by the party to the opposing party. Evidence submitted after the deadline may be returned to the submitting party by the hearing examiner with notice that it will not be used in reaching the decision.

(13) The hearing examiner shall close the hearing by informing the parties when they can expect the written decision, adjourning the hearing, and verifying that the recording equipment is turned off.

(14) All exhibits or other evidence admitted into the record or proffered shall be filed by the hearing examiner with the depository agent at the conclusion of the hearing.



(15) Following the hearing, the hearing examiner shall not discuss the substance of the case with the parties, unless they or their authorized representatives or attorneys participate.