

Kansas Administrative Regulations

Kansas Department for Children and Families

Article 7.—Appeals, Fair Hearings and TAF/GA Disqualification Hearings

30-7-102. Disqualification hearings.

(a) An individual's fair hearing may be consolidated with a disqualification hearing by the agency when the circumstances surrounding the hearings are the same or related, provided that the individual receives prior notice of the consolidation. Either the hearing officer for the fair hearing or the hearing officer for the disqualification hearing may be assigned by the agency to preside at a consolidated hearing.

(b) The hearing officer shall:

(1) administer oaths and affirmations;

(2) consider all relevant issues;

(3) request, receive and make part of the record all evidence necessary to decide the issues raised;

(4) conduct the hearing in a manner consistent with due process;

(5) advise the accused individual that the individual may refuse to answer questions during the hearing; and

(6) render a final decision that will resolve the issues in dispute.

(c) The hearing officer shall base a determination of intentional program violation on clear and convincing evidence which demonstrates that the individual committed an intentional program violation.

(d) The hearing officer shall conduct the fair hearing or any prehearing by telephone or other electronic means if each participant in the hearing or prehearing has an opportunity to participate in the entire proceeding while the proceeding is taking place. A party may be granted a face to face hearing or prehearing if good cause is shown that a fair and impartial hearing or prehearing could not be conducted by telephone or electronic means.

(e) (1) A written notice shall be provided by the agency to the individual alleged to have committed the intentional program violation at least 30 days before the date of the disqualification hearing.

(2) The advance written notice to the individual shall include the following items:

(A) The date, time and location of the hearing;

(B) the charge or charges against the individual;

(C) a summary of the evidence, and how and where the evidence can be examined;

(D) a warning that the individual's failure to appear without good cause will result in a decision by the hearing officer based solely on the information provided by the agency at the hearing;

(E) a statement that the individual may request a postponement of the hearing if the request is made to the state agency at least 10 days before the scheduled hearing;

(F) a statement that the individual will have 10 days from the date of the scheduled hearing to present to the agency good cause for failure to appear in order to receive a new hearing;

(G) a description of the penalties that can result from a determination that the individual has committed an intentional program violation and a statement of which penalty applies to the individual;

(H) a statement that the hearing does not preclude the state government from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from collecting an overpayment;

(I) information regarding free legal representation available to individuals alleged to have committed intentional program violations;

(J) a statement of the accused individual's right to remain silent concerning the charge or charges and that anything said or signed by the individual concerning the charge or charges may be used against the individual in a court of law;

(K) a statement that the individual may waive the right to appear at an administrative disqualification hearing;

(L) (i) the date that the signed waiver shall be received by the agency;

(ii) a signature block for the accused individual;

(iii) a statement that the caretaker relative shall also sign the waiver if the accused individual is not the caretaker relative; and

(iv) a signature block designated for the caretaker relative;

(M) a statement that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the agency; and

(N) an opportunity for the accused individual to specify whether the individual admits to the facts as presented by the agency.

(f) (1) The hearing officer shall postpone the scheduled hearing at the individual's request provided the request for postponement is made at least 10 days before the scheduled disqualification hearing;

(2) the hearing officer shall not postpone for more than a total of 30 days; and

(3) the hearing officer may limit the number of postponements to one.

(g) The hearing officer assigned to conduct the hearing shall be impartial and not previously involved in the case.

(h) Medical assessments shall be obtained by the agency at the agency's expense and shall be made part of the record if the hearing officer considers it necessary.

(i) The individual, or the individual's representative, shall have adequate opportunity to:

(1) examine the contents of the individual's case file, and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and during the hearing;

(2) present the individual's case alone or with the aid of an authorized representative;

(3) bring witnesses;

(4) establish all pertinent facts and circumstances;

(5) advance any arguments without undue influence; and

(6) question or refute any testimony or evidence, confronting and cross-examining adverse witnesses.

(j) Decisions made by the hearing officer shall be based exclusively on the evidence and other material admitted into the case record at the hearing. The transcript or recording of testimony, exhibits, or official reports admitted at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing officer shall be made available to the individual or to the individual's representative at a reasonable time and place.

(k) Decisions by the hearing officer shall:

(1) consist of a decision memorandum summarizing the facts, evidence and regulations supporting the decision; and

(2) be made within 90 days of the date of service of the notice of hearing.

(l) An individual shall not be disqualified by the agency per this section until the hearing officer finds that the individual has committed an intentional program violation. However, assistance may be discontinued, terminated, suspended, or reduced by the agency, or changed in the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

(m) If the hearing officer finds that the individual committed an intentional program violation, a written notice shall be provided by the agency to the individual before disqualification. The notice shall inform the individual of the following:

(1) the decision and the reason for the decision;

(2) the period of disqualification, which shall begin not later than the first day of the second month which follows the date of the notice;

(3) the amount of payment the household will receive during the disqualification period; and

(4) the individual's right to appeal the decision to the district court of Shawnee county or the individual's county within 30 days of the date of the decision and that an appeal may result in a reversal of the decision.

(n) This regulation shall take effect on and after July 1, 1996.

(Authorized by and implementing K.S.A. 1995 Supp. 39-708c; effective July 31, 1992; amended July 1, 1996.)