

CHAPTER 2

Rules and Regulations for the Wyoming Life Resource Center

Administrative Hearings

- Section 1. <u>Authority</u>. This Chapter is promulgated by the Department of Health pursuant to the Life Resource Center Act at W.S. § 25-5-101, *et seq.*, W.S. § 9-2-106(a)(vii), and the Wyoming Administrative Procedure Act at W.S. § 16-3-101, *et seq.*
- Section 2. <u>Purpose</u>. This Chapter is adopted to provide uniform procedures for the conduct of contested cases involving services at the Wyoming Life Resource Center. Contested case hearings regarding the services at the Wyoming Life Resource Center shall be conducted in accordance with these rules, unless otherwise provided by Wyoming State statute or Federal law.
- Section 3. <u>Notice of Adverse Action</u>. Except as otherwise specified in this rule, the Agency shall provide notice of final action at least ten (10) days before its effective date.
 - (a) Notice of the denial of an application shall be effective the date of receipt.
- (b) The Agency may provide notice of final action not later than the effective date if:
- (i) The Agency has factual information confirming the death of a client or applicant;
- (ii) The Agency receives a clear written statement signed by a client or applicant that:
 - (A) The client or applicant no longer wishes services;
- (B) Gives information that requires termination or reduction of services and indicates an understanding that this must be the result of supplying that information; or
- (C) The client or applicant elected to receive services from another provider or institution.
- (iii) The client or applicant's whereabouts are unknown and the post office returns agency mail indicating no forwarding address;
- (iv) The Agency establishes that the recipient was accepted for benefits or is receiving services by another jurisdiction, state, territory, or commonwealth;

- (v) The client's physician prescribes a change in the level of medical care; or
- (vi) The decision was made due to the health, safety, or welfare of the client.
- (c) Except as otherwise provided by these rules, the Agency's notice of final action shall include a statement of:
 - (i) The reasons for and the evidence supporting the Agency's action;
 - (ii) The effective date of the action;
- (iii) The specific regulations that support the action or the change in Federal or State law that requires the action;
 - (iv) The right to reconsideration or a hearing;
- (v) A contestant's failure to request reconsideration, which shall result in the denial of the contestant's right to request a hearing, where applicable;
 - (vi) The method of requesting reconsideration or a hearing; and
- (vii) The applicant or client's right to be represented by a lawyer, relative, friend, or other spokesperson, including the availability of legal services and the phone number and address of the Protection and Advocacy System, Inc.

Section 4. Reconsideration.

- (a) No provision of this section shall prohibit a client or applicant from working with the Agency prior to the Agency's final action.
- (b) Reconsideration shall not be available for the Division's final determinations of eligibility or the Center's decision to discharge a client, which shall become a contested case upon request for a hearing.
- (c) Clients or applicants may request that the Center reconsider a final decision regarding an adverse action other than the decision to discharge.
 - (d) A request for reconsideration shall contain:
- (i) The name, address, and telephone number of the person requesting reconsideration; and
- (ii) The reason for the request, including the nature of the agency's action, order, or determination to be reviewed.

(e) Procedure.

- (i) Requests for reconsideration shall be mailed to the Center within ten (10) days after the date the contestant receives notice of the action taken.
 - (A) The contestant may provide additional information.
- (B) The Program Manager's request for any additional information shall be by certified mail, return receipt requested.
- (I) The contestant or other party submitting additional information shall submit the requested information, or reason for denial of the request, within twenty (20) days of receipt of the Program Manager's request.
- (II) The contestant may, upon a showing of good cause, request additional time to respond to requests for additional information. The Program Manager may grant such requests as the Program Manager deems reasonable and prudent.
- (III) The Program Manager may make reasonable inferences adverse to any contestant's failure to provide or denial of a request to provide additional information.
- (ii) Upon determination that no additional information is necessary, the receipt of all additional information or expiration of the time for receipt of the same, the Program Manager may request a meeting of necessary persons with the client's representative and the client present.
- (A) A client's representative may waive the client's appearance at reconsideration upon a showing of good cause where such good cause is entered into the client's record.
- (B) A contestant may request that additional persons be permitted to attend the reconsideration meeting for purposes of presenting additional information.
- (C) The Program Manager may ask any employee of the Center involved in the client's treatment, care, or interdisciplinary team to explain the Center's action and allow the contestant opportunity to present argument in support of their position. Presentations may be oral or written.
- (iii) The Program Manager shall review the Center's decision, any additional information submitted, and the request of the contestant, and shall send written notice of the Program Manager's final decision by certified mail to the contestant within

- forty-five (45) days of the receipt of the contestant's request for reconsideration or the provision of additional information, whichever is later.
- (iv) A contestant who fails to request reconsideration as required by this Section may not subsequently request a contested case pursuant to this Chapter.
- (v) A contestant who is aggrieved by the reconsideration process may request an administrative hearing involving any matter at issue for reconsideration. Such request must be hand delivered or sent to the Center within thirty (30) days of receipt of the Center's notice of decision on reconsideration.
- Section 5. <u>Request for hearing</u>. A request for a hearing shall be mailed or personally delivered, by a contestant, to the Agency Division within thirty (30) days after the date the Notice of Adverse Action, for issues pursuant to this Chapter, is mailed to the recipient.

Section 6. <u>Procedure after request for hearing.</u>

- (a) The Agency shall evaluate the request and within thirty (30) days of receipt of the request:
- (i) Notify the requesting party that a hearing will be held, the time, date and place of the hearing; or
- (ii) Notify the requesting party of the denial of a hearing as requested and the reasons for the denial.
- (A) The Division may deny a request for hearing if the action complained of is not an adverse action and/or the request does not meet the requirements of Section 6.
- (B) A denial of a request for hearing is a final decision of the Department and may be appealed to district court pursuant to the Wyoming Administrative Procedure Act at W.S. § 16-3-101, et seq., unless otherwise agreed by the contestant and the Agency.

Section 7. Notice of hearing.

- (a) In any contested case, the Agency shall afford reasonable notice of the hearing to all parties.
- (i) Reasonable notice, as used in this section, shall be not less than twenty (20) days prior to the hearing date.

- (ii) The time period may be waived by the contestant individually, or by mutual assent of the parties. All waivers of this requirement shall be entered into the record in writing.
- (iii) Notice shall be served personally or by certified mail to the last known address of the party, with a return receipt requested.
- (iv) Where the necessary and indispensable parties are comprised of a large class, notice shall be:
- (A) Served upon a reasonable number of representatives of the class; or
- (B) Published in newspaper(s) of the state in reasonable numbers and times, at a minimum in a paper of general circulation in the county in which the contestant resides, and in at least one (1) newspaper with statewide circulation. In any county in which more than one newspaper is published, notice shall be published in the official paper of the county designated pursuant to W.S. § 18-3-517.
- (b) A notice of hearing shall contain the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is being held; the particular sections of the statutes or rules involved; a short and plain statement of the matters asserted; the docket number assigned to the case; the right to be represented by an attorney; and the availability of legal aid.
- (i) If the Agency is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter, upon request of any party, a more definite and detailed statement shall be furnished within ten (10) days of receipt of that request by the party.
- (ii) Upon written request by one of the parties, or upon his own motion, the hearing officer may reschedule the hearing to a time convenient for the parties. A party must submit such request within ten (10) days of receipt of the notice of hearing. When such request is granted, the hearing officer shall reissue the notice in accordance with these rules except that reasonable notice as used in this subsection shall be five (5) days prior to the hearing date.
- (A) Only one (1) request for rescheduling of a hearing shall be honored unless, in the hearing officer's judgment, additional changes must be allowed to avoid manifest injustice. Notice shall be issued as provided by subsection (ii).
- (B) A hearing shall be held within ninety (90) days of the action which gives rise to the request for a hearing,
- (I) Except for decisions regarding discharge from the Center, which will be held within thirty (30) days of a written request; and

(II) Except by agreement of the parties.

Section 8. Location of hearings.

- (a) Hearings involving applicants may be held in the county of the recipient's residence or in Cheyenne, Wyoming. Regardless of the location, the parties shall be given the opportunity to appear by telephone, rather than in person.
- (b) Hearings involving clients shall be held in Lander, Wyoming, unless otherwise agreed to by the parties.
- Section 9. <u>Consolidation of hearings</u>. Upon motion of one of the parties, the hearing officer may consolidate two or more hearings, if the hearings involve the same parties and/or related parties with similar or related issues.
- Section 10. <u>Procedural rights of contestant</u>. The contestant must be given the opportunity to:
- (a) Examine, at a reasonable time before the date of the hearing and during the hearing:
 - (i) The content of the contestant's case file; and
- (ii) All documents and records to be used by the Agency at the hearing.
- (b) Bring witnesses, establish all pertinent facts and circumstances, present an argument, and question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.
- Section 11. <u>Failure to appear</u>. If a contestant fails to appear at the place, date, and time specified in a notice, the hearing officer may:
- (a) Upon good cause, shown prior to the date of the hearing, continue the hearing to a later date and provide proper notice as prescribed in these rules;
- (b) Proceed to conduct the hearing without the contestant and dispose of the contested case, unless prohibited by Federal or State statute; or
 - (c) Deny or dismiss a hearing if:
 - (i) The contestant withdraws the request in writing; or

- (ii) The contestant fails to appear at a scheduled hearing without good cause. Good cause shall be determined by considering circumstances which are beyond the contestant's control.
- Section 12. <u>Discovery</u>. All discovery in a contested case shall be governed by the Wyoming Rules of Civil Procedure, as described in W.S. § 16-3-107(g) and (h).

Section 13. Prehearing conference.

- (a) At a time on or before the day of the hearing, the hearing officer, on his own or either party's motion, may meet with the parties for a conference to consider simplification of the issues, stipulations and admissions of fact, clarification or limitation of evidence, and any other matters that may expedite the proceeding and assure a just conclusion of the case. The meeting may be held by telephone conference.
- (b) Any stipulations, limitations, or agreements made at a prehearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent manifest injustice.

Section 14. <u>Disclosure Statements</u>.

- (a) In all cases, the parties shall file a short statement disclosing the witnesses to be called, the exhibits to be offered, and containing a concise statement of the party's contentions, and the relief requested.
 - (b) The hearing officer may order additional disclosures.
- (c) Unless otherwise ordered by the hearing officer, disclosure statements shall be filed no later than ten (10) days prior to the date of the hearing.

Section 15. Informal Disposition.

- (a) Settlement of a contested case by any informal means (i.e., stipulation, agreed settlement or consent order) shall be allowed at any time, unless precluded by law.
- (b) Alternative Dispute Resolution. Any party may request that the matter be set for settlement conference mediation, or other applicable form of alternative dispute resolution.
- (i) By agreement, the parties may select a qualified person to conduct the settlement conference or to serve as the mediator. If the parties cannot agree, they may each advise the hearing officer of their recommendations and the hearing officer shall appoint a person to conduct the settlement conference or serve as mediator.
- (ii) The settlement conference or mediation shall be conducted pursuant to the procedures established by Wyoming Rules of Civil Procedure, Rule 40,

and otherwise by the procedures prescribed by the person appointed to conduct the settlement conference or serve as the mediator.

- (iii) The hearing officer may, where good cause is shown by a party opposing alternative dispute resolution, deny the request to set the matter for alternative dispute resolution pursuant to this section.
- (iv) Alternate Dispute Resolution shall not be used to deny or delay a contestant's right to a hearing under these Rules or to deny any other rights afforded under these Rules or otherwise required by law.

Section 16. Hearing officer.

- (a) The Director shall appoint a hearing officer to preside over contested case hearings on a case-by-case basis or for a scheduled period of time, or the matter may be referred to the State of Wyoming, Office of Administrative Hearings (OAH), or its successor, pursuant to the rules of the OAH, as the Director sees fit.
- (b) The Department's hearing officer may be an employee, or other individual determined by the Director to be qualified to serve in such a capacity, who has not taken part in the investigation, preparation, or earlier disposition of the case to be heard.
- (i) The hearing officer shall withdraw from consideration of a case at any time he or she deems himself or herself disqualified, providing there are other qualified presiding officers available to act. Withdrawal shall be made in writing to the Director.
- (ii) Any party may request in writing the Director remove and replace the hearing officer in a contested case. This request must be accompanied by a statement and affidavits, setting forth the alleged grounds for disqualification. The Director may deny a party's request for removal and shall issue a written statement explaining the grounds for his denial, which shall be made a part of the record. If the request is granted, the Director shall appoint a new hearing officer as soon as is practicable.
- (iii) The contestant may object to the appointment of the hearing officer in the record at the hearing. The objection shall set forth the alleged grounds for disqualification.
- (c) The hearing officer shall have all powers necessary to conduct a fair and impartial hearing, including, but not limited to, the following authority:
 - (i) To administer oaths and affirmations;
- (ii) To subpoena witnesses and require the production of any books, papers, or other documents relevant or material to the inquiry;

- (iii) To rule upon offers of proof and relevant evidence;
- (iv) To provide for discovery and determine its scope;
- (v) To regulate the order of procedure of the hearing pursuant to Section 19;
- (vi) To hold conferences for the settlement or simplification of the issues;
 - (vii) To dispose of procedural requests or similar matters;
 - (viii) To take any other action authorized by the Department's rules; and
- (ix) To make proposed findings of facts and conclusions of law pursuant to Section 20.
- (d) Failure or refusal to appear or obey orders of the hearing officer may result in the sanctions provided in W.S. § 16-3-107(c) and (f).
- (e) Except to the extent required for the disposition of ex parte matters authorized by law, the hearing officer shall not consult with any individual or party on any fact at issue except as allowed in W.S. § 16-3-111.

Section 17. <u>Evidence and testimony</u>.

(a) Burden of proof. The Agency shall have the burden of proof, unless otherwise provided by law. The burden shall be to prove by a preponderance of the evidence that the adverse action is not arbitrary and capricious, or otherwise in violation of law.

(b) Admissibility of evidence.

- (i) The parties shall be entitled to present any oral or documentary evidence, submit rebuttal evidence, and conduct cross-examinations as may be required for a full disclosure of the facts. All documentary or physical evidence submitted for consideration shall be marked as exhibits. Agency's exhibits shall be marked by letters of the alphabet beginning with "A." Contestant's exhibits will be marked by numbers beginning with "1."
- (ii) The hearing officer shall allow any oral or documentary evidence, except irrelevant, immaterial, or unduly repetitious evidence.

(c) Objections.

- (i) The grounds for objection to any evidentiary ruling by the hearing officer shall be briefly stated. Rulings on all objections shall appear in the record. Only those objections made before the hearing officer, or specifically stipulated to by both parties, may be relied on in a subsequent proceeding.
 - (ii) Formal exception to an adverse ruling is not required.
 - (d) Privileged and confidential information.
- (i) Any privilege at law shall be recognized by the hearing officer in considering evidence.
- (ii) No employee of the Department shall be compelled to testify or to divulge information which is confidential or privileged at law and which is contained within the records of the Department or acquired within the scope of his employment except as provided in W.S. § 16-3-107.
- (e) The hearing officer may take official notice of any material fact not appearing in evidence in the record that is of the nature of traditional matters of judicial notice or within the special technical knowledge or files of the Department. Parties shall be given an opportunity to contest matters officially noticed prior to a final decision by the Department in accordance with W.S. § 16-3-108.
- (f) Each witness who is present to give testimony must identify himself by stating his name and address, indicate on whose behalf he will testify, and be administered the following oath by the hearing officer: "Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"
 - (g) Only a party or their attorney may examine or cross-examine witnesses.
 - (h) The hearing officer may examine witnesses.

Section 18. Representation.

- (a) A contestant has the right to represent herself or to be represented by an attorney authorized to practice pursuant to the rules of the Supreme Court of Wyoming. If the contestant is represented by an attorney, payment of attorney's fees and costs are the responsibility of the contestant. The Agency is not responsible for payment.
- (b) Agency may request the Attorney General to assist in contested case hearings to the extent required by W.S. § 16-3-112(c).

Section 19. Order of procedure.

(a) As nearly as practicable, the following order of procedure shall be followed:

- (i) The hearing officer shall announce the hearing is open and call by docket number and title of the case to be heard. The hearing officer shall ask if parties are ready to proceed and will allow parties an opportunity to dispose of any preliminary matters.
- (ii) The hearing officer shall administer the oath to all witnesses who will present testimony.
- (iii) The hearing officer may, in his discretion, allow the hearing to proceed in an order other than that prescribed here.
- (iv) Opening statements may be made beginning with the party with the burden of proof, and then followed by the other party.
- (v) The party with the burden of proof shall offer evidence first, followed by the other party. The party which proceeded first may then offer rebuttal evidence. Parties may cross-examine.
- (vi) No testimony shall be received by the hearing officer unless given under oath/affirmation administered by the hearing officer.
- (vii) Closing statements may be made beginning with the party holding the burden of proof, then the other party, followed by the party with the burden of proof in response.
- (viii) The hearing officer may limit the time for opening and closing statements.
- (ix) After all parties have had an opportunity to be heard, the hearing officer shall excuse all witnesses and close the evidence.
- (x) Evidence may be reopened only upon a motion by a party to the proceeding on a showing of good cause.
- (b) All parties or other interested persons may submit legal briefs after the close of the hearing. The hearing officer shall allow a reasonable time of not less than ten (10) working days from the date of hearing for preparation of the briefs. The time may be extended upon agreement between the parties with the approval of the hearing officer.

Section 20. Decisions.

(a) The hearing officer shall propose a final determination, including findings of fact and conclusions of law, within twenty (20) working days of the close of the hearing and forward them to the Director for final determination. This time may be extended if the parties or other interested persons are to submit briefs, but may not be

extended by more than ten (10) working days, unless the parties stipulate in writing or on the record at the hearing to a later date.

- (i) Within ten (10) working days of the close of the hearing, or such additional time as the hearing officer may allow, each party shall be allowed to file with the hearing officer any proposed findings of fact and conclusions of law, and a supporting brief. Such proposals and briefs shall be served on all other parties.
- (ii) Within ten (10) working days after the issuance of the hearing officer's proposed findings of fact and conclusions of law, any of the parties may submit exceptions. Such exceptions shall be filed with the Director and served on all other parties.
- (b) Within ten (10) working days after the period for submitting exceptions pursuant to Subsection (a)(ii), the Director shall make and enter into the record the final decision. The final decision shall be served on all parties to the proceedings. The final decision shall include:
 - (i) A statement of the findings of fact and conclusions of law; and
- (ii) The appropriate rule, order, relief, or denial thereof. The decision shall be based upon the contested case record or any portion stipulated to by the parties. The decision shall include facts officially noticed and relief upon, as provided by W.S. § 16-3-108(d). It shall be made on the basis of a preponderance of evidence contained in the record.
- (c) Final decisions of the Department shall be effective immediately after being entered in the record and served upon all parties. Service shall be personal or by mailing a copy of any decision or order to each party or the party's attorney of record within a reasonable time after the entry of the decision into the record.
- Section 21. <u>Appeals</u>. Appeals from a final decision of the Department shall be in accordance with W.S. § 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure, except as otherwise agreed by the parties.

Section 22. Transcripts and record.

- (a) A contested case proceeding is a public record pursuant to the Public Records Act. When a contested case is set for hearing, the Agency shall assign a docket number to the case and enter the case with its number and date of filing on a docket. The Agency shall maintain a separate file for each docketed case in which all pleadings, transcriptions, correspondence, papers, and exhibits for that case shall be maintained. All such items shall have noted thereon the assigned docket number and the date of filing.
- (b) The Agency shall record all contested case proceedings electronically through the use of a qualified court reporter, or any other appropriate means determined

by the agency or the hearing officer. Transcriptions of oral proceedings or written transcripts of a witness's testimony may be obtained by contestant from the Agency upon payment of the cost.

- (c) If the contestant can demonstrate that he is indigent and that he cannot effectively perfect his appeal without such transcription, the Department may waive the payment of the fee.
- (d) The disclosure of health information in proceedings initiated under this Chapter shall comply with 45 CFR 164512(e) and W.S. § 25-5-131.
 - (e) The record of the hearing shall contain:
- (i) All formal or informal notices, pleadings, motions, and intermediate rulings;
- (ii) Evidence received or considered, including matters officially noticed;
 - (iii) Questions and offers of proof, objections and rulings;
 - (iv) Any proposed findings of fact and conclusions of law;
- (v) The proposed final determination, including findings of fact and conclusions of law of the hearing officer;
- (vi) Any exceptions to the hearing officer's proposed final determination, including findings of fact and conclusions of law;
 - (vii) The Director's final decision; and
- (viii) A stipulation resolving the matter shall not be part of the record unless otherwise agreed to by the parties, including HIPAA information agreed to by the parties that would be kept in a confidential part of the record.

Section 23. Interpretation of Chapter.

- (a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other provision.
 - (b) The text of this Chapter shall control the titles of various provisions.
- Section 24. <u>Superseding effect</u>. This Chapter supersedes all prior rules or policy statements issued by the Department, including provider manuals and provider bulletins, which are inconsistent with this Chapter.

Section 25. <u>Severability</u>. If any portion of these rules is found to be invalid or unenforceable, the remainder shall continue in full force and effect.