

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
 PROCEDURES FOR)
 CASES TRANSFERRED)
 UNDER EXECUTIVE)
 ORDER 116) Standing Order No. 2012-01
 _____)

On March 17, 2012, Executive Order 116 became law in accordance with Article III, Section 23 of the Alaska Constitution, transferring to this office the hearing functions currently performed by the Office of Hearings and Appeals (OHA) of the Department of Health and Social Services. The transfer of functions takes effect on July 1, 2012.

Procedures for many OHA hearings have been governed by 7 AAC 49 or 7 AAC 45.585, and some have been governed by 7 AAC 150. After July 1, 2012, certain procedures in 7 AAC 49, 7 AAC 150 and 7 AAC 45.585 will be incompatible with the procedures governing this office in AS 44.64 and 2 AAC 64, and will be superseded by statutes in AS 44.64 or regulations in 2 AAC 64 in accordance with AS 44.64.060(a), or otherwise superseded by the statutory changes occasioned by Executive Order 116. At the same time, with respect to some cases formerly handled by OHA, requirements of federal law will render inapplicable some of the provisions of AS 44.64 and 2 AAC 64, in accordance with AS 44.64.060(a), AS 44.64.095, and 2 AAC 64.100(b)(1).

The Department of Health and Social Services intends to promulgate revisions to Title 7 of the Alaska Administrative Code to integrate that department’s case procedures with the laws applicable to this office. The process of receiving public comment, revising, and adopting those regulations will not be completed until after July 1, 2012.

Accordingly, it is ordered:

1. For hearings enumerated in 7 AAC 49.010:
 - a. Insofar as it assigns the role of giving notice of a hearing to a division of the Department of Health and Social Services, the first sentence of 7 AAC 49.080 is deemed to be superseded by 2 AAC 64.260(b).
 - b. 7 AAC 49.120(2) regarding representation shall be construed in conformity with 2 AAC 64.160.

c. 7 AAC 49.150 and 7 AAC 49.900(14) are deemed to be superseded. The role of hearing *official* has been assigned by statute to the administrative law judge designated pursuant to AS 44.64.020(a)(4). Unless the Commissioner of Health and Social Services designates the administrative law judge or another individual as hearing *authority* (and hence final decisionmaker) in a particular case, hearing authority rests with the Commissioner and the Commissioner shall render the final decision in the manner prescribed in AS 44.64.060.

d. The first sentence of 7 AAC 49.160 is superseded by statute; hearings will be conducted by an administrative law judge. Insofar as the second sentence of 7 AAC 49.160 indicates that the Department of Health and Social Services shall distribute the final decision, it is superseded by 2 AAC 64.340(c).

e. 7 AAC 49.220 – 230 are superseded by AS 44.64.060.

2. For hearings within the scope of 7 CFR § 273.15 (Supplemental Nutrition Assistance Program/food stamps fair hearings):

a. The administrative law judge designated pursuant to AS 44.64.020(a)(4) is the hearing official under 7 CFR § 273.15(m).

b. The Commissioner of Health and Social Services is the hearing authority under 7 CFR § 273.15(n).

c. To facilitate compliance with 7 CFR § 273.15(c), the time to file a proposal for action by notice or order may be shortened from the ten days ordinarily allowed under 2 AAC 64.340(b) for fast-track cases to as little as five days after distribution of the proposed decision.

3. For hearings within the scope of 7 AAC 45.585 (administrative disqualification for intentional program violations):

a. The first sentence of 7 AAC 45.585(e) concerning appointment of hearing officers is deemed to be superseded by statute. *See* AS 44.64.020(a)(4), AS 44.64.030(a) and AS 44.64.200.

b. As permitted by 7 CFR § 273.16(e)(2)(ii) and 7 CFR § 273.15(n), the role of hearing *official* has been assigned by statute to the administrative law judge designated pursuant to AS 44.64.020(a)(4). Unless the Commissioner of Health and Social Services designates the administrative law judge or another individual as hearing

authority (and hence final decisionmaker) in a particular case, hearing authority rests with the Commissioner and the Commissioner shall render the final decision in the manner prescribed in AS 44.64.060. In 7 AAC 45.585(j) and (k), “hearing officer” will be construed to refer to the hearing authority—that is, to the Commissioner or Commissioner’s delegee having final decisionmaking authority.

4. For hearings within the scope of 7 AAC 150.230 and 150.240(i):
 - a. 7 AAC 150.230(b) is deemed to be superseded by 2 AAC 64.150 and 2 AAC 64.260(b).
 - b. 7 AAC 150.230(i) is deemed to be superseded by AS 44.64.060 and 2 AAC 64.340(a)-(c).

* * *

This order will become effective July 1, 2012, and will remain in effect until rescinded or modified, or superseded by a case-specific order, or until revisions to 7 AAC 49, 7 AAC 150 and 7 AAC 45.585 become effective, whichever occurs first.

ENTERED this 21st day of June, 2012.

Terry L. Thurbon

Terry L. Thurbon
Chief Administrative Law Judge