

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.22, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

The proposed amendments change the definition of "aggrieved person" by adding:

- A drug manufacturer that has received a notice of decision regarding disputed drug rebates, pursuant to the dispute resolution procedures of a national drug rebate agreement or Iowa Medicaid supplemental drug rebate agreement.
- Persons applying for the Iowa Disaster Aid Individual Assistance Grant Program.

Pursuant to the national drug rebate agreements and Iowa supplemental rebate agreements, the state is required to make available to the manufacturer the state hearing mechanism available under the Medicaid program. The Office of Inspector General and the Centers for Medicare & Medicaid Services of the federal Department of Health and Human Services have recommended that the state develop policies and procedures to allow manufacturers to file administrative appeals. Currently, most drug rebate disputes are settled by the state informally through working with the manufacturer. The Department expects that pattern to continue after this change.

The rules regarding time limits for appeals have been reworked to make them easier to understand. Language about the timeliness of child abuse appeals has been incorporated. Other technical changes are made to:

- Remove references to the "Food Stamp" program and replace with "Food Assistance."
- Update form names and numbers and rule references.
- Conform to current practices.

Chapter 7 does provide for waivers in various situations. Waiver of any Department rule may be requested under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before May 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 17A.10 through 17A.20.

The following amendments are proposed.

ITEM 1. Amend rule **441—7.1(17A)**, definitions of "Aggrieved person," "Food stamp administrative disqualification hearing," "Intentional program violation," "PROMISE JOBS displacement grievance" and "Reconsideration," as follows:

"*Aggrieved person*" means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. For financial assistance (including the family investment program, refugee cash assistance, child care assistance, diversion, emergency assistance, family or community self-sufficiency grants, family investment program hardship exemptions, and state supplementary assistance dependent person, in-home health related care, and residential care facility benefits), a person:

- Whose request to be given an application was denied.
- Whose application for assistance has been denied or has not been acted on in a timely manner.
- Who contests the effective date of assistance.

- Who contests the amount of benefits granted.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of assistance.
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
2. For food ~~stamps~~ assistance, a person:
- Whose request to be given an application was denied.
 - Whose application has been denied or has not been acted on in a timely manner.
 - Who contests the effective date of assistance.
 - Who contests the amount of benefits granted.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of benefits.
 - Whose request to ~~replace~~ receive a credit for benefits ~~that were lost in the mail~~ from an electronic benefit transfer (EBT) account has been denied.
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
3. For Medicaid medical assistance, healthy and well kids in Iowa, IowaCare, family planning services, and waiver services, a person (see numbered paragraph “7” for providers):
- Whose request to be given an application was denied.
 - Whose application has been denied or has not been acted on in a timely manner.
 - Who has been notified that level of care requirements have not been met.
 - Who has been aggrieved by a failure to take into account the appellant’s choice in assignment to a coverage group.
 - Who contests the effective date of assistance, services, or premium payments.
 - Who contests the amount of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.
 - Who contests the amount of client participation.
 - Whose claim for payment or prior authorization has been denied.
 - Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
 - Who has received notice from the Medicaid medical assistance hotline that services not received or services for which an individual is being billed are not payable by Medicaid medical assistance.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of assistance or waiver services.
 - Who has been notified that an overpayment of benefits has been established and repayment is requested.
4. For social services, including, but not limited to, adoption, foster care, and family-centered services, a person (see numbered paragraph “7” for providers):
- Whose request to be given an application was denied.
 - Whose application for services or payment for adoption subsidy or foster care has been denied or has not been acted on in a timely manner.
 - For whom it is determined that the person must participate in a service program.
 - Whose claim for payment of services has been denied.
 - Who has been notified that a protective or vendor payment will be established.
 - Who has been notified that there will be a ~~suspension~~, reduction, or cancellation of services.
 - Who has been notified that an overpayment of benefits services has been established and repayment is requested.
 - Who applies for an adoption subsidy after the adoption has been finalized.
 - Who alleges that the adoptive placement of a child has been denied or delayed when an adoptive family is available outside the jurisdiction with responsibility for handling the child’s case.
 - Who has not been referred to community care as provided in rule 441—186.2(234).
 - Who has been referred to community care as provided in rule 441—186.2(234) and has exhausted the community care provider’s dispute resolution process.

- Who has been referred to aftercare services under 441—Chapter 187 and has exhausted the aftercare provider’s dispute resolution process.

5. and 6. No change.

7. For providers, a person or entity:

- Whose license, certification, registration, approval, or accreditation has been denied or revoked or has not been acted on in a timely manner.

- Whose claim for payment or request for prior authorization of payment has been denied in whole or in part and who states that the denial was not made according to department policy. Providers of Medicaid services must accept reimbursement based on the department’s methodology.

- Whose contract as a Medicaid patient manager has been terminated.

- Who has been subject to the withholding of a payment to recover a prior overpayment or who has received an order to repay an overpayment pursuant to ~~441—paragraph 79.4(4)“e.”~~ 441—subrule 79.4(7).

- Who has been notified that the managed care reconsideration process has been exhausted and who remains dissatisfied with the outcome.

- Whose application for child care quality rating has not been acted upon in a timely fashion, who disagrees with the department’s quality rating decision, or whose certificate of quality rating has been revoked.

8. No change.

9. For mental health and developmental disabilities, a person:

- Whose application for ~~statement payment program benefits~~ or state community mental health or mental retardation service funds has been denied or has not been acted upon in a timely manner.

- Who has been notified that there will be a reduction or cancellation of ~~state payment program benefits~~ or state community mental health or mental retardation service funds.

~~Individuals and providers that are not listed above may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.~~

10. No change.

11. For Iowa disaster aid individual assistance grant program, a person:

- Whose request to be given an application was denied.

- Whose application has been denied or has not been acted on in a timely manner.

- Who contests the amount of reimbursement granted.

12. For drug manufacturers, a manufacturer that has received a notice of decision regarding disputed drug rebates pursuant to the dispute resolution procedures of a national drug rebate agreement or an Iowa Medicaid supplemental drug rebate agreement.

13. Individuals and providers that are not listed in paragraphs “1” to “12” may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.

“Food ~~stamp~~ assistance administrative disqualification hearing” means a type of hearing used to determine if an individual fraudulently received benefits for which the individual was not eligible. A presiding officer shall determine if the individual will be banned from participating in the food ~~stamp~~ assistance program for a period of time.

“Intentional program violation” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing ~~an~~ any act that is a violation of the ~~Food Stamp Act~~ Food and Nutrition Act of 2008, food ~~stamp~~ assistance program regulations, or any state ~~rule~~ law relating to the use, presentation, transfer, acquisition, receipt, ~~or~~ possession, or trafficking of a ~~benefit transfer instrument~~ an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food ~~stamp~~ assistance administrative disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

“PROMISE JOBS displacement grievance” means any written complaint filed with a PROMISE JOBS contractee by regular employees or their representatives which alleges that the work assignment of an individual under the PROMISE JOBS program violates any of the prohibitions against displacement of regular workers described in rule ~~441—93.144(239B)~~ 441—93.17(239B).

“*Reconsideration*” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through the Iowa ~~Foundation for Medical Care~~ Medicaid enterprise or its subcontractors, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, ~~Medicaid~~ medical assistance patient management services, the managed health care review committee, a division or bureau within the department, the mental health, mental retardation, and developmental disabilities, and brain injury commission, or a licensed health care professional as specified in 441—paragraph 9.9(1) “i.” Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Rescind and reserve rule ~~441—7.2(17A)~~.

ITEM 3. Amend subrule 7.5(2) as follows:

7.5(2) *When a hearing is not granted.* A hearing shall not be granted when:

a. One of the following issues is appealed:

(1) No change.

(2) ~~Rescinded IAB 7/6/05, effective 7/1/05.~~ Repayment of food assistance benefits as a result of trafficking has been requested on Form 470-4179, Notice of Food Assistance Trafficking Debt.

(3) to (7) No change.

(8) Notice has been issued from the treasury offset program for a food ~~stamp~~ assistance overpayment.

(9) to (11) No change.

(12) The appellant has a complaint about child support recovery matters other than those described in numbered paragraph “5” of the definition of an aggrieved person in rule 441—7.1(17A). This includes collection of an annual fee for child support services as specified in Iowa Code chapter 252B.

(13) to (15) No change.

(16) ~~Based~~ The issue appealed is not eligible for further hearing based on the doctrine of issue preclusion.

(17) No change.

b. to f. No change.

g. The appellant is an “aggrieved party” as defined in rule 441—22.1(225C) and is eligible for a compliance hearing with the mental health, mental retardation, and developmental disabilities, and brain injury commission in accordance with rule 441—22.5(225C).

h. and i. No change.

ITEM 4. Amend subrule 7.5(4) as follows:

7.5(4) *Time limit for granting hearing to an appeal.* Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

~~a. — In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. Time limits for food stamps and offsets vary as follows:~~

~~(1) — For appeals regarding food stamps, a hearing shall be held if the appeal is made within 90 days after official notification of an action.~~

~~(2) — For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1) “e.”~~

~~b. a. General standards. In general, a hearing shall be held if the appeal is made within 30 days after official notification of an action or before the effective date of action. When the appeal is made more than 30 days (or more than 15 days for state or federal tax or debtor offsets) but less than 90 days after notification, the director shall determine whether a hearing shall be granted.~~

~~(1) The director may grant a hearing if one or more of the following conditions existed:~~

~~(1) 1. There was a serious illness or death of the appellant or a member of the appellant’s family.~~

~~(2) 2. There was a family emergency or household disaster, such as a fire, flood, or tornado.~~

~~(3) 3. The appellant offers a good cause beyond the appellant’s control, which can be substantiated.~~

~~(4)~~ 4. There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

~~e.~~ (2) The time in which to appeal an agency action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

~~f.~~ (3) The day after the official notice is mailed is the first day of the ~~time~~ period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

b. Food assistance standard. For appeals regarding food assistance, a hearing shall be held if the appeal is made within 90 days after official notification of an action.

c. Offset standards. For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441—paragraph 14.4(1) "e." When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) The director may grant a hearing if one or more of the following conditions existed:

1. There was a serious illness or death of the appellant or a member of the appellant's family.

2. There was a family emergency or household disaster, such as a fire, flood, or tornado.

3. The appellant offers a good cause beyond the appellant's control, which can be substantiated.

4. There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

(2) The time in which to appeal an offset action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

d. Abuse standard. For appeals regarding child and dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235A.19. The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. Displacement and discrimination standard. PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within ~~ten~~ 10 days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in ~~paragraph "b"~~ subparagraph 7.5(4) "a"(1) is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in ~~paragraphs "a," "b," and "e"~~ paragraph 7.5(4) "a" in relation to the action alleged to have involved discrimination ~~unless good cause for late filing as described in paragraph "b" is found.~~

f. Risk assessment standard. An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

ITEM 5. Amend paragraph 7.5(6) "c" as follows:

c. Subject to the time limits described in subrule 7.5(4), a person's right to appeal the recovery of an overpayment through benefit reduction, as described at rule 441—46.25(239B), but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485, 470-0485(S), or 470-0486, or 470-0486(S), Notice of Decision, informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

ITEM 6. Amend paragraph 7.5(7)“a” as follows:

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence and amount of a ~~Medicaid~~ medical assistance, SSA state supplementary assistance, or healthy and well kids in Iowa (HAWK-I) program overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

~~1. (1) Form 470-2891, Notice of Overpayment Demand Letter for the Medicaid or State Supplementary Medical Assistance Overpayment; or~~

~~2. (2) Form 470-3984, Demand Letter for HAWK-I~~ Notice of Healthy and Well Kids in Iowa (HAWK-I) Overpayment.

ITEM 7. Amend subrules 7.5(9) and 7.5(10) as follows:

7.5(9) *Appeals of child care assistance benefit overissuances or overpayments.*

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence, computation, and amount of a child care assistance benefit overissuance or overpayment begins when the department sends the first notice informing the person of the child care assistance overpayment. The notice shall be sent on Form 470-3627 470-4530, Demand Letter for Notice of Child Care Assistance Provider Error Overissuance Overpayment, or Form 470-3807, Demand Letter for Child Care Assistance Client Error Benefit Overissuance, informing the person of the child care assistance overpayment.

b. A hearing shall not be held if an appeal is filed in response to a second or subsequent ~~Demand Letter for Child Care Assistance Provider Error Overissuance or Demand Letter for Child Care Assistance Client Error Benefit Overissuance~~ notice about the same overpayment.

7.5(10) *Appeals of food assistance overpayments.*

a. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the existence, computation, and amount of a food ~~stamp~~ assistance overpayment begins when the department sends the first notice informing the person of the food assistance overpayment. The notice shall be sent on:

(1) Form 470-0338, Demand Letter for Food Assistance Agency Error Overissuance;

(2) Form 470-3486, Demand Letter for Food Stamp Assistance Intentional Program Violation Overissuance; or

(3) Form 470-3487, Demand Letter for Food Stamp Assistance Inadvertent Household Error Overissuance, informing the person of the food stamp overpayment.

b. Subject to the time limits described in subrule 7.5(4), a person’s right to appeal the recovery of an overpayment through benefit reduction, but not the existence, computation, or amount of an overpayment, begins when the person receives Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), Notice of Decision, informing the person that benefits will be reduced to recover a food assistance overpayment.

ITEM 8. Amend subrule 7.6(2) as follows:

7.6(2) *Representation.* All persons shall be advised that they may be represented at hearings by others, including legal counsel, relatives, friends, or any other spokesperson of choice, unless otherwise specified by statute or federal regulations. The agency department shall advise the persons of any legal services which may be available and ~~assist in securing the services if the persons desire~~ that the person may be represented by counsel at the person’s own expense.

ITEM 9. Amend subrule 7.7(1) as follows:

7.7(1) *Notification.*

a. Whenever the department proposes to cancel, ~~or reduce, or suspend~~ assistance or services or to revoke a license, certification, approval, registration, or accreditation, it shall give timely and adequate notice of the pending action, except:

~~(1) when~~ When a service is deleted from the state’s comprehensive annual service plan in the social services block grant program at the onset of a new program year, or

~~(2) as~~ As provided in subrule 7.7(2).

b. For the purpose of this subrule, “assistance” includes food ~~stamps~~ assistance, Medicaid medical assistance, the family investment program, refugee cash assistance, child care assistance,

diversion, emergency assistance, family or community self-sufficiency grant, PROMISE JOBS, state supplementary assistance, ~~and healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, aftercare services, or other programs or services provided by the department.~~

c. The department shall give adequate notice of the approval or denial of assistance or services; the approval or denial of a license, certification, approval, registration, or accreditation; and pending action for a state or federal tax or debtor offset.

~~a.~~ d. “Timely” means that the notice is mailed at least ten calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is mailed.

~~b.~~ e. “Adequate” means a written notice that includes:

(1) to (5) No change.

ITEM 10. Amend subrule 7.7(2) as follows:

7.7(2) Dispensing with timely notice. Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued when:

a. to j. No change.

k. The ~~agency~~ department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), ~~470-4083(Spanish)~~, or ~~470-4083(M)~~ 470-4083(MS), Review/Recertification Eligibility Document, as described at 441—paragraph 40.27(1) “~~b.~~” or rule 441—75.52(249A).

l. to n. No change.

ITEM 11. Amend subrule 7.7(6) as follows:

7.7(6) Reinstatement.

a. Whenever the ~~county office~~ department determines that a previously canceled case must remain canceled for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2).

b. Whenever the ~~county office~~ department determines that a previously canceled case is eligible for reinstatement at a lower level of benefits, for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2).

c. Food ~~stamp~~ assistance cases are eligible for reinstatement only in circumstances found in rule 441—65.44(234) ~~and 441—subrule 65.19(13)~~. FIP cases are eligible for reinstatement only in circumstances found in 441—subrule 40.22(5).

ITEM 12. Amend subrules 7.8(1) and 7.8(8) as follows:

7.8(1) Initiating ~~a request an appeal.~~ an appeal. ~~When To initiate an appeal, a person, or the person’s authorized representative, expresses must state in writing to the appeals section, the local office, or the office that took the adverse action dissatisfaction with any that the person disagrees with a decision, action, or failure to act with reference to the on the person’s case, the agency shall determine from the nature of the complaint whether the person wishes to appeal and receive an appeal hearing before a presiding officer.~~

a. ~~Food stamp All appeals shall be made in writing, except for food assistance appeals, which may be made orally; all other appeals shall be made in writing.~~

b. The written request may be sent or delivered by any means to the appeals section, to the local office, or to the office that took the adverse action.

c. The oral request may be made to the appeals section or to the department office that took the adverse action.

7.8(8) Withdrawal. ~~When the appellant desires to voluntarily withdraw the an appeal, the worker, the presiding officer, or the appeals section shall request that a clear, written statement from the appellant sign to withdraw the appeal. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, if the appellant is in the local office for this purpose. In all other cases the appeals section will request that the appellant sign the form or the presiding officer will secure a statement on the hearing record. The appeals section will accept any clear, written statement from the appellant to withdraw the appeal.~~

ITEM 13. Amend paragraph **7.8(9)“c”** as follows:

c. Provide the appellant and the appellant’s representative copies of all materials sent to the appeals section ~~for inclusion in the appeal file or the presiding officer~~ to be considered in reaching a decision on the appeal ~~to the appellant and the appellant’s representative~~ at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 14. Amend paragraph **7.9(1)“b”** as follows:

b. The appellant requests a hearing within ten days from the date adequate notice is issued for cancellation, ~~or reduction, or suspension~~ of food assistance, family investment program, or ~~Medicaid~~ medical assistance benefits, based on the completed report form, including:

(1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), 470-4083 (Spanish), or 470-4083(M) 470-4083(MS).

(2) Transitional Medicaid Notice of Decision/Quarterly Income Report, Form 470-2663, 470-2663(S), ~~or 470-2663(M)~~, or 470-2663(MS).

ITEM 15. Amend paragraphs **7.10(4)“a”** and **“b”** as follows:

a. In cases involving individual appellants, the hearing shall be held by teleconference call or in the appropriate departmental department office, ~~provided that when the appellant is incapacitated due to illness or other disability and is housebound, hospitalized, or in a nursing home, the place of the hearing shall be at the convenience of the appellant even to the extent of holding the hearing in the appellant’s home except where otherwise restricted.~~

b. In cases of appeals by vendors or agencies, the hearing shall be scheduled by teleconference call or at the most appropriate department office, ~~giving due consideration to the convenience of the vendor or agency and availability of department employees.~~

ITEM 16. Amend subrule 7.13(4) as follows:

7.13(4) Default. If a party to the appeal fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing pursuant to subrules 7.13(1), 7.13(2) and 7.13(3) and render a proposed decision on the merits in the absence of the defaulting party.

a. to d. No change.

ITEM 17. Amend paragraph **7.13(6)“e”** as follows:

e. “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 18. Amend subrules 7.16(3) and 7.16(9) as follows:

7.16(3) Proposed decision. Following the reception of evidence, the presiding officer shall issue a proposed decision, consisting of the issues of the appeal, the decision, the findings of fact and the conclusions of law, separately stated. ~~Each item shall be separately stated under individual headings.~~ The proposed decision shall be mailed by first-class mail, postage prepaid, addressed to the appellant at the appellant’s last-known address.

7.16(9) Time limit limits. ~~Prompt, definite and final administrative action to carry out the decision rendered shall be taken~~ A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food ~~stamps~~ assistance and vendors. Food ~~stamps~~ assistance-only decisions shall be rendered in 60 days. ~~Vendor decisions shall be rendered in 120 days.~~ PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant’s appeal.

a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. ~~Within seven~~ The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision, ~~the department shall take the action required by the decision.~~ When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

ITEM 19. Amend rule 441—7.21(17A) as follows:

441—7.21(17A) Food ~~stamp~~ assistance hearings and appeals.

7.21(1) Appeal hearings. All appeal hearings in the food ~~stamp~~ assistance program shall be conducted in accordance with federal regulation, Title 7, Section 273.15, as amended to January 1, ~~2002~~ 2008.

7.21(2) Food ~~stamp~~ assistance administrative disqualification hearings. All food ~~stamp~~ assistance administrative disqualification hearings shall be conducted in accordance with federal regulation, Title 7, Section 273.16, as amended to January 1, ~~2002~~ 2008.

~~a. —Rescinded IAB 4/30/03, effective 7/1/03.~~

~~b. —Rescinded IAB 4/30/03, effective 7/1/03.~~

~~c. —Rescinded IAB 4/30/03, effective 7/1/03.~~

7.21(3) Conduct of a food ~~stamp~~ assistance administrative disqualification hearing. Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

a. to c. No change.

7.21(4) Consolidating hearings. Appeal hearings and food ~~stamp~~ assistance administrative disqualification hearings may be consolidated if the issues arise out of the same or related circumstances, and the household member has been provided with notice of the consolidation by the department of inspections and appeals.

a. If the hearings are combined, the time frames for conducting a food ~~stamp~~ assistance administrative disqualification hearing shall apply.

b. No change.

7.21(5) No change.

7.21(6) Food ~~stamp~~ assistance administrative disqualification hearing decisions. The presiding officer shall base the determination of an intentional program violation on clear and convincing evidence that demonstrates the person committed, and intended to commit, an intentional program violation.

a. No change.

b. The appeals section shall notify the household member and the ~~county~~ local office of the final decision within 90 days of the date the household member is notified in writing that the hearing has been scheduled. If the hearing was postponed pursuant to subrule 7.21(3), paragraph “b,” the 90 days for notifying the household member of the final decision shall be extended for as many days as the hearing is postponed.

c. The department shall take no action to disqualify a person from receiving food ~~stamps~~ assistance before receiving the final appeal decision finding that the person has committed an intentional program violation.

d. No change.

e. When a court decision reverses a determination of an intentional program violation, the appeals section shall notify the ~~county~~ local office of the specifics of the court decision.