

441—7.9 (17A) Continuation of assistance pending a final decision on appeal.

7.9(1) *When assistance continues.* Assistance shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:

a. An appeal is filed within the timely notice period.

b. The appellant requests a hearing within ten days from receipt of a notice of cancellation or reduction of food assistance, family investment program, or medical assistance benefits, based on the completed report form, including:

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

(2) Medicaid Review, Form 470-3118, 470-3118(S), 470-3118(M), or 470-3118(MS).

The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

c. If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

7.9(2) *When assistance does not continue.* The adverse action appealed to suspend, reduce, restrict, or cancel assistance; revoke a license, registration, certification, approval, or accreditation; or take other proposed action may be implemented pending a final decision on appeal when:

a. An appeal is not filed within the timely notice period or within ten days from the date notice is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Benefits or services were time limited through a certification period or prior authorization for which notice was given when established or for which adequate notice was provided.

c. The appellant directs the worker in writing to proceed with the intended action.

7.9(3) *Recovery of excess assistance paid pending a final decision on appeal.* Continued assistance is subject to recovery by the department if its action is affirmed, except as specified at subrule 7.9(5).

When the department action is sustained, excess assistance paid pending a hearing decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a hearing decision.

7.9(4) *Recovery of excess assistance paid when the appellant's benefits are changed prior to a final decision.* Recovery of excess assistance paid will be made to the date of change which affects the improper payment. The recovery shall be made when the appellant's benefits are changed due to one of the following reasons:

a. A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law or policy and not one of incorrect grant computation, and the grant is adjusted.

b. A change affecting the appellant's grant occurs while the hearing decision is pending and the appellant fails to request a hearing after notice of the change.

7.9(5) *Recovery of assistance when a new limited benefit plan is established.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:

a. The appeal is filed within the timely notice period of the notice of decision or notice of action establishing the beginning date of the LBP.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.