**441—7.5(17A) The right to appeal.** An aggrieved person who qualifies for an appeal as stated in rule 441—7.2(17A) may file an appeal. The appeals section shall determine whether a hearing shall be granted.

**7.5(1)** *When a hearing is granted.* A hearing shall be granted to any appellant when the right to a hearing is granted by state or federal law, except as limited in subrules 7.5(2) and 7.5(4).

**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) The service is no longer available through the department.

(2) Repayment of food assistance benefits as a result of trafficking has been requested on Form 470-4179, Notice of Food Assistance Trafficking Debt.

(3) Payment for a medical claim has been made in accordance with the Medicaid payment schedule for the service billed.

(4) Children have been removed from or placed in a specific foster care setting.

(5) Children have not been placed with or have been removed from a preadoptive family.

(6) A qualified provider or qualified entity has denied a person presumptive eligibility for Medicaid under 441—subrule 75.1(30), 75.1(40), or 75.1(44).

(7) A qualified provider or qualified entity has determined a person to be presumptively eligible for Medicaid under 441—subrule 75.1(30), 75.1(40), or 75.1(44), but presumptive eligibility ends due to the person's failure to file an application.

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

(9) A rate determination for foster group care services has been reviewed under rule 441—152.3(234).

(10) The maximum provider rate ceiling has been contested for child care assistance under 441—subrule 170.4(7).

(11) The risk pool board has accepted or rejected an application for assistance from the risk pool fund or the tobacco settlement fund risk pool fund in whole or in part under rules 441—25.66(426B) and 441—25.77(78GA,ch1221).

(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) The appellant has a complaint about a local office employee (when this is the only issue of the appeal).

(14) A request for an exception to policy under 441—subrule 1.8(1) has been denied.

(15) A final decision from a previous hearing with a presiding officer has been implemented.

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

(17) The appeal involves patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

(18) An MCO provider fails to submit a document providing the member's approval of the request for appeal.

(19) Notice was issued by the exchange regarding determination of eligibility for enrollment in a qualified health plan or for advance payment of the premium tax credit or cost-sharing reductions.

(20) Notice has been issued regarding the completion of a family assessment that indicates no determination of child abuse or neglect has been made and no information has been reported to the child abuse registry.

(21) Notice has been issued regarding an MCO grievance request.

(22) Notice has been issued by an MCO to a provider regarding a claims dispute issue.

*b.* Either state or federal law requires automatic grant adjustment for classes of recipients. The director of the department shall decide whether to grant a hearing in these cases. When the reason for an individual appeal is incorrect grant computation in the application of these automatic adjustments, a hearing may be granted.

*c.* State or federal law or regulation provides for a different forum for appeals.

*d.* The appeal is filed prematurely as:

(1) There is no adverse action by the department,

(2) The appellant has not exhausted the reconsideration process, or

(3) The appellant has not exhausted the first-level review process with a managed care organization except as provided at paragraph 7.2(5)*"c."*

*e.* Upon review, it is determined that the appellant does not meet the criteria of an aggrieved person as defined in rule 441—7.1(17A).

*f.* The sole basis for denying, terminating or limiting assistance under 441—Chapter 47, 441—Chapter 58 or 441—Chapter 87 is that funds for the respective programs have been reduced, exhausted, eliminated or otherwise encumbered.

*g.* Rescinded IAB 6/7/17, effective 7/12/17.

*h.* The issue appealed is moot.

*i.* The issue appealed has previously been determined in another appeal by the same appellant.

**7.5(3)** *Group hearings.* The appeals section may respond to a series of individual requests for hearings by requesting the department of inspections and appeals to conduct a single group hearing in cases in which the sole issue involved is one of state or federal law or policy or change in state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

**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. 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 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 agency 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 sent 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.

*b. Food assistance, medical assistance eligibility, fee-for-service medical coverage, family planning program or autism support program standard.* For appeals regarding food assistance, medical assistance eligibility, fee-for-service medical coverage, the family planning program or the autism support program, a hearing shall be held if the appeal is made within 90 days after official notification of an action.

*c. Managed care organization medical coverage.* For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 120 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 120 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5)*"c."*

*d. 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— subrule 14.4(3). 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 sent 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. Abuse standard.*

(1) For appeals regarding 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 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is sent 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.

*f. 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 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 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 paragraph 7.5(4)*"a"* in relation to the action alleged to have involved discrimination.

*g. 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.

**7.5(5)** *Informal settlements.* The time limit for submitting an appeal is not extended while attempts at informal settlement are in progress.

**7.5(6)** *Appeals of family investment program (FIP), refugee cash assistance (RCA), and PROMISE JOBS 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 FIP, RCA, or PROMISE JOBS overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on:

(1) Form 470-4683, Notice of FIP or RCA Overpayment; or

(2) Form 470-4688, Notice of PROMISE JOBS Overpayment.

*b.* A hearing shall not be held if an appeal is filed in response to a second or subsequent notice as identified in paragraph *"a."*

*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 Notice of Decision or Notice of Action, Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), informing the person that benefits will be reduced to recover a FIP or RCA overpayment.

**7.5(7)** *Appeals of medical assistance, state supplementary assistance (SSA), and HAWK-I program overpayments.*

*a.* Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence and amount of a medical assistance, 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) Form 470-2891, Notice of Medical Assistance Overpayment; or

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

*b.* A hearing shall not be held if an appeal is filed in response to a second or subsequent notice as identified in paragraph *"a."*

*c.* A program overpayment means medical assistance, state supplementary assistance, or healthy and well kids in Iowa (HAWK-I) assistance was received by or on behalf of a person in excess of that allowed by law, rules or regulations for any given month or in excess of the dollar amount of assistance. Subrule 7.5(7) relates to overpayments received by recipients, not by providers of the medical assistance program.

**7.5(8)** *Appeal rights under the family investment program limited benefit plan.* A participant only has the right to appeal the establishment of the limited benefit plan once at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, when the reason for the appeal is based on an incorrect grant computation, an error in determining the eligible group, or another worker error, a hearing shall be granted when the appeal otherwise meets the criteria for hearing.

**7.5(9)** *Appeals of child care assistance benefit 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 470-4530, Notice of Child Care Assistance Overpayment.

*b.* A hearing shall not be held if an appeal is filed in response to a second or subsequent notice about the same overpayment.

*c.* A program overpayment means child care assistance was received by or on behalf of a person in excess of that allowed by law, rules or regulations for any given month or in excess of the dollar amount of assistance. Subrule 7.5(9) relates to overpayments received by recipients and child care providers. Either entity may be responsible for repayment.

**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 assistance overpayment begins when the department sends the first notice informing the person of the food assistance overpayment. The notice shall be sent on Form 470-4668, Notice of Food Assistance 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 Notice of Decision or Notice of Action, Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), informing the person that benefits will be reduced to recover a food assistance overpayment.

**7.5(11)** *Appeals of family planning program overpayments.*

*a.* Subject to the time limits described in subrule 7.5(4), a person's right to appeal the existence and amount of a family planning program overpayment begins when the department sends the first notice informing the person of the overpayment. The notice shall be sent on Form 470-5483, Notice of Family Planning Program Assistance Overpayment.

*b.* A hearing shall not be held if an appeal is filed in response to a second or subsequent notice as identified in paragraph 7.5(11)*"a."*

[**ARC 8003B**, IAB 7/29/09, effective 9/2/09; **ARC 8439B**, IAB 1/13/10, effective 3/1/10; **ARC 9698B**, IAB 9/7/11, effective 8/15/11; **ARC 0304C**, IAB 9/5/12, effective 11/1/12; **ARC 0487C**, IAB 12/12/12, effective 2/1/13; **ARC 0583C**, IAB 2/6/13, effective 4/1/13; **ARC 0819C**, IAB 7/10/13, effective 9/1/13; **ARC 1261C**, IAB 1/8/14, effective 3/1/14; **ARC 3093C**, IAB 6/7/17, effective 7/12/17; **ARC 3199C**, IAB 7/19/17, effective 7/1/17; **ARC 3389C**, IAB 10/11/17, effective 11/15/17; **ARC 3787C**, IAB 5/9/18, effective 7/1/18]