

**441—7.8 (17A) Opportunity for hearing.**

**7.8(1) *Initiating an appeal.*** To initiate an appeal, a person or the person's authorized representative must state in writing that the person disagrees with a decision, action, or failure to act on the person's case.

*a.* All appeals shall be made in writing, except for food assistance appeals, which may be made orally.

*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(2) *Filing the appeal.*** The appellant shall be encouraged, but not required, to make written appeal on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and the worker shall provide any instructions or assistance required in completing the form. When the appellant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the appeal is in writing (except for food assistance appeals) and has been communicated to the department by the appellant or appellant's representative.

A written appeal is filed on the date postmarked on the envelope sent to the department, or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

**7.8(3)** Rescinded IAB 12/13/89, effective 2/1/90.

**7.8(4) *Prehearing conference.*** When desired by the appellant, a prehearing conference with a representative of the local office or the office which took the action appealed shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the conference, unless precluded by federal rule or state statute.

The purpose of the prehearing conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant's action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9. A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9.

**7.8(5) *Interference.*** The prehearing conference shall not be used to discourage appellants from proceeding with their appeals. The right of appeal shall not be limited or interfered with in any way, even though the person's complaint may be without basis in fact, or because of the person's own misinterpretation of law, agency policy, or methods of implementing policy.

**7.8(6) *Right of the department to deny or dismiss an appeal.*** The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

*a.* It has been withdrawn by the appellant in writing.

*b.* The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.

*c.* It has been abandoned.

*d.* The agency, by written notice, withdraws the action appealed and restores the appellant's status which existed before the action appealed was taken.

*e.* The agency implements action and issues a notice of decision to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, or the appellant's authorized representative fails, without good cause, to appear at the hearing.

**7.8(7) *Denial of due process.*** Facts of harassing, threats of prosecution, denial of pertinent information needed by the appellant in preparing the appeal, as a result of the appellant's communicated desire to proceed with the appeal shall be taken into consideration by the administrative law judge in reaching a proposed decision.

**7.8(8) *Withdrawal.*** When the appellant desires to voluntarily withdraw an appeal, the worker, the presiding officer, or the appeals section shall request a clear, written statement from the appellant to withdraw the appeal. The appellant may use Form 470-0492 or 470-0492(S), Request for Withdrawal of Appeal, for this purpose.

**7.8(9) *Department's responsibilities.*** Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

*a.* Within one working day of receipt, complete the worker information section of Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and forward that form, the written appeal, the postmarked envelope, if there is one, and a copy of the notification of the proposed adverse action to the appeals section.

*b.* Forward a summary and supporting documentation of the worker's factual basis for the proposed action to the appeals section within ten days of the receipt of the appeal.

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

[ARC 8003B, IAB 7/29/09, effective 9/2/09]