

441—1.8(17A,217) Waivers of administrative rules (hereinafter referred to as exceptions to policy). Exceptions to the department's rules may be granted in individual cases upon the director's own initiative or upon request. No exception will be granted to a rule required by state statute or by federal statute or regulation. Any exception granted must be consistent with state and federal law.

1.8(1) Procedures for requests.

a. Requests for exceptions must be submitted in writing to the Appeals Section, Department of Human Services, 1305 E. Walnut Street, 5th Floor, Des Moines, Iowa 50319-0114.

b. A request for an exception is independent from a departmental appeal under 441—Chapter 7. However, a request for an exception may be combined with an appeal of a proposed decision to the director under 441—Chapter 7. A request for an exception made prior to an appeal under 441—Chapter 7 may be denied pending an appeal where factual matters need to be developed.

c. A party requesting an exception must establish that the exception is appropriate. A request for an exception should include the following information where applicable and known to the requester:

(1) The name, address, and case number or state identification number of the person or entity for whom an exception is being requested and the person requesting the exception, if different from the person for whom an exception is being requested.

(2) The specific rule to which an exception is requested or the substance thereof.

(3) The specific exception requested.

(4) Facts relevant to the factors listed in subrule 1.8(2).

(5) A history of the department's action on the case.

(6) Any information known to the requester regarding the department's treatment of similar cases.

(7) The name, address, and telephone number of any person inside or outside the department with knowledge of the matter with respect to which the exception is requested.

(8) Releases of information authorizing persons with knowledge regarding the request to furnish the department information pertaining to the request.

d. Requests for exceptions shall be acknowledged within seven days. The department may give notice of the request to other affected parties. The department may also request additional information from the applicant.

e. The department shall issue a written decision on the request for an exception to policy within 120 days of receipt, unless the applicant agrees to a later date. If a request for an exception to policy has been filed in a contested case proceeding, the department may pend the request until after a final decision is issued.

f. A denial of a request for an exception is absolutely final and is not appealable under 441—Chapter 7.

g. A request for an exception does not delay the time to request an appeal under 441—Chapter 7 or for filing a petition for judicial review of a final decision in a contested case under Iowa Code section 17A.19.

h. A request for an exception is not required to exhaust administrative remedies before judicial review of department action under Iowa Code section 17A.19.

i. The department shall maintain a deidentified record of exceptions granted and denied indexed by rule available for public inspection.

1.8(2) Policy.

a. The director may grant an exception if the director finds, based on clear and convincing evidence, that:

(1) Failure to grant the exception will result in undue hardship;

(2) The exception will not substantially affect another person in an adverse manner;

(3) The exception is not prohibited by state or federal law; and

(4) The exception will not endanger public health, safety, or welfare.

b. The decision on whether an exception should be granted will be made at the complete discretion of the director after consideration of all relevant factors including, but not limited to, those in paragraph "a" and the following:

(1) The need of the person or entity directly affected by the exception. Exceptions will be granted only in cases of extreme need.

(2) Whether there are exceptional circumstances justifying an exception to the general rule applicable in otherwise similar circumstances.

(3) Whether granting the exception would result in net savings to the state or promote efficiency in the administration of programs or service delivery. Net savings or efficiency will make an exception more likely.

(4) In the case of services, assistance, or grants, whether other possible sources have been exhausted. Exceptions will not generally be granted if other sources are available.

(5) The cost of the exception to the state and the availability of funds in the department's budget.

This rule is intended to implement Iowa Code section 217.6 and 2000 Iowa Acts, House File 2206.