

641—73.11 (135) Appeals and fair hearings—local agencies.**73.11(1) Right of appeal.**

- a. Applicant.* An applicant may appeal the denial or rejection of a timely submitted application.
- b. Contract agencies.* The right to appeal shall be granted when, during the course of the contract or agreement period, a local agency is disqualified or any other action which affects participation is taken.

73.11(2) Request for hearing. The appeal shall be submitted in writing within ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

- a. Applicant.* In the event of an appeal, the department will continue working with the applicant awarded funding pending the outcome of the appeal.
- b. Contract agencies.* For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action.

73.11(3) Contested cases. Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals (DIA) pursuant to the administrative rules adopted by DIA regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to DIA.

73.11(4) Notice of hearing. Parties shall receive notice of the hearing in advance. The administrative law judge (ALJ) shall schedule the time, place, and date of the hearing so that the hearing is held as expeditiously as possible.

73.11(5) Conduct of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the department of inspections and appeals upon request.

73.11(6) Decision. A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

73.11(7) Decision of ALJ. When the ALJ makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is filed by either of the parties as provided in 641—subrule 176.8(5) or the director serves notice on the parties of the director's intent to review the decision.

73.11(8) Appeal to director. Any appeal to the director for review of the proposed decision and order of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

73.11(9) Record of hearing. Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a.* All pleadings, motions, and rules.
- b.* All evidence received or considered and all other submissions by recording or transcript.
- c.* A statement of all matters officially noticed.
- d.* All questions and offers of proof, objections and rulings thereon.
- e.* All proposed findings and exceptions.
- f.* The proposed decision and order of the ALJ.

73.11(10) *Decision of director.* Upon receipt of a properly filed appeal, the director shall establish a briefing schedule and, at the discretion of the director, an opportunity for oral argument. An appeal to the director shall be based on the record made at the hearing. The director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law the director finds to be in error. The decision and order of the director shall be delivered by certified mail, return receipt requested, or by personal service, and becomes the department's final decision upon receipt by the aggrieved party.

73.11(11) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

73.11(12) *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The party who appeals a final agency action to district court shall pay the costs of the preparation of a transcript of the contested case hearing for the district court.

[ARC 2839C , IAB 12/7/16, effective 1/11/17]