
POLICY TRANSMITTAL NO. 10-12

DATE: MAY 7, 2010

LEGAL DIVISION

DEPARTMENT OF HUMAN SERVICES
OFFICE OF INTERGOVERNMENTAL
RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-5-91.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

OAC 340:2-5-91 is amended to update to whom a fair hearing may be granted.

Original signed on 3-3-10

Charles Waters, General Counsel
Legal Division

Sandra Harrison, Coordinator
Office of Intergovernmental Relations and
Policy

WF # 09-30 (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

REMOVE

340:2-5, Table of Contents

340:2-5-91

INSERT

340:2-5, Table of Contents, pages 1-3,
revised 6-1-10

340:2-5-91, pages 1-2, revised 6-1-10

SUBCHAPTER 5. FAIR HEARINGS**PART 1. APPEAL PROCESSES FOR PROGRAMS, EXCEPT TITLE III OF THE OLDER AMERICANS ACT AND 53-10 OF THE FEDERAL TRANSIT ACT PROGRAMS [REVOKED]**

Section

- 340:2-5-1. Purpose **[REVOKED]**
- 340:2-5-2. Definitions **[REVOKED]**
- 340:2-5-3. Legal basis **[REVOKED]**
- 340:2-5-4. General provisions **[REVOKED]**
- 340:2-5-5. Client hearing procedures **[REVOKED]**
- 340:2-5-6. Client hearings conducted by the Appeals Unit **[REVOKED]**
- 340:2-5-7. Client hearings and procedures conducted by specially designated hearing officers **[REVOKED]**
- 340:2-5-8. Handling of client complaints **[REVOKED]**
- 340:2-5-9. Procedures relating to client hearings **[REVOKED]**
- 340:2-5-10. Withdrawal of request for hearing **[REVOKED]**
- 340:2-5-11. Scheduling of the hearing **[REVOKED]**
- 340:2-5-12. Local office contact with client after receipt of appointment letter **[REVOKED]**
- 340:2-5-13. Conduct of a hearing by the Appeals Unit **[REVOKED]**
- 340:2-5-14. Recording of the hearing proceedings **[REVOKED]**
- 340:2-5-15. Obtaining testimony **[REVOKED]**
- 340:2-5-16. Presentations by the client and his/her witness **[REVOKED]**
- 340:2-5-17. Presentations by the local office **[REVOKED]**
- 340:2-5-18. Recessed hearings **[REVOKED]**
- 340:2-5-19. Closing statement by the hearing officer **[REVOKED]**
- 340:2-5-20. Hearing officer's summary **[REVOKED]**
- 340:2-5-21. Decision by the State Department **[REVOKED]**
- 340:2-5-22. Abandonment of hearing **[REVOKED]**
- 340:2-5-23. Reopened hearings **[REVOKED]**
- 340:2-5-24. Appeals Unit responsibility for notification of decision and assuring that decision is carried out **[REVOKED]**
- 340:2-5-25. Action by local office following receipt of decision **[REVOKED]**
- 340:2-5-26. Availability of hearing decisions **[REVOKED]**
- 340:2-5-27. Administrative disqualification hearings - Food Stamp Program only **[REVOKED]**
- 340:2-5-28. Medical provider administrative reviews (Medicaid and Children's Special Health Care Needs (CSHCN) Program) **[REVOKED]**
- 340:2-5-29. Hearings on licensing actions related to child care facilities and child placing agencies **[REVOKED]**

340:2-5-30. Telephonic hearings **[REVOKED]**

**PART 3. FAIR HEARINGS FOR TITLE III OLDER AMERICANS ACT AND 16(B)2
INTERMODAL SURFACE TRANSPORTATION ACT PROGRAMS**

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340:2-5-42. Definitions
340:2-5-43. Legal authority
340:2-5-44. Procedures relating to grantee hearings
340:2-5-45. Appeals Unit responsibility for notification of decision and assuring that decision is carried out

PART 5. GENERAL PROVISIONS

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340:2-5-51. Organization

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- 340:2-5-100. Standard of review and burden of proof
- 340:2-5-101. Hearing procedures
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- 340:2-5-103. Hearing decision
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- 340:2-5-111. Hearing conducted by the Appeals Unit
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- 340:2-5-118. Presence of Department of Human Services (DHS) employees or DHS records at hearings
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- 340:2-5-121. Evidence
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- 340:2-5-123. Action by local office following receipt of decision
- 340:2-5-124. Appeals to district court

340:2-5-91. Fair hearings conducted by the Appeals Unit

Revised 6-1-10

(a) **Purpose.** The primary purpose of the fair hearing is to safeguard the rights of clients and provide recourse to address infractions of individual rights and interests. Administrative fair hearing may be granted to foster parents, adoptive parents, or kinship guardians.

(b) **Foster parents.** An administrative hearing is granted to foster parents when Oklahoma Department of Human Services (OKDHS):

- (1) denies the foster parent's claim for foster care maintenance payments;
- (2) pays foster care maintenance payments in an amount lower than the amount claimed;
- (3) does not pay the foster care maintenance payments to the foster parent in a timely manner;
- (4) closes the foster home unless the court ordered the child removed from the foster home or upheld a decision removing the child from the foster home;
- (5) does not return a child in OKDHS custody removed from the foster home due to a child abuse or neglect investigation, and the foster parent:
 - (A) was not provided notice of the foster parent's right to be heard during proceedings before the court; or
 - (B) received the notice, attempted to have the court hear the question but was denied a right to be heard by the court regarding the decision not to return the child during a hearing, and the court never heard the question about whether the child should be returned; or
- (6) notifies the foster parent of an overpayment the foster parent disputes.

(c) **Adoptive parents.** An administrative hearing is granted to adoptive parents when OKDHS:

- (1) denies the adoptive parent's application for adoption assistance;
- (2) approves the adoptive parent's application for adoption assistance in an amount

less than requested;

(3) modifies or terminates adoption assistance without the concurrence of the adoptive parents;

(4) delays or denies an authorized adoptive placement with an out-of-state family; or

(5) notifies the adoptive parent of an overpayment the adoptive parent disputes.

(d) Kinship guardians. An administrative fair hearing may be granted to kinship guardians when OKDHS:

(1) denies a kinship guardianship assistance payment as indicated on Form 04AN011E, Request for Review of Denial;

(2) approves the kinship guardianship payment in an amount less than requested;

(3) delays or denies an authorized kinship guardian placement out-of-state with the kinship guardian; or

(4) notifies the kinship guardian of an overpayment the kinship guardian disputes.