**Section 270.438 Motions**

a) Pre-hearing Motions

1) Any party may file a pre-hearing motion requesting appropriate relief. A pre-hearing motion shall be in writing, unless made orally on the record and accompanied by any affidavits or other evidence relied upon. Appropriate relief will be determined by the Department/other entity authorized to conduct hearings under this Subpart based on the nature and form of the hearing. Absent good cause, a pre-hearing motion will be filed no later than five business days prior to the date of the hearing. Pre-hearing motions are limited to requesting the following:

A) Dismissal of a pleading for failure to state facts that, if true, would form a sufficient basis for the challenged action;

B) Dismissal of a request for hearing for failure to comply with notice or service requirements of this Subpart;

C) Compliance with discovery obligations or sanctions in accordance with Section 270.442 dealing with discovery;

D) A continuance or extension of time to comply with any of the provisions of this Section;

E) That an ALJ deems a failure to file a necessary answer to be an admission of the truth of the allegations contained in the pleading;

F) That an order be vacated or modified;

G) That ALJ schedule a pre-hearing conference;

H) Separation of cases consolidated by the Department/other entity;

I) Disqualification of an ALJ;

J) Approval to intervene, as a party with standing, in an existing proceeding; and

K) Any relief consistent with the administrative process that the Department/other entity determines is in the interest of justice.

2) Within five business days after receipt of a pre-hearing motion, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If the hearing is held during the response period, a party may respond to the pre-hearing motion on the record at the start of the hearing. If a party does not respond, the party will be deemed to have waived objection to the granting of the motion. Waiver of objection does not automatically constitute grounds for granting the motion. The moving party does not have a right to reply.

3) Upon a finding of good cause, the Department/other entity may, by written order, set additional time deadlines. Good cause will have the same meaning ascribed in Section 270.464(c).

b) Unless the ALJ directs otherwise, no oral argument will be heard on a motion. A written brief, no longer than 3,000 words, may be filed with a motion or a response to a motion, stating the arguments and authorities relied upon.

c) The Department/other entity shall rule on motions by written order or orally on the record.

d) Unless due process requires filing of a motion for fundamental fairness, the filing of a motion shall not unduly delay the start of the hearing or extend the time for the performance of any act described by this Subpart.

(Source: Added at 42 Ill. Reg. 9226, effective July 1, 2018)