**Section 434.10 Administrative Hearings of Draft Audit Findings and Recommendations**

a) When a request for an administrative hearing is received, the administrator of the Administrative Hearings Unit may grant a request for a hearing only when:

1) the written request for an administrative hearing is received by the Department within the 15 business days following the conclusion of the exit conference;

2) the request is accompanied by supporting documents or factual matters which refute or modify the Department's draft finding; and

3) the issue is an audit issue encompassed within the jurisdiction of the Administrative Hearings Unit.

b) The administrator of the Administrative Hearings Unit shall dismiss a request for an administrative hearing only when:

1) The appeal has been withdrawn in writing;

2) The appeal has been abandoned. Abandonments shall be deemed to have occurred if the appellant, the appellant's authorized representative, or an individual legally authorized to act on behalf of the appellant fails to appear at the hearing and the appellent does not have an adequate cause for failing to appear. Adequate cause for failing to appear at an administrative hearing may include but is not limited to:

A) death in the family of the appellant or in the family of the appellant's representative;

B) serious illness of the appellant or the appellant's representative or serious illness in either person's immediate family;

C) transportation difficulties that make it impossible for the appellant or representative to appear at the hearing; or

D) failure of the Department to give notice of the hearing to the appellant or representative at the last known address available to the Department. However, it is the appellant's responsibility to keep the Department updated on any change of address;

3) the issue is not within the jurisdiction of the appeal system;

4) the request for an administrative hearing was not received within 15 calendar days following the conclusion of the exit conference;

5) the appellant failed to notify the administrator of the Administrative Hearings Unit of a change of address, and a notice of the administrative hearing cannot be delivered.

c) The Department shall provide written notice of the decision to grant or deny the request for an administrative hearing within 20 calendar days after receipt of the request for an administrative hearing. If the administrator of the Administrative Hearings Unit finds that the issue is not appealable under this Part, but can be appropriately heard through another appeal process, in accordance with 89 Ill. Adm. Code 435 (Administrative Appeals and Hearings), the Department shall forward the appeal to the proper hearing authority and notify the appellant of this action.

d) The administrator of the Administrative Hearings Unit shall:

1) schedule the hearing at a date within 30 calendar days after the date of the appellant's written request for hearing;

2) ensure that the administrative hearing is scheduled at a time and place reasonably convenient for all parties. If the parties cannot agree to a reasonably convenient time and place, the administrator shall make this determination and proceed to schedule the hearing;

3) provide a written notice to the appellant at least 15 calendar days before the scheduled hearing, which shall contain the following information:

A) the date, time and location of the hearing;

B) a statement that the appellant or appellant's representative's failure to appear at the hearing without adequate cause may be deemed an abandonment of the request, thus constituting a waiver by the appellant of the right to a hearing; and

C) a statement of the parties' rights during the appeal process.

e) An appellant may bring a representative, including legal counsel, to the hearing. Expenses of a representative or of an appellant's witnesses shall be paid by the appellant.

f) An appellant may request the Department employee who had direct involvement in the audit, or other persons who may have information relevant to the issues in dispute, to attend the hearing by asking the administrator of the Administrative Hearings Unit to issue appropriate subpoenas. Witness fees and travel expenses for persons other than Department employees are the responsibility of the party requesting the subpoena.

g) Any motions from the appellant or the Department shall be filed with the administrative law judge at least 10 calendar days before the hearing. Copies shall be provided simultaneously to the Department's representative and the appellant.

h) At the appellant's request, the Department shall provide an interpreter at no cost to the appellant if English is not the appellant's primary language or a sign interpreter if the appellant is hearing impaired.

i) Both the appellant and the Department have the right to examine and copy documents and other information to be used by either party and to receive a list of witnessess to be called by either party at the hearing by requesting them at least 10 calendar days before the hearing. If a party fails to disclose evidence and then seeks to introduce it at the hearing, the administrative law judge shall consider the surprise or prejudice to the other parties, including prior disclosure during the audit process. The administrative law judge's authority includes adjourning or continuing the hearing to a later time or date to permit the other parties to examine the evidence and prepare their cases accordingly.

j) During the administrative hearing, the appellant and the Department have the right to:

1) present and question witnesses;

2) present any information relevant to the issues;

3) question or disprove any information, including an opportunity to question opposing witnesses; and

4) dispose of any disputed issue by mutually agreeing to a resolution any time prior to the conclusion of the administrative hearing.

k) In an administrative hearing concerning audit findings:

1) the Department carries the burden of proof by preponderance of the evidence; and

2) the administrative law judge has the authority to recommend changes in the audit findings record.

l) Appointment of the Administrative Law judge

The administrator of the Administrative Hearings Unit shall select and the Director shall appoint a trained impartial administrative law judge from the available pool to conduct the appeal hearing. The administrative law judge shall:

1) be an attorney licensed to practice law in the State of Illinois;

2) possess knowledge and information acquired through training and/or experience relevant to the field of child and family welfare law including familiarity with Department rules, procedures and functions;

3) not have been involved in the decision to take the action being appealed or have rendered legal advice to the decision maker on the issue; and

4) not have a personal or professional interest which interferes with exercising objectivity or have any bias against the parties or issues appealed. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

m) Functions of the Administrative Law Judge

The administrative law judge shall have all authority allowed under the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.) [5 ILCS 100]. This authority shall include, but is not limited to, the following:

1) conduct a fair, impartial and formal hearing in which the strict rules of evidence do not apply;

2) provide for the recording of the hearing;

3) inform participants of their individual rights and their responsibilities;

4) conduct preliminary and prehearing telephone conferences if necessary between the parties and/or their attorneys to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law in order to expedite the actual hearing;

5) take necessary steps to develop a full and fair record which contains all relevant facts;

6) administer an oath or an affirmation to all witnesses;

7) quash or modify subpoenas for good cause, including but not limited to relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;

8) preserve all documents and evidence for the record;

9) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;

10) order the removal of any person from the hearing room who is creating a disturbance whether by physical action, profanity or otherwise engaging in conduct which disrupts the hearing;

11) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including but not limited to the submission of briefs, memoranda of law, affidavits or post hearing briefs; and

12) present a written opinion and recommendation to the Director within 30 calendar days after the record of the administrative hearing is completed or transcript is received. The opinion shall contain a summary of the evidence, findings of fact, conclusions of law and a recommendation.

n) Combined Hearings

When a common issue is raised, the Department may respond to requests for hearings from more than one appellant by conducting a single group hearing. The Department may also combine all issues raised by a single petitioner in one hearing. In all group hearing, the appeal system in this Part shall apply. Individuals shall be permitted to present their own cases separately. The Department, if required for the fair, efficient administration of the hearing or to prevent possible prejudice to the appellant, may sever any party or any issue from the combined hearing. The severed party or issue shall be heard separately.

o) Making the Final Administrative Decision

The Director of the Department shall receive the recommended decision from the administrative law judge and shall agree, disagree, or modify the recommended decision. The Director's decision is the final administrative decision of the Department and shall be based upon good business practices and generally accepted accounting principles. If the decision requires corrective action by the Department, the Director shall appoint a Department staff person who shall be responsible for assuring compliance with the decision and within the timeframes prescribed within the decision.

p) Notice of the Availability of Judicial Review

The Department shall include a notice to appellants as part of the final administrative decision. This notice shall include the name of the person responsible for compliance, if applicable, and shall advise the appellants that under the provisions of the Administrative Review Law (Ill. Rev. Stat. 1991, ch. 110, par. 3-101 et seq.) [735 ILCS 5/Art. 3] that they may seek judicial review of the Department's decisions if it is unfavorable to them, within the statutory time frame.

q) Who Receives Copies of the Final Administrative Decision

The appellant or authorized representative, the Department's representative, the administrative law judge, and the administrator of the Administrative Hearings Unit shall receive a copy of the final administrative decision.

r) Records of Administrative Hearings

The permanent record of the administrative hearing and the final administrative decision shall be maintained by the administrator of the Administrative Hearings Unit. All hearing decisions shall be available for public inspection during regular business hours. However, confidential information shall be deleted in conformance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department) and federal or State laws and regulations on confidentiality.

(Source: Added at 18 Ill. Reg. 6697, effective May 1, 1994)