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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** Kurt West, AAC Contact  
Department of Health and Social Services

**FROM:** Scott Meriwether  
Special Assistant  
907.465.3509

A handwritten signature in black ink, appearing to read "Scott Meriwether", written over the printed name and title.

**DATE:** March 8, 2013

**RE:** Filed Permanent Regulations: Department of Health and Social Services

Regulations re: fair hearings: 7 AAC 23.220; 7 AAC 40.080; 7 AAC 40.480(o); 7 AAC 45.570(m)(2); 7 AAC 45.580(f)(2); 7 AAC 45.583; 7 AAC 45.585; 7 AAC 47.567(o)(2); 7 AAC 49; 7 AAC 55.640(f); 7 AAC 100.008(b)(7); 7 AAC 100.208(a)(1); 7 AAC 100.506(e)(1), (2); 7 AAC 100.560(b); 7 AAC 100

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Attorney General File: JU2012200534

Regulation Filed: 3/5/2013

Effective Date: 4/4/2013

Print: 206, July 2013

cc with enclosures:

Linda Miller, Department of Law  
Robert Pearson, Administrative Regulation Review Committee  
Judy Herndon, LexisNexis

JU2012200534

ORDER ADOPTING CHANGES TO REGULATIONS OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES


The attached 31 pages of regulations, dealing with hearing and appeal procedures, are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Health and Social Services adopts, under the authority of AS 13.26.062, AS 25.23.230, AS 47.05.010, AS 47.05.020, AS 47.05.030, AS 47.05.050, AS 47.07.070, AS 47.07.075, AS 47.25.001, AS 47.25.071, AS 47.25.130, AS 47.25.170, AS 47.25.180, AS 47.25.260, AS 47.25.460, AS 47.25.624, AS 47.25.980, AS 47.27.005, and AS 47.27.080, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Health and Social Services paid special attention to the cost to private persons of the regulatory action being taken.


The regulation changes described in this order take effect on the 30<sup>th</sup> day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 2/21/2013  
Juneau, Alaska

  
\_\_\_\_\_  
William J. Streur, Commissioner  
Department of Health and Social Services

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on March 5, 2013 at 11:00 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – AS 44.62.120.

  
\_\_\_\_\_  
Mead Treadwell, Lieutenant Governor  
State of Alaska

Effective April 4, 2013.  
Register 206, July 2013.

7 AAC 23.220 is amended to read:

**7 AAC 23.220. Availability of hearing.** Upon the presentation of an oral or written request for a hearing, the department will grant a hearing to an applicant whose application or waiver request is not acted upon within 30 days after receipt by the department, or whose application or waiver request is denied in whole or part, or of a child or the parent or guardian of a child whose assistance is reduced or discontinued. [THE HEARING WILL BE CONDUCTED UNDER THE PROCEDURES SET OUT AT 7 AAC 49.010 - 7 AAC 49.180, 7 AAC 49.220 AND 7 AAC 49.240, EXCEPT THAT, FOR THE PURPOSES OF THIS SECTION, "DIVISION" AND "DIRECTOR" AS USED IN 7 AAC 49.010 - 7 AAC 49.180, 7 AAC 49.220 AND 7 AAC 49.240, MEAN THE DIVISION OF PUBLIC HEALTH OF THE ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, AND THE DIRECTOR OF THE DIVISION OF PUBLIC HEALTH.] (Eff. 6/28/85, Register 94; am 4/4/2013, Register 206)

**Authority:** AS 18.05.010 AS 18.05.030 AS 18.05.040

7 AAC 40.080 is amended to read:

**7 AAC 40.080. Availability of hearing.** An applicant whose application is not acted upon within 30 **working** days after receipt by the division, whose application is denied in whole or part, or whose assistance is reduced or discontinued, will upon presentation of **a** [AN ORAL OR] written request be granted a hearing **under** [BEFORE A REPRESENTATIVE OF THE DIVISION. THE HEARING WILL BE CONDUCTED UNDER THE PROCEDURES SET OUT IN] 7 AAC 49. **In this section, "working day" means a day other than Saturday,**

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Sunday, or a legal holiday under AS 44.12.010. (Eff. 5/12/82, Register 82; am 4/4/2013

Register 206)

**Authority:** AS 47.05.010 AS 47.25.260

7 AAC 40.480(o) is amended to read:

(o) In this section, "overpayment"

**(1)** means the amount of assistance given under this chapter to which a recipient was not entitled;

**(2)** ["OVERPAYMENT"] includes the amount of assistance paid to a recipient under 7 AAC 49.190 pending a fair hearing, if the **final** [HEARING AUTHORITY RENDERS A] decision **is** [REQUIRING] that the assistance **must** be repaid. (Eff. 5/12/82, Register 82; am 10/1/93, Register 127; am 10/10/96, Register 140; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.455 AS 47.25.500

7 AAC 45.570(m)(2) is amended to read:

(2) "overpayment"

**(A)** means a payment received by or for an assistance unit that exceeds the amount for which that assistance unit is eligible;

**(B)** ["OVERPAYMENT"] includes the amount of assistance paid to an assistance unit under 7 AAC 49.190 pending a fair hearing, if the **final decision is** [HEARING AUTHORITY, AFTER THE HEARING, ORDERS] that the assistance **must** be repaid;

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(Eff. 8/5/92, Register 123; am 10/1/93, Register 127; am 10/1/97, Register 143; am 10/1/2001, Register 159; am 1/7/2005, Register 173; am 6/23/2006, Register 178; am 4/4/2013 Register 206)

**Authority:** Sec. 55, ch. 107, AS 47.05.010 AS 47.27.005  
SLA 1996

7 AAC 45.580(f)(2) is amended to read:

(2) the individual waived that individual's right to appear at an administrative disqualification hearing under 7 AAC 45.583(12) [7 AAC 45.585(a)(12)];

(Eff. 8/6/92, Register 123; am 10/1/93, Register 127; am 7/1/97, Register 142; am 10/1/97, Register 143; am 1/7/2005, Register 173; am 6/23/2006, Register 178; am 4/4/2013, Register 206)

**Authority:** Sec. 55, ch. 107, AS 47.27.005 AS 47.27.035  
SLA 1996 AS 47.27.015 AS 47.27.040  
AS 47.05.010 AS 47.27.030

7 AAC 45 is amended by adding a new section to read:

**7 AAC 45.583. Notice of administrative disqualification hearing.** If the department believes that an individual has committed an intentional program violation under 7 AAC 45.580, the department will refer the matter to the office of administrative hearings (AS 44.64.010) for scheduling of an administrative disqualification hearing under 7 AAC 45.585. After the office of administrative hearings sets a date and time for the hearing, and not later than 30 days before that

date, the department will provide the individual with written notice of the administrative disqualification hearing. In the notice the department will include

- (1) the date and time of the hearing;
- (2) the accusations against the individual;
- (3) a summary of the evidence to be presented by the department, and how and where the evidence can be examined;
- (4) a statement whether a hearing postponement is available, as provided in 7 AAC 45.585;
- (5) an explanation of the consequences of failure to appear at the hearing, as provided in 7 AAC 45.585;
- (6) instructions on how to claim good cause for failure to appear at the hearing, as provided in 7 AAC 45.585;
- (7) a description of the disqualification penalties, as provided in AS 47.27.015(e), and the penalty applicable to the case scheduled for hearing;
- (8) a statement that the hearing does not preclude the state or the federal government from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from recovering an overpayment;
- (9) a list of the public resources that may provide free legal representation, and a statement that the department is not responsible for providing legal representation;
- (10) a statement that the hearing may be held in person or by telephone, at the discretion of the administrative law judge;
- (11) a statement that the accused individual has the right to remain silent, and that

anything the individual states, or any written statement the individual signs, concerning the accusations can be used against the individual in the hearing or a court of law; and

(12) a statement that the accused individual may waive the right to the disqualification hearing; in the statement the department will inform the individual

(A) of the date by which a signed waiver-of-rights form must be received by the department;

(B) that a waiver of the individual's rights will result in disqualification of the accused individual and a reduction in the ATAP benefit paid to the individual's assistance unit during the period of disqualification, even if the accused individual does not admit to the facts as represented by the department; and

(C) that the individual may specify on the waiver-of-rights form whether the individual admits to the facts as represented by the department. (Eff. 4/4/2013  
Register 206)

**Authority:** AS 47.05.010 AS 47.27.005 AS 47.27.080

7 AAC 45.585 is repealed and readopted to read:

**7 AAC 45.585. Administrative disqualification hearing.** (a) An accused individual may request one hearing postponement of not more than 30 calendar days after the date of the first scheduled administrative disqualification hearing if the department and the office of administrative hearings receive the request for postponement not later than 10 calendar days before the first scheduled hearing.

(b) If an accused individual or the individual's representative fails to appear at an

administrative disqualification hearing, the administrative law judge shall

(1) hold the hearing without the accused individual or the individual's representative;

(2) consider the evidence based on the information provided by the department; and

(3) determine if an intentional program violation was committed.

(c) An accused individual who fails to appear, or have a representative appear, for an administrative disqualification hearing has 10 calendar days after the date of the scheduled hearing to contact the office of administrative hearings, provide evidence of good cause for failure to appear, and request that a new hearing be scheduled. If the administrative law judge determines that the individual had good cause for not appearing, the administrative law judge shall schedule a new hearing and reopen the hearing record.

(d) An administrative law judge with the office of administrative hearings (AS 44.64.010) shall conduct a hearing under this section. After hearing the facts of the case and examining the evidence, the administrative law judge shall decide whether an individual has committed an intentional program violation. The administrative law judge shall base a determination of intentional program violation on clear and convincing evidence that the individual committed, and intended to commit, an intentional program violation as defined in 7 AAC 45.580.

(e) At a hearing, an accused individual may choose self-representation, to be represented by an attorney, or the assistance of another person who may be helpful in defense of the accusation. If the accused individual chooses to be represented at the hearing by an attorney or



another person, the individual shall submit a completed permission form provided by the department, that is signed by the individual and the individual's representative.

(f) The accused individual, or the individual's representative, may

(1) examine the contents of the individual's file, and all documents and records to be used at the administrative disqualification hearing, at a reasonable time before the date of the hearing, and during the hearing;

(2) at the individual's own expense, present at the hearing witnesses and documents pertinent to the case;

(3) establish relevant facts and circumstances;

(4) present oral or written arguments pertinent to the case; and

(5) question or refute any testimony or evidence, including the opportunity to cross-examine witnesses.

(g) If the hearing involves a medical issue and if requested by the accused individual or the department, the administrative law judge may order that a medical assessment be obtained at the department's expense and made part of the hearing record if the assessment is

(1) related to the underlying issue at the hearing; and

(2) done by a provider enrolled under 7 AAC 105 - 7 AAC 160.

(h) If the accused individual is notified in advance, a fair hearing under 7 AAC 49 and an administrative disqualification hearing under this section that are based on the same or related circumstances may be combined by the administrative law judge into a single hearing.

(i) The administrative law judge shall render a decision not later than 90 calendar days after the date the accused individual received the notice of the hearing in accordance with (a) of

this section. However, if the accused individual or the individual's representative is granted a postponement, the 90-day time limit is extended for the same number of days that the hearing is postponed.

(j) If the administrative law judge determines that an individual has committed an intentional program violation, as described in 7 AAC 45.580, no further administrative remedy exists. However, the individual is entitled to seek relief in a court having appropriate jurisdiction. (Eff. 8/6/92, Register 123; am 10/1/97, Register 143; am 1/7/2005, Register 173; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.27.005 AS 47.27.080

7 AAC 47.567(o)(2) is amended to read:

(2) "overpayment"

(A) means the amount of assistance given under AS 47.45.301 - 47.45.309 and 7 AAC 47.545 - 7 AAC 47.599, or former AS 47.45.310 and 47.45.320, to which a recipient is not entitled;

(B) ["OVERPAYMENT"] includes the amount of assistance paid to a recipient under 7 AAC 49.190 pending a hearing, if the **final decision is** [HEARING AUTHORITY, AFTER THE HEARING, ORDERS] that the assistance **must** be repaid.

(Eff. 8/1/2007, Register 183; am 11/25/2007, Register 184; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.45.302 AS 47.45.308  
AS 47.45.301 AS 47.45.306

7 AAC 49.010 is repealed and readopted to read:

**7 AAC 49.010. Hearing; special provisions.** (a) Except as expressly stated in this chapter, hearings for recipients of financial, food, or medical assistance granted by the department in the following programs are conducted under AS 44.64.060 and 2 AAC 64.100 - 2 AAC 64.990:

- (1) General Relief Assistance (GRA);
- (2) General Relief Medical (GRM);
- (3) Chronic and Acute Medical Assistance (CAMA);
- (4) adult public assistance (APA);
- (5) Medicaid, including personal care services and home and community-based waiver services;
- (6) Alaska Temporary Assistance Program (ATAP);
- (7) Women, Infant and Children (WIC);
- (8) food stamps;
- (9) child care assistance;
- (10) heating assistance.

(b) The provisions of this chapter do not apply to an administrative disqualification hearing covered under 7 C.F.R. 273.16 for an alleged intentional program violation of the food stamp program, or under 7 AAC 45.585 for an alleged intentional program violation of the Alaska Temporary Assistance Program.

(c) Federal regulations relating to hearings within the Medicaid program under 42 C.F.R. 431.220 - 431.250 and the food stamp program under 7 C.F.R. 273.15 and 273.21(p) take

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precedence where inconsistent with the requirements of this chapter and 2 AAC 64. (Eff.

3/23/78, Register 65; am 8/6/92, Register 123; am 6/26/99, Register 150; am 10/1/99, Register 151; am 3/31/2005, Register 173; am 6/23/2006, Register 178; am 4/13/2011, Register 198; am

4/4/2013 Register 206)

**Authority:** [AS 13.26.062] AS 47.05.050 AS 47.25.460  
[AS 25.23.210] AS 47.25.001 AS 47.25.624  
[AS 25.23.220] AS 47.25.071 AS 47.25.980  
[AS 25.23.230] AS 47.25.180 AS 47.27.080  
AS 47.05.010

7 AAC 49.020 is repealed and readopted to read:

**7 AAC 49.020. Opportunity for hearing.** An opportunity for a hearing must be granted to a recipient whose

(1) request for financial, food, or medical assistance is denied or is not acted upon with reasonable promptness; or

(2) financial, food, or other medical assistance benefits are suspended, terminated, or reduced. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013,

Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.030 is repealed and readopted to read:

**7 AAC 49.030. Request for hearing.** (a) Unless otherwise provided in federal law, a request for a hearing within the scope of 7 AAC 49.020 must be made to the department in writing by a recipient, or by a legal representative acting on the recipient's behalf, not later than 30 days after the date of the notice required under 7 AAC 49.060. A hearing request may be accepted after the time limit under this section only if the administrative law judge finds, based on the evidence submitted, that the request for a hearing could not be filed within the time limit.

(b) Unless the request is denied under 7 AAC 49.080, the department will refer the matter to the office of administrative hearings (AS 44.64.010) as provided under AS 44.64.060 and 2 AAC 64.120.

(c) Other than a care coordinator, a service provider may not request a hearing for a recipient if it concerns services by that provider or if the outcome of the hearing affects the level of paid services to that provider. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 [AS 47.25.370] AS 47.27.080  
AS 47.25.180 AS 47.25.460

7 AAC 49.040 is repealed:

**7 AAC 49.040. Time limit on availability.** Repealed. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; repealed 4/4/2013, Register 206)

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7 AAC 49.050 is repealed:

**7 AAC 49.050. Notice of changes in the law.** Repealed. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; repealed 4/4/2013 Register 206)

7 AAC 49.060 is repealed and readopted to read:

**7 AAC 49.060. Notice of proposed agency action.** The department will give written notice to the recipient not later than 10 days before the date the department intends to take action denying, reducing, suspending, or terminating assistance, unless

- (1) factual evidence exists of the death of the recipient;
- (2) a recipient indicates in writing that the recipient no longer desires assistance, or gives information that requests termination or reduction of assistance and also indicates in writing that the recipient understands the consequences of reporting this information;
- (3) a recipient has been admitted or committed to an institution in which residents are not eligible for assistance of the type the recipient has been receiving;
- (4) the recipient's whereabouts are unknown and department mail directed to the recipient's last known address has been returned by the post office indicating no known forwarding address;
- (5) factual evidence exists that a recipient has been accepted for assistance in another jurisdiction;
- (6) a change in the level of medical care is prescribed by the recipient's physician;
- (7) the notice involves an adverse determination made with regard to the

preadmission screening requirements of 42 U.S.C. 1396r(e)(7) (sec. 1919(e)(7) of the Social Security Act); or

(8) federal regulations governing the Medicaid or food stamp programs specify shorter notice time limits or allow advance notice to be waived for certain groups of recipients.

(Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.170 AS 47.25.460

7 AAC 49.070 is repealed and readopted to read:

**7 AAC 49.070. Contents of notice regarding denial, reduction, suspension, or termination of benefits.** In a written notice provided under 7 AAC 49.060 of a department action to deny, reduce, suspend, or terminate assistance, and unless otherwise specified in applicable federal regulations, the department will state in the written notice the reasons for the proposed action; including the statute, regulation, or policy upon which that action is based. In the notice the department also will inform the recipient

- (1) of the recipient's right to a hearing;
- (2) how to request a hearing;
- (3) that if requested the department will assist the recipient in making a hearing request;
- (4) by whom the recipient may be represented or assisted; and
- (5) the conditions, if any, under which assistance may continue if a hearing is

requested. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.170 AS 47.25.460  
AS 47.25.130

7 AAC 49.080 is repealed and readopted to read:

**7 AAC 49.080. Time and place of hearing.** (a) Not later than 10 days after the department receives a hearing request, the department will either

(1) deny the request in writing for reasons allowed by law, stating the reasons as required under AS 44.64.060(b) and 2 AAC 64.130, and forward notice of that denial to the party who requested the hearing and the office of administrative hearings (AS 44.64.010); or

(2) grant the request and immediately refer the request for hearing to the office of administrative hearings for scheduling of a hearing or other appropriate proceeding. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.170 AS 47.25.460  
AS 47.25.180

7 AAC 49.090 is amended to read:

**7 AAC 49.090. Group hearings.** The administrative law judge [HEARING AUTHORITY] may consolidate a series of individual requests for hearing by conducting a single group hearing if the sole issue involved is one of state or federal law [, REGULATION,] or policy, or changes in state or federal law [, REGULATION,] or policy. A consolidation of requests does not affect the right of a member of the group to withdraw from the group before or during the group hearings in favor of an individual hearing, and does not affect the right of each



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member of the group to present the member's [MEMBERS] own case or be represented by the member's authorized representative at the group hearing. The administrative law judge [HEARING AUTHORITY] shall inform each individual affected by a consolidation of requests that a consolidation has been made and that the right to individual withdrawal exists. (Eff.

3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.170 AS 47.25.460  
AS 47.25.180

7 AAC 49.100 is repealed and readopted to read:

**7 AAC 49.100. Denial or dismissal of hearings.** The administrative law judge shall deny or dismiss a hearing request or terminate a hearing if

(1) the issues by which the recipient is aggrieved are not those set out in 7 AAC 49.020;

(2) the recipient withdraws the request in writing or orally on the record;

(3) the sole issue is one of state or federal law requiring automatic benefit adjustments affecting groups of recipients or all recipients, and the issue is not one of incorrect benefit computation;

(4) the recipient fails, without good cause as determined by the administrative law judge, to appear in person, telephonically, or by authorized representative at the scheduled hearing; or

(5) the appeal was untimely under 7 AAC 49.030. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

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**Authority:** AS 47.05.010 AS 47.25.170 AS 47.25.460  
AS 47.25.180

7 AAC 49.110 is repealed:

**7 AAC 49.110. Assistance to clients.** Repealed. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; repealed 4/4/2013 Register 206)

7 AAC 49 is amended by adding a new section to read:

**7 AAC 49.115. Access to agency records.** (a) After granting a request for a hearing under 7 AAC 49.080, the department will provide the recipient and the administrative law judge with a position statement. In the position statement the department will include a

- (1) summary of the proposed action and the reasons for the proposed action;
- (2) copy of each law the department is relying upon to support its proposed action; and
- (3) copy of each document the department is relying upon to support its proposed action.

(b) The position statement and documents relied upon by the department constitute the official agency record for purposes of the hearing.

(c) Notwithstanding any other provision of law related to the release of records or access to records retained by the department, during a hearing under this chapter the recipient, the recipient's authorized representative, or a person who has been designated to assist the recipient may examine, at a reasonable time before the hearing, the recipient's case file. In this subsection,

"recipient's case file" means the file that the department used when issuing notice to the recipient under 7 AAC 49.060.

(d) The recipient's authorized representative or person who has been designated to assist the recipient in the administrative process may examine the records under (a) and (c) of this section only after providing the department a release from the recipient that

(1) is in writing;

(2) clearly identifies the designated person; and

(3) clearly identifies where to send the information. (Eff. 4/4/2013, Register

206)

**Authority:** AS 47.05.010 AS 47.25.180 AS 47.25.460

7 AAC 49.120 is repealed and readopted to read:

**7 AAC 49.120. Conduct of hearings.** During a hearing under this chapter,

(1) the recipient has the right to self-representation, representation by an attorney, or the assistance of an agent under a power of attorney, a guardian, a family member, a friend, or another person who may be helpful in the presentation of the case;

(2) the department has the right to self-representation or representation by an attorney; and

(3) the recipient, the department, the recipient's authorized representative, or a person who has been designated to assist the recipient has the right to

(A) present witnesses and documents relevant to the case;

(B) establish facts and advance arguments relevant to the case;

(C) question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses; and

(D) request a de novo review in a hearing related to the administration of the Medicaid program. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am

4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.180 AS 47.25.460

7 AAC 49 is amended by adding a new section to read:

**7 AAC 49.135. Burden of proof.** For actions involving termination or reduction of benefits, the burden of proving evidence supporting the termination or reduction is on the department and is by a preponderance of evidence, unless otherwise provided by law. For a request for new or additional benefits, the burden of proof is on the applicant or recipient requesting the service, and is by a preponderance of evidence. (Eff. 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.180 AS 47.25.460

7 AAC 49.140 is repealed and readopted to read:

**7 AAC 49.140. Medical evidence in Medicaid hearings.** In hearings brought under AS 47.07 or 7 AAC 105 - 7 AAC 160, if an administrative law judge finds that a medical assessment is necessary, the administrative law judge may order the assessment at department expense as provided in 42 C.F.R. 431.240(b). Payment at department expense will be made in accordance with Medicaid payment rates and conditions under 7 AAC 145. (Eff. 3/23/78,

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Register 65; am 6/26/99, Register 150; repealed 4/4/2013, Register 206)

**Authority:** AS 47.05.010 [AS 47.25.460] [AS 47.27.080]  
[AS 47.25.180]

7 AAC 49.150 is repealed and readopted to read:

**7 AAC 49.150. Hearing and final decision authority.** (a) For hearings under this chapter, the hearing authority is with the administrative law judge

(1) that the office of administrative hearings (AS 44.64.010) assigns to the matter, subject to 2 AAC 64.170; and

(2) who conducts the hearing on behalf of the commissioner.

(b) The administrative law judge shall hear and take all evidence in the matter. The decision-making process is subject to the procedure set out in 2 AAC 64.340.

(c) The commissioner or a person to whom the commissioner has delegated hearing authority will issue the final decision in the matter. The final decision is the final agency action. Once the commissioner or the commissioner's delegee has issued a final decision, the department will notify the recipient of the right to seek judicial review of the final decision under Alaska Appellate Rule 602. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

**7 AAC 49.160. Duties of the hearing authority.** Repealed. (Eff. 3/23/78, Register 65;

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am 6/26/99, Register 150; repealed 4/4/2013, Register 206)

7 AAC 49.170 is repealed and readopted to read:

**7 AAC 49.170. Limits of hearing authority.** Unless the applicant or recipient has requested a de novo review under the Medicaid program, or if otherwise specified under applicable federal regulations, the scope of the administrative law judge's review is limited to ascertaining whether

(1) the laws and policies have been properly applied in the case according to the record as it existed at the time the initial decision was made, and as supplemented by evidence admitted in the hearing; and

(2) whether the computation of the benefit amount, if in dispute, is in accordance with the laws and policies in effect at the time the decision was made. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.180 is repealed and readopted to read:

**7 AAC 49.180. Proposed and final decisions.** Except as otherwise specified in applicable federal regulations, and unless the period is extended by mutual agreement of the recipient and the department and approved by the assigned administrative law judge, the administrative law judge shall issue the proposed decision required under AS 44.64.060(d) in time to allow the commissioner or commissioner's delegee to issue a final decision as described

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administrative law judge may order the recipient to repay the assistance provided during the hearing process. Nothing in this section limits the ability of the department to seek recoupment of assistance paid as authorized under state or federal law. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.210 is amended to read:

**7 AAC 49.210. Retroactive assistance.** If the final decision is [HEARING AUTHORITY, OR THE DIRECTOR IN THE CASE OF AN APPEAL UNDER 7 AAC 49.220, DETERMINES] that the department [DIVISION] action at issue was in error, the department will [DIVISION SHALL] provide assistance retroactive to the effective date of the erroneous denial, [MODIFICATION,] suspension, termination, or reduction. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.220 is repealed:

**7 AAC 49.220. Appeal to the director.** Repealed. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; repealed 4/4/2013, Register 206)

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in 7 AAC 49.150(c) not later than 90 days after the date on which the department received the request for a hearing. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.190 is amended to read:

**7 AAC 49.190. Continuation of assistance.** Except as otherwise specified in applicable federal regulations, a recipient of assistance other than General Relief, General Relief Medical, or Chronic and Acute Medical assistance **that** [WHO] continues to satisfy all eligibility criteria other than those at issue in the hearing request will, upon filing that hearing request, have the assistance reinstated retroactively or continued until the date that the **final** [HEARING AUTHORITY'S] decision is **issued, unless the recipient informs the department that the recipient does not want to receive continuing assistance** [RENDERED]. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.25.460 AS 47.27.080  
AS 47.25.180

7 AAC 49.200 is repealed and readopted to read:

**7 AAC 49.200. Liability if assistance is continued.** If a request for a hearing has caused a recipient's assistance to be reinstated or continued pending the hearing under 7 AAC 49.190, and if the final decision is that the department action at issue was correct, the



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7 AAC 49.230 is repealed:

**7 AAC 49.230. Notice of appeal decision.** Repealed. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; repealed 4/4/2013, Register 206)

7 AAC 49.240 is amended to read:

**7 AAC 49.240. Decisions public.** Subject to state and federal statutes and regulations safeguarding public assistance information, hearing decisions of the **department** [DIVISION] are public information. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.05.020 AS 47.05.030

7 AAC 49 is amended by adding a new section to read:

**7 AAC 49.250. Confidentiality.** (a) Recordings of hearings, transcripts created from those recordings, and exhibits and other documents submitted to the office of administrative hearings in connection with a matter heard under this chapter are confidential and are not subject to public disclosure without consent of the Medicaid or public assistance recipient, or by order of the assigned administrative law judge or a court of competent jurisdiction.

(b) Final decisions issued in matters heard under this chapter may be made publicly available if first redacted to remove information identifying the recipient, the recipient's family, and the recipient's employer. (Eff. 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.05.020 AS 47.05.030

7 AAC 49.900 is repealed and readopted to read:

**7 AAC 49.900. Definitions.** In this chapter, unless the context requires otherwise,

(1) "administrative law judge" has the meaning given in AS 44.64.200;

(2) "adult public assistance" means the program administered under

AS 47.25.430 - 47.25.615 and 7 AAC 40;

(3) "Alaska Temporary Assistance Program" means the program administered

under AS 47.27 and 7 AAC 45;

(4) "applicant" means a person who completes or had an application submitted on

the person's behalf for public assistance or medical assistance under one of the programs listed in

7 AAC 49.010;

(5) "child care assistance" means the program administered under AS 47.25,

7 AAC 41, and 7 AAC 45.258;

(6) "Chronic and Acute Medical Assistance" means the program administered

under AS 47.08.150 and 7 AAC 48.500 - 7 AAC 48.900;

(7) "commissioner" means the commissioner of health and social services;

(8) "department" means the Department of Health and Social Services;

(9) "food stamp program" means the program administered under AS 47.25.975 -

47.24.990 and 7 AAC 46;

(10) "General Relief Assistance" means the program administered under

AS 47.25.120 - 47.25.300 and 7 AAC 47;

(11) "General Relief Medical" means the program administered under

AS 47.25.120 - 47.25.300 and 7 AAC 47.200 - 7 AAC 47.290;

(12) "heating assistance" means the program administered under AS 47.05.010, AS 47.25.621 - 47.25.626, and 7 AAC 44;

(13) "Medicaid" means the program administered under AS 47.07 and 7 AAC 105 - 7 AAC 160;

(14) "recipient" means an applicant for, a recipient of, or a person that requests an application for public assistance or medical assistance under one of the programs listed in 7 AAC 49.010. (Eff. 3/23/78, Register 65; am 6/26/99, Register 150; am 11/1/2002, Register 164; am 3/31/2005, Register 173; am 10/1/2011, Register 199; am 4/4/2013, Register 206)

**Authority:** AS 25.23.230 AS 47.05.010

7 AAC 55.640(f) is amended to read:

(f) A pregnant woman who is aggrieved by a decision of the division that she is not eligible for services may request a hearing, using the same procedures as those set out in 7 AAC 49 [, WITH THE EXCEPTION THAT "DIVISION" MEANS THE DIVISION OF FAMILY AND YOUTH SERVICES RATHER THAN THE DIVISION OF PUBLIC ASSISTANCE]. (Eff. 2/7/85, Register 93; am 1/14/2000, Register 153; am 4/4/2013, Register 206)

**Authority:** AS 47.40.100 AS 47.40.120

7 AAC 100.008(b)(7) is amended to read:

(7) the department is reinstating benefits for a recipient whose Medicaid eligibility was terminated, if the recipient has made a timely request for a hearing under 7 AAC 49, or reinstatement of eligibility is ordered under 7 AAC 49 or by the court [OR A BY A

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HEARING AUTHORITY UNDER 7 AAC 49]. (Eff. 7/20/2007, Register 183; am

4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.07.040

7 AAC 100.208(a)(1) is amended to read:

(1) reinstatement is ordered [BY A HEARING AUTHORITY] following a hearing under 7 AAC 49;

(Eff. 7/20/2007, Register 183; am 10/1/2009, Register 191; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 100.506(e)(1) is amended to read:

(1) **the commissioner or the commissioner's delegee** [A HEARING AUTHORITY] acting under 7 AAC 49 decides that the community spouse must retain a higher amount of resources to raise the income generated from those resources to the minimum amount deductible as a community spouse allowance under 7 AAC 100.560;

7 AAC 100.506(e)(2) is amended to read:

(2) **the commissioner or the commissioner's delegee** [A HEARING AUTHORITY] acting under 7 AAC 49 decides that the amount of countable resources used to determine eligibility was incorrect;

(Eff. 7/20/2007, Register 183; am 2/1/2010, Register 193; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.07.020 AS 47.07.040

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7 AAC 100.560(b) is amended to read:

(b) The community spouse allowance may be increased by a **decision under 7 AAC 49** **or** court order [OR BY A HEARING AUTHORITY'S DECISION UNDER 7 AAC 49] that a greater monthly amount is needed based on extreme financial duress of the community spouse.

(Eff. 7/20/2007, Register 183; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 100.562(b) is amended to read:

(b) The dependent family member allowance may be increased by a **decision under 7 AAC 49** **or** court order [OR BY A HEARING AUTHORITY'S DECISION UNDER 7 AAC 49] that a greater monthly amount is needed based on extreme financial duress of the dependent family member.

(Eff. 7/20/2007, Register 183; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.07.020 AS 47.07.040

The lead-in language of 7 AAC 100.912(d) is amended to read:

(d) The department will seek recovery under 7 AAC 100.910 from an individual if, after a hearing under 7 AAC 49, **the final decision is** [A HEARING AUTHORITY FINDS] that

...

(Eff. 7/20/2007, Register 183; am 4/4/2013 Register 206)

**Authority:** AS 47.05.010 AS 47.05.240 AS 47.07.040

AS 47.05.210

The lead-in language of 7 AAC 150.230(c) is amended to read:

(c) No more than 45 days after receiving the notice of assignment, the **administrative law judge** [HEARING OFFICER] shall conduct a prehearing conference, at which time a schedule shall be established that sets prehearing deadlines and a date for the hearing. The schedule shall provide for a hearing on the administrative appeal under 7 AAC 150.220(a) or (b) to begin no more than 120 days after the written notice of appeal was received by the commissioner, unless the facility requests a delay or the **administrative law judge** [HEARING OFFICER] finds good cause for the delay. The **administrative law judge** [HEARING OFFICER] may find good cause for the delay under AS 47.07.075(b)(1) and this subsection in circumstances such as the following:

...

7 AAC 150.230(c)(1) is amended to read:

(1) the **administrative law judge** [HEARING OFFICER] finds that the facility waived its right to a timely hearing under this section;

7 AAC 150.230(c)(5) is amended to read:

(1) the **administrative law judge** [HEARING OFFICER] finds that strict adherence to the 120-day time limit for a hearing would work injustice.

7 AAC 150.230(d) is amended to read:

(d) A facility may amend its original statement of issues once as a matter of course at

7 AAC 150.230(a) is amended to read:

(a) If a notice of appeal satisfies the requirements of 7 AAC 150.220, the department will file, in accordance with the prehearing schedule established under (c) of this section, and with both the **administrative law judge that the office of administrative hearings (AS 44.64.010) assigns to the matter** [HEARING OFFICER] and the facility representative designated under 7 AAC 150.220(a)(4) or (b)(4) as the point of contact, a written response setting out the department's position with respect to each of the points raised in the appeal. In the response, the department will state clearly the defenses it intends to assert.

7 AAC 150.230(b) is amended to read:

(b) **Not** [NO] later than **10** [15] days after receiving a notice of appeal that satisfies the requirements of 7 AAC 150.220, the commissioner will **refer the appeal to the office of administrative hearings (AS 44.64.010) for a hearing in accordance with 2 AAC 64.100 - 2 AAC 64.990** [ASSIGN THE CASE TO A HEARING OFFICER. THE COMMISSIONER WILL SEND NOTICE OF THE ASSIGNMENT TO THE ASSIGNED HEARING OFFICER, THE DEPARTMENT, AND THE FACILITY REPRESENTATIVE DESIGNATED UNDER 7 AAC 150.220(a)(4) OR (b)(4) AS THE POINT OF CONTACT. IN THE NOTICE, THE COMMISSIONER WILL STATE THE DATE THAT THE COMMISSIONER RECEIVED THE NOTICE OF APPEAL. THE NOTICE WILL BE ACCOMPANIED BY A COPY OF THE NOTICE OF APPEAL AND ANY DOCUMENTS FILED WITH THE NOTICE OF APPEAL].

any time before the department's response is filed. The department may amend its response to the facility's statement of issues, once no more than 20 days after the department's original response is filed. A party may amend the statement of issues or a response at other times only by leave of the **administrative law judge** [HEARING OFFICER] or by written consent of the opposing party. The **administrative law judge** [HEARING OFFICE] shall freely grant leave to amend, if the **administrative law judge** [HEARING OFFICER] finds justice so requires. Unless the **administrative law judge** [HEARING OFFICER] orders otherwise, the department shall respond to an amended statement of issues no later than the time remaining for response to the original statement of issues or no more than 10 days after service of the amended statement of issues, whichever period is longer.

7 AAC 150.230(e) is amended to read:

(e) Unless otherwise ordered by the **administrative law judge** [HEARING OFFICER], discovery shall be permitted in accordance with a plan for discovery approved by the **administrative law judge** [HEARING OFFICER].

The lead-in language of 7 AAC 150.230(f) is amended to read:

(f) The **administrative law judge** [HEARING OFFICER] shall issue a proposed decision on the appeal **not** [NO] more than **120** [180] days after the latest of the following events:

...



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7 AAC 150.230(g) is amended to read:

(g) If a proposed decision is not issued under (f) of this section in 120 [180] days or less, the **administrative law judge** [HEARING OFFICER] shall inform the commissioner and the parties, in writing, as to the reasons for the delay. Failure to complete a proposed decision in 120 [180] days or less does not affect the status of the administrative proceeding or the rights of the parties in the administrative proceeding.

7 AAC 150.230(h) is repealed:

(h) Repealed 4/4/2013

7 AAC 150.230(i) is repealed:

(i) Repealed 4/4/2013

(Eff. 2/1/2010, Register 193; am 4/4/2013, Register 206)

**Authority:** AS 47.05.010 AS 47.07.070 AS 47.07.075