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Fair Hearings

Sec. 17-603-1. Definitions

As used in Sections 17-603-1 to 17-603-13, inclusive, as follows:

(a) “Account Review” means an informal hearing, conducted either in-person or based only on the case record, by the Bureau of Child Support Enforcement or the Support Enforcement Division of the Superior Court for the purpose of determining the appropriate distribution of child support collections.

(b) “Aggrieved Person” means an individual authorized by Section 17-603 of the Connecticut General Statutes to request a fair hearing.

(c) “Commissioner” means the Commissioner of the Department of Human Resources.

(d) “Conservator” means a person, a municipal or state official, or a private profit or nonprofit corporation, appointed by the probate court. For purposes of these regulations, a conservator shall have the same rights as an aggrieved person.

(e) “Department” means the Department of Human Resources.

(f) “Desk Review” means an administrative hearing conducted by a hearing officer for an aggrieved person who resides in another State and who is unable to attend the hearing. The Desk Review shall have the same force and effect as a fair hearing, but shall be limited to interstate child support cases that qualify for review under federal and state laws.

(g) “Hearing Officer” means an individual designated by the Commissioner to conduct a hearing in an agency proceeding. Such individual may be a staff employee of the agency.

(h) “Intervenor” means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of Section 4-176 of the Connecticut General Statutes or subsection (b) of Section 4-177a of the Connecticut General Statutes.

(i) “Notice of Action” means a written statement mailed to the aggrieved person which indicates that the Department or its duly authorized agents have taken or intend to take a specific action. Such action shall include, but not be limited to:

(1) the denial, discontinuance, suspension, termination or reduction of payment;

(2) the child support enforcement actions specified in Section 17-603-11 of these regulations; or

(3) the change in the manner or form of payment.

(j) “Notice of Hearing” means a written statement mailed to the aggrieved person from the Commissioner or the Commissioner’s duly authorized hearing officer giving the time and place of the fair hearing at least ten (10) days prior to the date of the fair hearing.

(k) “Party” means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding or (C) who is granted status as a party under subsection (a) of Section 4-177a of the Connecticut General Statutes.

(l) “Person” means any individual, partnership, corporation, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding.

(m) “Request for a Fair Hearing” means a written request in simple language signed by the aggrieved person that contains the reasons why the aggrieved person is seeking to have his case reviewed by the Department.

(Effective September 25, 1992)

Sec. 17-603-2. Time limits

(a) In all programs administered by the Department, the aggrieved person shall mail his request for a fair hearing within sixty (60) days of the date that the Department or its duly authorized agent renders its decision. The date that the notice of action is mailed shall be deemed the date the decision was rendered.

(b) In benefit programs where the Department has provided for a pre-termination hearing, the aggrieved person must request a fair hearing within ten (10) days of the mailing date of the Department's notice of action in order to prevent termination or reduction of benefits.

(c) Within ninety (90) days following the close of evidence, or the due date for the filing of briefs, whichever is later, the Commissioner or duly authorized hearing officer shall render a final decision based on all the evidence on the record and apply all pertinent provisions of law, regulations, and departmental policy. Such final decision shall supersede the decision made without a hearing, and shall be implemented within one hundred and twenty (120) days after the request of such hearing; however, the one hundred and twenty (120) day time period shall be extended by any period of continuance granted. The Department shall mail the aggrieved person a copy of the decision within one business day of its rendition.

(d) Where federal law or regulations govern the Department's programs and establish different time limits than this section, the time limits in the federal law or regulations shall prevail.

(e) In all other cases, the time limits described in Section 17-603-2 of these regulations shall take precedence over any conflicting or inconsistent state regulations pertaining to fair hearings conducted by the Department.

(Effective October 2, 1991)

Sec. 17-603-3. Denial or dismissal

(a) The Department shall deny a request for a fair hearing if the aggrieved person does not request the fair hearing within the time limits described in Section 17-603-2 of these regulations.

(b) The Department shall dismiss a request for a fair hearing if:

(1) the aggrieved person withdraws the request in writing; or

(2) the aggrieved person fails to appear at the scheduled hearing without good cause; or

(3) the matter is resolved to the satisfaction of the aggrieved person prior to the fair hearing.

(Effective October 2, 1991)

Sec. 17-603-4. Notice of hearing

(a) The Department shall notify the aggrieved person in writing at least ten (10) days in advance regarding the time, place, and nature of the fair hearing.

(b) The Department's notice of hearing shall:

(1) advise the aggrieved person of the name, address, and telephone number of the person to notify if the aggrieved person is unable to attend the fair hearing;

(2) state that the Department will dismiss the fair hearing if the aggrieved person fails to appear at the fair hearing without good cause;

(3) provide a statement of the legal authority and jurisdiction under which the fair hearing is held;

(4) provide a reference to the particular sections of the statutes and regulations involved;

(5) provide a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(6) advise the aggrieved person of the right to be represented by counsel or another person.

(Effective October 2, 1991)

Sec. 17-603-5. Scheduling and location

The Department shall schedule the fair hearing to be held:

(a) during normal working hours;

(b) within thirty (30) days from the date the Department receives the request for a fair hearing; however, a reasonable period of continuance may be granted for good cause; and

(c) at a reasonable location accessible to the aggrieved person. If the aggrieved person is disabled, the fair hearing may be held at such person's home if so requested.

(Effective October 2, 1991)

Sec. 17-603-6. Duties and powers of hearing officer

(a) The Commissioner may designate a hearing officer to conduct the fair hearing provided that no individual who has personally carried out the function of an investigator may serve as a hearing officer in that case.

(b) The hearing officer may render the final decision on behalf of the Commissioner, or at the discretion of the Commissioner, the delegation of authority to the hearing officer may be limited to the conduct of the hearing and the presentation to the Commissioner of findings of fact, proposed conclusions of law and a proposed final decision in accordance with Section 4-179 of the Connecticut General Statutes. The final decision in such a case shall be made by the Commissioner in accordance with Connecticut General Statute Section 4-179.

(c) In addition to any other expressed or implied powers, the hearing officer shall have the authority to:

(1) schedule the fair hearing;

(2) require a representative from the Department or its authorized agents, the Family Division, or other cooperating agencies to attend the fair hearing, to submit a case summary prior to the fair hearing, and to provide necessary documents and case files at the fair hearing;

(3) require the Department and aggrieved person to submit a list of witnesses prior to the fair hearing;

(4) compel by subpoena, when deemed necessary, the attendance and testimony of witnesses, the production of records, physical evidence, documents and papers in accordance with Sections 4-177b and 17-603 of the Connecticut General Statutes;

(5) administer oaths or affirmations;

(6) separate and sequester witnesses;

(7) determine the issue(s) of the hearing;

(8) determine whether evidence is relevant and material to the issue(s);

(9) regulate the conduct and course of the fair hearing consistent with due process;

(10) maintain a fair hearing record that shall consist of all papers filed under the proceedings including a mechanical recording of the fair hearing; and

(11) render a final decision on behalf of the Commissioner.

(Effective October 2, 1991)

Sec. 17-603-7. Agency proceedings on proposed final decisions

(a) In contested cases where the Commissioner limits the delegation of authority to the hearing officer to render a proposed final decision in accordance with Section 4-179 of the Connecticut General Statutes, the following shall apply.

(1) As soon as possible, following the close of evidence or the due date for the filing of briefs, the hearing officer shall render a proposed final decision. A copy of the proposed final decision shall be served upon the agency and upon the parties by certified mail.

(2) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision.

(3) A party adversely affected by a proposed final decision may file exceptions, present briefs and petition the Commissioner for an opportunity to present oral arguments; provided that any such exceptions, briefs and petitions shall be filed by said party within ten (10) days of the mailing date of the proposed final decision. This subdivision shall apply only in cases where the Commissioner has not heard the matter or read the record.

(4) The Commissioner shall determine the amount of time for oral argument.

(5) The parties and the agency conducting the proceeding may waive, by written stipulation, compliance with subdivisions (1) through (4) inclusive of this section.

(b) The Commissioner shall render a final agency decision in accordance with Sections 17-604 and 4-179 of the Connecticut General Statutes and Section 17-603-2 (c) of these regulations.

(Effective October 2, 1991)

Sec. 17-603-8. Rights of the aggrieved person

The aggrieved person shall have the right to:

(a) in a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes and at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved;

(b) present his case or have such case presented by legal counsel or authorized representative retained by the aggrieved person;

(c) such other rights as may be provided for in the Uniform Administrative Procedure Act.

(Effective October 2, 1991)

Sec. 17-603-9. Fair hearing decision

(a) The fair hearing decision shall be based exclusively on evidence admitted to the record, or officially noticed by the hearing officer.

(b) The fair hearing decision shall:

(1) summarize the facts; and

(2) identify the evidence and legal authority supporting the decision.

(Effective October 2, 1991)

Sec. 17-603-10. Maintaining and reinstating benefits

(a) The Department shall not terminate or reduce the aggrieved person's assistance benefits until the fair hearing decision is rendered, if the fair hearing has been

requested within the ten (10) day notice period as stated in subsection (b) of Section 17-603-2 of these regulations.

(b) If the fair hearing decision reinstates the aggrieved person's benefits, said benefits may be retroactive to the date of discontinuance.

(Effective October 2, 1991)

Sec. 17-603-11. Special considerations for the child support enforcement program

(a) Prehearing Review by the Support Enforcement Division and Fair Hearing by the Department

(1) An individual who has been mailed a notice of action concerning one or more of the following enforcement actions shall have the right to request a review by the Support Enforcement Division of the Superior Court:

(A) Withholding of a refund of federal income taxes in accordance with Section 52-362e-2 of the Regulations of Connecticut State Agencies.

(B) Placement of a lien in accordance with Section 52-362d-2 of the Regulations of Connecticut State Agencies.

(C) Reporting of an arrearage to a consumer reporting agency in accordance with Section 52-362d-3 of the Regulations of Connecticut State Agencies.

(D) Withholding of a refund of state income taxes in accordance with Section 52-362e-3 of the Regulations of Connecticut State Agencies.

(2) To obtain such a review, an aggrieved person shall request a review from the Support Enforcement Division within twenty (20) days of the mailing date of the notice of action.

(3) If the aggrieved person is dissatisfied with the review decision by the Support Enforcement Division, or the Support Enforcement Division has taken no action on the request within fifteen (15) days, the aggrieved person shall have the right to request a fair hearing.

(4) A fair hearing shall be requested within sixty (60) days from the mailing date of the notice of action, regardless of whether the Support Enforcement Division completed its review.

(5) Failure to request a review from the Support Enforcement Division shall not preclude the aggrieved person from requesting a fair hearing within sixty (60) days from the mailing date of the notice of action.

(b) Appeals from Account Reviews

Individuals who are aggrieved by an account review decision have the right to request a fair hearing in accordance with Section 17-603 of the Connecticut General Statutes and these regulations.

(c) Defenses for the Child Support Enforcement Program

Defenses that the aggrieved person may raise at a fair hearing concerning the withholding of state or federal income tax refunds, placement of liens, credit bureau reporting, and offset against money payable by the state include, but are not limited to, those defenses set out in Sections 52-362d-1 and 52-362e-1 of the Regulations of Connecticut State Agencies.

(d) Rights of Custodial Relative(s) in Non-AFDC Cases

(1) In non-AFDC cases only, a copy of the notice of hearing mailed to the aggrieved person, in accordance with Section 17-603-4 of these regulations, shall also be mailed to the custodial relative(s) at least ten (10) days prior to a scheduled hearing.

(2) The custodial relative(s) in non-AFDC cases only, who attends the fair hearing shall have the same rights as the aggrieved person, including, but not limited to:

legal representation, testimony, witnesses, exhibits, receipt of the decision and right to appeal.

(e) **Interstate Cases**

(1) In interstate cases where the obligor resides in another state, the obligor may request a desk review from this state or an administrative review from the state with the order upon which the enforcement action is based.

(2) Requests for an administrative review from the state with the order shall be made through the State of Connecticut. Within ten (10) days of receipt of such a request, the Department shall notify the state with the order of the request and provide all necessary information to that state.

(3) In a case where another state submits to the IRS a referral for offset on the basis of a Connecticut court order, and the other state transfers the case to Connecticut for administrative review, the hearing officer shall schedule the hearing and render a decision within forty-five (45) days from the receipt of the other state's request, unless:

(A) the other state's request is incomplete; or

(B) the parties request and receive a continuance.

(Effective June 1, 1993)

Sec. 17-603-12. Reconsideration and modification of final decisions

(a) Unless otherwise provided by law, a party in a contested case may, within fifteen (15) days after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that:

(1) an error of fact or law should be corrected;

(2) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or

(3) other good cause for reconsideration has been shown.

Within twenty-five (25) days of the filing of the petition, the agency shall decide whether to reconsider the final decision. The failure of the agency to make that determination within twenty-five (25) days of such filing shall constitute a denial of the petition. Within forty (40) days of the personal delivery or mailing of the final decision, the agency, regardless of whether a petition for reconsideration has been filed, may decide to reconsider a final decision. If the agency decides to reconsider a final decision, pursuant to subdivisions (1), (2) or (3) of this subsection, the agency shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision. Any such additional proceedings shall be conducted in accordance with Sections 17-603 and 17-604 of the Connecticut General Statutes and these regulations.

(b) On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion. The procedure set forth in this subsection for contested cases shall be applicable to any proceedings in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

(c) The agency may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal that modification under the provisions

of Section 4-183 of the Connecticut General Statutes or if an appeal is pending when the modification is made, may amend the appeal.

(Effective October 2, 1991)

Sec. 17-603-13. Right to appeal

(a) The aggrieved person or the custodial relative who attends the fair hearing shall have the right to appeal the fair hearing decision to the court of competent jurisdiction in accordance with Section 4-183 of the Connecticut General Statutes.

(b) The aggrieved person or the custodial relative who attends the fair hearing shall file his appeal within forty-five (45) days after the mailing date of the fair hearing decision and shall serve the Commissioner with a copy of the petition to appeal within forty-five (45) days from the mailing date, unless the Commissioner extends the time limits for good cause. However, in no event shall a petition for extension be considered or approved if filed later than ninety (90) days after the rendition of the fair hearing decision in accordance with Section 17-604(c) of the Connecticut General Statutes.

(Effective October 2, 1991)