

DISTRICT OF COLUMBIA OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code § 2-1831.05(b)(7)), gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 28 of Title 1 of the District of Columbia Municipal Regulations (DCMR). These rules are adopted for the following purposes:

- As an initial step toward developing a simplified procedural track for cases involving public assistance benefits so that applicants for, and recipients of, those benefits may more easily present their cases before OAH and understand their rights under federal and local law;
- To revise and clarify the procedure for motions for reconsideration, so that parties will have a clearer understanding of when those motions are decided;
- To revise and simplify certain procedures under the Litter Control Administration Act, D.C. Official Code § 8-801, *et seq.* to provide for more orderly and efficient adjudication.

Adoption of these rules on an emergency basis will ensure that important and necessary procedural reforms are available promptly to the parties that appear before OAH. Therefore, adoption of these rules on an emergency basis is necessary to protect public health, safety and welfare. These emergency rules were adopted on April 7, 2005, and became effective on that date.

These emergency rules will expire on August 5, 2005, 120 days after their adoption, or upon publication of a notice of final rulemaking in the D.C. Register, whichever occurs first.

The Chief Administrative Law Judge also gives notice of his intent to take final rulemaking action to adopt these rules as an amendment to Chapter 28 of Title 1 DCMR in not less than thirty (30) days from the date of publication of this notice in the D.C. Register in accordance with § 6(a) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505(a).

Sections 2804.4 and 2804.5 of 1 DCMR Chapter 28 are amended to read as follows:

- 2804.4 In any case in which the Government represents that a Notice of Violation was served by certified mail, it shall file a copy of the certified mail return receipt (U.S.P.S. Form 3811, or its successor) signed by the recipient, or an affidavit or

declaration sufficient to demonstrate that the Notice of Violation was received by the Respondent, or if not received, the reason, to the best of the Government's knowledge, why it was not received. Any submission made under this Section shall also include a photocopy of any envelope returned to the Government by the United States Postal Service as undelivered or undeliverable, and any paper or document appended to such envelope by the United States Postal Service.

- 2804.5 Unless the Respondent has answered the Notice of Violation or otherwise appeared, any case in which the Government has failed to comply with Section 2804.4 within forty-five (45) calendar days of the filing of the Notice of Violation shall be dismissed without prejudice for lack of sufficient proof of proper service. If a case is pending at the time Section 2804.4 is adopted, such compliance shall occur within forty-five (45) calendar days of the filing of the Notice of Violation, or fourteen (14) calendar days of the adoption of Section 2804.4, whichever is later.

Sections 2805.9, 2805.10 and 2805.11 of 1 DCMR Chapter 28 are added as follows:

- 2805.9 In addition to filing a written hearing request or making an oral hearing request to the Department of Human Services, an individual seeking a hearing in any case involving Medicaid, Food Stamps, Temporary Assistance for Needy Families ("TANF"), Emergency Shelter, Interim Disability Assistance, General Assistance for Children, Program on Work, Employment and Responsibility ("POWER"), Energy Assistance, Rehabilitation Services, Burial Assistance benefits or any other benefits provided by the Department of Human Services, may make an oral hearing request, in person or by telephone, to a docket clerk of the Office of Administrative Hearings during regular business hours. This subsection shall be effective on May 1, 2005.
- 2805.10 Any oral hearing request authorized by Section 2805.9 must specify the type of benefits at issue and must describe the action or actions taken by an agency of the District of Columbia to which the person objects.
- 2805.11 Upon receipt of an oral hearing request authorized by Section 2805.9, the docket clerk shall promptly transmit a written summary of the request to the agency whose decision is being challenged.

Section 2808.1 of 1 DCMR Chapter 28 is amended to read as follows:

- 2808.1 Except as otherwise provided in these Rules, by statute, or by order of this administrative court, every order required by its terms to be served, every pleading, except an answer to a Notice of Infraction or Notice of Violation, and every other paper filed in this administrative court shall be served upon the parties, or, if represented, their attorneys or authorized representatives. Proof of service must be filed in accordance with Rule 2810.

Section 2810.4 of 1 DCMR Chapter 28 is amended to read as follows:

2810.4 Except for an answer and plea to a Notice of Infraction or Notice of Violation, or as otherwise provided by statute or these Rules, or as otherwise ordered by this administrative court, all papers filed with this administrative court must contain a certificate of service identifying the individual serving the document as well as the parties served, the manner of service and date of service. A failure to provide a certificate of service according to this Rule may result in a paper being rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge.

Sections 2820.1 and 2820.2 of 1 DCMR Chapter 28 are amended to read as follows:

2820.1 Evidence shall not be excluded on the ground that it is hearsay. To the extent it promotes fairness, equity and substantial justice for all parties, the admissibility of relevant, non-cumulative evidence is favored.

2820.2 In determining the weight of evidence, the Federal Rules of Evidence shall not be binding, but may be deemed persuasive authority. In determining the weight to be given hearsay evidence, the presiding Administrative Law Judge may consider whether a recognized hearsay exception is applicable.

Sections 2830.1, 2830.2, 2830.3 and 2830.4 of 1 DCMR Chapter 28 are amended to read as follows:

2830.1 For cases arising under D.C. Official Code Title 8, Chapter 8 in which a final order has been issued, the Government may elect to move to reopen a case, as of right, to seek a collateral order providing for abatement costs. The Government may do so by filing and serving upon respondent a bill of abatement costs not later than one hundred twenty (120) days after service of the final order, or by July 15, 2005, whichever is later. Failure, without good cause, to file and serve a bill of abatement costs in the time prescribed in this Section shall preclude recovery.

2830.2 A request by a respondent for a hearing on the Government's motion for abatement cost recovery shall be in writing, and shall be filed within thirty (30) days of service of the bill of abatement costs by the Government upon the respondent.

2830.3 If a respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of abatement costs. A Respondent previously found liable for a violation may not contest his or her liability for that violation at the hearing.

2830.4 If a respondent does not file a request for a hearing within the deadline established in Section 2830.2, the presiding Administrative Law Judge may decide, solely on the motion and accompanying papers filed by the Government, whether the

Government is entitled to an order granting abatement costs and the amount of any such costs. Alternatively, the presiding Administrative Law Judge may order the Government and the respondent to appear for a hearing if he or she cannot determine the issues based on the motion and accompanying papers.

Section 2830.5 of 1 DCMR Chapter 28 is repealed.

Section 2832.3 of 1 DCMR Chapter 28 is amended to read as follows:

2832.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for reconsideration shall not stay the effectiveness of the order. With respect to a final order, if such a motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge.

Section 2832.6 of 1 DCMR Chapter 28 is amended to read as follows:

2832.6 An order granting or denying a motion for reconsideration shall be issued in each case in which such a motion is filed.

Sections 2838.1 and 2838.2 of 1 DCMR Chapter 28 are amended to read as follows:

2838.1 An individual or other party may be represented before this administrative court by an attorney. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar, or who are authorized to practice law in the District of Columbia pursuant to Rules 49(c) (1), (4), (8) or (9) of the District of Columbia Court of Appeals, may appear before this administrative court as a representative of a party.

2838.2 An attorney who is not a member of the District of Columbia Bar, and who is not authorized to practice law in the District of Columbia pursuant to Rules 49(c) (1), (4), (8) or (9) of the District of Columbia Court of Appeals, may appear before this administrative court, upon the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury:

- (a) That I have not applied for admission *pro hac vice* in more than five cases in this administrative court or in the courts of the District of Columbia during this calendar year;
- (b) That I am a member in good standing of the bar of the highest court(s) of the State(s) of ____ (list all states);
- (c) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;

- (e) That I do not practice or hold out to practice law in the District of Columbia;
- (f) That I have read all of the rules of this administrative court and have complied fully with District of Columbia Court of Appeals Rule 49. The reason(s) I am applying for admission *pro hac vice* are as follows: _____ (list all reasons); and
- (g) I acknowledge the jurisdiction of this administrative court and the courts of the District of Columbia over my professional conduct, and I agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*. I have applied for admission *pro hac vice* in this administrative court and in the courts of the District of Columbia _____ (list number) times previously in this calendar year.

Section 2839.2 of 1 DCMR Chapter 28 is amended to read as follows:

2839.2 An Administrative Law Judge shall permit a party to be represented by another person who is not an attorney, without charge or fee, where required by law.

Section 2839.9 of 1 DCMR Chapter 28 is amended to read as follows:

2839.9 Unless otherwise required by law, no person who is not a member in good standing of the District of Columbia Bar, or an attorney otherwise authorized to practice before this administrative court pursuant to Sections 2838.1 and 2838.2, may request or accept compensation, in any form, from a party for providing representation to that party. A presiding Administrative Law Judge may require such disclosures as may be reasonably necessary to ensure compliance with this Section, and in the furtherance of this administrative court's responsibility to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49.

Sections 2839.11, 2839.12, and 2839.13 of 1 DCMR Chapter 28 are added as follows:

2839.11 As required by Federal law, 42 CFR 431.206(b)(3), in cases involving Medicaid benefits, any applicant for, or recipient of, those benefits may be represented by an attorney, a relative, a friend, or other spokesperson.

2839.12 As required by Federal law, 7 CFR 273.15(f), in cases involving Food Stamps benefits, any household that is an applicant for, or recipient of Food Stamps benefits, may be represented by a household member, or a representative, such as an attorney, a relative, a friend or other spokesperson.

2839.13 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.04(a), an individual may be represented by an attorney or by a lay

person who is not an employee of the District in cases involving the following public benefit programs: Temporary Assistance for Needy Families ("TANF"); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility ("POWER"); and Emergency Family Shelter Services.

Section 2843 of 1 DCMR Chapter 28 is added to read as follows:

2843 Decision Deadlines in Public Benefits Cases

- 2843.1 As required by Federal law, 7 CFR 273.15(c), decisions in cases involving Food Stamps benefits shall be issued and served upon the parties within 60 days of receipt of the hearing request.
- 2843.2 As required by Federal law, 42 CFR 431.244(f)(1), decisions in cases involving Medicaid benefits shall be issued and served upon the parties within 90 days of receipt of the hearing request.
- 2843.3 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.12(a), decisions shall be issued and served upon the parties within 60 days of receipt of the hearing request in cases involving the following public benefit programs: Temporary Assistance for Needy Families ("TANF"); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility ("POWER"); and Emergency Family Shelter Services.
- 2843.4 In all cases described in subsections 1 through 3, if a postponement of the hearing date is granted to the Petitioner, the deadline for the issuance and service of the decision shall be extended for as many days as the hearing is postponed.

Comments on these proposed rules should be submitted in writing to Ms. Barbara Madden, Executive Director, Office of Administrative Hearings, 441 4th Street, N.W., Suite 870-North, Washington, DC 20001-2714, with thirty (30) days of the publication of this notice in the D.C. Register. Copies of these proposed rules are available without charge at that address.