

## DISTRICT OF COLUMBIA REGISTER

## OFFICE OF ADMINISTRATIVE HEARINGS

## NOTICE OF PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in section 8(b)(7) 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)), hereby gives notice of his intent to take final rulemaking action to adopt the following rules that will amend Title 1, Chapter 29 of the District of Columbia Municipal Regulations by changing the title of that Chapter, and by adding sections 2970 to 2978 to that Chapter. The proposed rules will establish simplified procedures for cases concerning certain public benefits that are now heard by the Office of Administrative Hearings. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register in accordance with section 6(a) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505(a).

**1 DCMR Chapter 29 is amended as follows:**

The title of the Chapter is changed to "Office of Administrative Hearings: Rules Applicable in Specific Classes of Cases."

**The following sections are added:****2970 Public Benefits Cases: Scope**

2970.1. Sections 2970 to 2978 contain the rules for hearings at the Office of Administrative hearings concerning the following kinds of benefits:

Medicaid

Temporary Assistance for Needy Families ("TANF")

Food Stamps

Interim Disability Assistance

Shelter for homeless persons

General Assistance for Children

Program on Work, Employment and Responsibility ("POWER")

Burial Assistance

Any other benefits provided by the Department of Human Services, except for benefits provided by the Rehabilitation Services Administration

Low Income Home Energy Assistance Program benefits provided by the District of Columbia Energy Office

- 2970.2 Sections 2970 to 2978 also apply to hearings requested by the Department of Human Services when it seeks to disqualify someone from receiving Food Stamps benefits due to an intentional program violation.
- 2970.3 If a circumstance arises that is not covered by any of the rules in sections 2970 to 2978, the rules of the Office of Administrative Hearings found in 1 DCMR Chapter 28 shall apply.
- 2970.4. If there is a conflict between any federal law or regulation and anything in these rules, the federal law or regulation shall control.
- 2970.5 If there is a conflict between any District of Columbia statute and anything in these rules, the District of Columbia statute shall control.
- 2970.6 If there is a conflict between any other agency's procedural rules or regulations and these rules, these rules shall control.

**2971 Public Benefits Cases: How to Request a Hearing**

2971.1 A hearing can be requested in writing, in person, or by telephone.

2971.2 To request a hearing in writing, a person may:

- (a) Fill out a hearing request form at a Department of Human Services service center, or at the Office of Administrative Hearings; or
- (b) Send a hearing request form to the Department of Human Services or the Office of Administrative Hearings; or
- (c) Send a letter to the Department of Human Services or the Office of Administrative Hearings with a clear statement that he or she wishes to have a hearing. The letter must describe both the type of benefits at issue and the action or inaction to which the person objects. The letter must contain the name, address and telephone number of the person requesting a hearing; or
- (d) In addition, if a person wants a hearing concerning Medicaid benefits, he or she also can send or bring a hearing request form, or a letter requesting a hearing to the Department of Health.

- (e) In addition, if a person wants a hearing concerning Low Income Home Energy Assistance Program benefits, he or she also can send or bring a hearing request form to the District of Columbia Energy Office.
- 2971.3. Forms for requesting hearings shall be available at the Office of Administrative Hearings, at all service centers of the Department of Human Services, at the Department of Health and at the District of Columbia Energy Office.
- 2971.4 To request a hearing in person, a person may:
- (a) Come to a Department of Human Services service center; or
  - (b) Come to the Office of Administrative Hearings;
  - (c) Come to the Department of Health, for a hearing concerning Medicaid; or
  - (d) Come to the District of Columbia Energy Office, for a hearing concerning Low Income Home Energy Assistance Program benefits;
- 2971.5 To request a hearing by telephone, a person may
- (a) Telephone the Department of Human Services;
  - (b) Telephone the Office of Administrative Hearings
- 2971.6 Any government agency that receives a written hearing request must file it with the Clerk of the Office of Administrative Hearings within three (3) business days of receiving it.
- 2971.7 Any government agency that receives an oral or telephone hearing request from an individual must complete a hearing request form and file it with the Clerk of the Office of Administrative Hearings within three (3) business days of receiving it.
- 2971.8 If the Office of Administrative Hearings receives a written hearing request from an individual, the docket clerk will send it to the agency whose decision is being challenged.
- 2971.9 If the Office of Administrative Hearings receives an oral or telephone hearing request from an individual, the docket clerk shall complete a written summary of the request and send it to the agency or service provider whose decision is being challenged.

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2971.10 The Department of Human Services can request a hearing concerning a claim that a Food Stamps recipient should be disqualified from receiving benefits due to an intentional program violation by filing a hearing request form, approved by the Chief Administrative Law Judge, at the Office of Administrative Hearings.

**2972 Public Benefits Cases: Representatives**

2972.1 As required by Federal law, *see, e.g.* 42 C.F.R. 431.206(b)(3) and 7 C.F.R. 273.15(f), and the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.04(a), an applicant for, or recipient of, the benefits listed in Rule 2970.1, may be represented by an attorney, a relative, a friend or other representative who is not employed by the District of Columbia government.

2972.2 Any person who is not a lawyer who requests a hearing on behalf of someone else must file a statement, signed by the Petitioner authorizing that person to be a representative. A hearing request is subject to dismissal unless that statement is filed. Before dismissing a case under this Rule, an Administrative Law Judge shall notify the party's representative of this requirement.

2972.3 The practice of lawyers or other representatives of parties shall be regulated in accordance with OAH Rules 2838 and 2839, 1 DCMR 2838 and 2839.

**2973 Public Benefits Cases: Hearing Dates**

2973.1 After a hearing request is filed, an Administrative Law Judge ordinarily will issue a Hearing Notice that usually will schedule a hearing date. If any applicable law requires that an administrative review be completed before a hearing takes place, a hearing will not be scheduled until the administrative review has been completed.

2973.2 Instead of, or in addition to, scheduling a hearing date, an Administrative Law Judge may schedule a status conference or other preliminary hearing in order to simplify the issues in the case, identify the parties' legal and factual positions, rule on any preliminary legal issues, or for any other purpose that could lead to the efficient resolution of the case.

2973.3 Only an Administrative Law Judge can change a hearing date.

2973.4 Any party may ask an Administrative Law Judge for a different hearing date by submitting a form approved by the Chief Administrative Law Judge. Copies of that form will be sent with every Hearing Notice, and are available from the Office of Administrative Hearings.

**2974 Public Benefits Cases: Administrative Reviews**

2974.1 An administrative review is an informal meeting between a person who has requested a hearing and a representative of the agency or service provider whose action or inaction is being challenged by that person. The purpose of an

administrative review is to determine whether the agency's or service provider's position is valid and, if possible, to achieve an informal solution of the claim.

2974.2 An agency or service provider shall offer each person who requests a hearing an opportunity for an administrative review, if required by law. At least five days before the hearing date, the agency or shall file and send to Petitioner and his or her representative a status report, which says whether or not an administrative review was held, and the results of any review.

2974.3 In cases involving claims for shelter or other services for homeless persons, as required by the Homeless Services Reform Act of 2005, D.C. Official Code §§ 4-1601.01 *et seq.*, the Department of Human Services shall conduct the administrative review.

2974.4 As required by law, a government agency or shelter shall make the case file available to the Petitioner.

**2975 Public Benefits Cases: Hearings**

2975.1. At each hearing, the Administrative Law Judge shall decide the order in which the parties will present their cases.

2975.2 If a party who requests a hearing fails to attend the hearing without good cause, the case may be dismissed with prejudice. "Good cause" includes, but is not limited to serious illness, an accident, a childcare problem, severe weather conditions, or other emergency.

2975.3. If the agency or service provider whose action or inaction is being challenged fails to attend the hearing, a default order may be entered, granting the Petitioner the relief that he or she seeks.

2975.4 If the respondent in a Food Stamps Intentional Program Violation case fails to appear for a hearing, the Government must still prove its case.

2975.5. Parties shall have the following rights at a hearing:

- (a) The right to testify in support of their case, and to have other witnesses testify for them;
- (b) The right to cross-examine witnesses called by the other party;
- (c) The right to examine all exhibits offered into evidence by the other party and to object to the admission of any testimony or other evidence;
- (d) The right to subpoena witnesses, as provided in Rule 2976;
- (e) The right to a representative, as provided in Rule 2972.

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2975.6 At a hearing, both the Petitioner and the Government's representatives may present evidence. "Evidence" includes sworn testimony by the Petitioner, the Government's representative and any witnesses that either of them may present. "Evidence" also includes documents, photographs or any other item that either the Petitioner or the Government's representative believes may help the Administrative Law Judge to decide the case.

2975.7 At least seven (7) days before the hearing date, each party shall file with the Office of Administrative Hearings copies of any documents, photographs or other items that the party may want the Administrative Law Judge to consider at the hearing. Copies must be sent to the other party in the following manner:

- (a) Any Government agency or service provider must send copies to all other parties;
- (b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;
- (c) A shelter resident must deliver a copy to the shelter director if the shelter makes free copying services available to the shelter resident for that purpose;
- (d) For other individuals, the Office of Administrative Hearings will deliver copies by interagency mail to the Department of Human Services, the Department of Health or the District of Columbia Energy Office, as appropriate.

2975.8 If any item is not filed according to the requirements of Rule 2975.7, and the other party shows that it has been unfairly surprised, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party an opportunity to bring in responsive evidence.

2975.9 If any party demonstrates that it has been unfairly surprised by the appearance of a witness, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party an opportunity to prepare for the witness' testimony. If a witness list has been filed and sent to the other party in the manner provided by Rule 2975.7 at least seven (7) days before the hearing, the Administrative Law Judge shall find that there has been no unfair surprise.

**2976 Public Benefits Cases: Subpoenas**

2976.1. The person requesting the hearing, the respondent in a Food Stamps Intentional Program Violation case, and the agency or service provider whose decision is being challenged may request the Administrative Law Judge to issue a subpoena to require a witness to attend the hearing.

- 2976.2 The Administrative Law Judge will issue a subpoena under this rule if it is likely that the witness will be able to provide testimony that will be helpful in deciding the case, and if requiring the witness to appear will not be unduly burdensome, or otherwise contrary to law.
- 2976.3 The Petitioner or the Government also may request a subpoena to require a witness to bring documents, photographs or other things to the hearing. The Administrative Law Judge will issue a subpoena under this rule if it is likely that the requested items will be helpful in deciding the case, and if requiring those items to be produced will not be unduly burdensome, or otherwise contrary to law.
- 2976.4 A form to be used to request a subpoena is available from the Office of Administrative Hearings.
- 2976.5 If an Administrative Law Judge issues a subpoena, the party requesting the subpoena is responsible for delivering it to the person to whom the subpoena has been issued.
- 2977 Public Benefits Cases: Deadlines**
- 2977.1 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 sixty (60) days of receipt of the hearing request, except that in Intentional Program violation cases, as required by 7 CFR 273.16(e)(2)(iv), the decisions shall be issued and served within ninety (90) days after a hearing notice has been issued.
- 2977.2 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 sixty (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) Medicaid.
- 2977.4 As required by the Homeless Services Reform Act of 2005, D.C. Official Code § 4-1601.25(f)(3)(C), decisions in cases involving claims for shelter or other services provided for homeless persons shall be issued and served upon the parties within 15 days of the completion of the hearing.
- 2977.5 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.
- 2978. Public Benefits Cases: Reconsideration**
- 2978.1 Within ten (10) days of service of a final order, any party may ask for reconsideration of that order.

2978.2 Reconsideration of a final order shall be granted only for the following reasons:

- (a) if there has been an intervening change in the law;
- (b) if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration;
- (c) if there is a clear error of law in the Final Order; or
- (d) if a party shows that there was a good reason for not attending the hearing.

Comments on these proposed rules should be submitted in writing to Mr. Michael Williams, Executive Director, Office of Administrative Hearings, 825 North Capitol Street, Suite 4150, Washington, DC 20002-4210, within 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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PROPOSED RULEMAKING  
Z.C. Case No. 05-01  
(Text Amendments –Adult Day Treatment Centers -- 11 DCMR)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01) hereby gives notice of its intent to amend §§ 199, 501, 601, 701, 721, 802, 901, and 2101 of the Zoning Regulation (11 DCMR). The proposed rules would recognize “Adult day treatment center” as a use separate and distinct from the existing use known as “Child/Elderly development center”. The use would not be permitted in any Residence or C-1 Zone District, but allowed as a matter of right in all other zones, except the Industrial Zones (CM and M), for which special exception approval must be obtained. Final Rulemaking action to adopt these amendments shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*

Title 11 DCMR (Zoning) is proposed to be amended as follows (new text is shown in **bold** and underline and deleted text is shown with ~~strike through~~):

A. Section 199, DEFINITIONS, is amended as follows:

1. By amending the definition of “Child/Elderly development center” to read as follows:

**Child/Elderly development center** - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care, education, counseling, or training of individuals two (2) years old or older but under the age of fifteen (15) years of age or less and/or for the non-residential care of elderly individuals age 65 or older, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling; education, training, and health and social services for the ~~parents or principal guardians of children~~ person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child or legal guardian of such individuals

2. By inserting the following new definitions in alphabetical order:

**Adult day treatment facility** – a building or part of a building used for non-residential programs operated for the purpose of providing medically supervised day treatment services for adults with a developmental disability or mental disorders, totaling six (6) or more persons who are present for less than twenty-four (24) hours. An adult day treatment facility includes the following accessory uses: counseling, education, training and health and social services for the person or persons with legal charge of individuals

attending the center, including but not limited to any parent, spouse, sibling, child or legal guardian of such individuals. This definition does not encompass facilities that offer drug or alcohol abuse rehabilitation services. For the purposes of this definition, the following sub-definitions apply:

**Mental disorder** - an abnormal mental condition in an individual, who requires the comprehensive and relatively intensive full range of mental health services in a therapeutic and structured environment if he or she is to remain in the community or if he or she is to move from twenty-four (24) hour institutional care to the community.

**Developmental disability** - a severe, chronic disability of a person that is attributable to a mental or physical impairment, or both, that is manifested before the person attains the age of twenty-two (22) years and is likely to continue indefinitely. The person causes substantial functional limitations in three (3) or more areas of major life activity:

- (a) Self-care;
- (b) Receptive and expressive language;
- (c) Learning;
- (d) Mobility;
- (e) Self-direction;
- (f) Capacity for independent living; or
- (g) Economic sufficiency;

A developmental disability reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment, or other service, which are life-long or of extended duration, and are individually planned and coordinated.

B. Section 501, Uses as a Matter of Right (SP), is amended by adding new § 501.1 (j) to read as follows:

- (j) Adult day treatment facility.

C. Section 601, Uses as a Matter of Right (CR), is amended by adding new § 601.2 (d) to read as follows:

- (d) Adult day treatment facility, provided that there shall be no property containing an existing adult day treatment facility either in the same square as or within a radius of 500 feet (500 ft.) from any portion of the subject property.

D. Chapter 7 is amended as follows:

1. Section 701.2 is amended by inserting the phrase "or Adult day treatment facility" after the phrase "and their families"; and

2. Section 721, Uses as a Matter of Right (C-2), is amended by adding a new § 721.2 (y) to read as follows:

(y) Adult day treatment facility.

E. Section 802, Special Exceptions (C-M), is amended by adding new § 802.20 to read as follows:

802.20 Adult day treatment facility.

F. Section 901, Uses as a Matter of Right (W), is amended by adding new § 901.1 (x) to read as follows:

(x) Adult day treatment facility.

G. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended by inserting, alphabetically, the following use and parking requirement in the parking schedule included in § 2101.1, under the general use category "Commercial Building".

**Adult Day Treatment Facility**

All Districts

1 for each employee.

All persons wishing to comment on the above matter of this proposed rulemaking should file their comments, in writing, to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.