Chapter 119. Hearings Rules Table of Contents

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| Chapter 119. Hearings Rules (5101:6-50) |
The following definitions apply to rules 5101:6-50-01 to 5101:6-50-09 of the Administrative Code.

1. "Affected party" means a person whose interests are subject to an adjudication by ODJFS, including providers and licensees.
2. "Appellant" means an affected party who has requested an adjudication hearing pursuant to Chapter 119. of the Revised Code.
3. "Contract" means any agreement through which ODJFS purchases goods or services from a vendor.
4. "Department" means the Ohio department of job and family services.
5. "Depository agent" means the office of legal services of ODJFS and its official mailing address for the purpose of receiving correspondence or filings for any hearing held under authority of Chapter 5101:6-50 of the Administrative Code.
6. "Director" means the director of ODJFS or the director's designee.
7. "Final fiscal audit" means a medicaid report of examination or a medicaid final settlement or a medicaid hospital final settlement, including a final settlement in which Title V monies are offset against medicaid monies proposed for adjudication by ODJFS.
8. "Grant" means an award of funds by ODJFS to a public agency or private nonprofit corporations that does not include the purchase or lease of services, materials, or supplies for ODJFS.
9. "Hearing" means a hearing held by ODJFS in compliance with sections 119.06 to 119.13 of the Revised Code.
10. "Last known address" means the most recent mailing address reported to ODJFS by the person in compliance with requirements to provide the person's address.
11. "License" means any license, permit, certificate, commission, or charter issued by ODJFS. License does not include any arrangement whereby a person, institution, or entity furnishes medicaid services under a provider agreement with ODJFS.
12. "Licensee" means any person, institution, or entity, governmental or non-governmental, that furnishes services under a license issued by ODJFS pursuant to statute.
13. "ODJFS" means the Ohio department of job and family services.
14. "Order" means any final adjudication of facts, issues, or amounts in controversy in any hearing conducted under the authority of Chapter 5101:6-50 of the Administrative Code before ODJFS and any final disposition or directive of the director regarding the rights, duties, privileges, benefits, legal relationships, jurisdictional status, or standing of any affected party or appellant.
15. "Person" means an individual, a firm, a corporation, an association, an institution, a partnership, or an entity.
16. "Provider" means any person, governmental or non-governmental, that furnishes medicaid services under a provider agreement with ODJFS.
17. "Provider agreement" means a contract between ODJFS and a person who provides medical services and supplies pursuant to rules contained in division 5101:3 of the Administrative Code.

Application of procedures contained in Chapter 5101:6-50 of the Administrative Code

Chapter 5101:6-50 of the Administrative Code prescribes the procedures to be followed in all hearings held before ODJFS pursuant to sections 119.06 to 119.13, 5103.03, 5103.12, 5104.04, and 5111.065164.38 of the Revised Code. The provisions of Chapter 5101:6-50 of the Administrative Code are to be interpreted and construed to achieve their general purpose of providing orderly and fair
procedures for conducting hearings before ODJFS. Section 1.14 of the Revised Code controls the computing of time deadlines referenced in Chapter 5101:6-50 of the Administrative Code.

(C) Actions that do not provide hearing rights under this chapter

Unless otherwise noted, Chapter 5101:6-50 of the Administrative Code does not apply to circumstances that include, but are not limited to, the following:

1. Acts of the director or other officers of ODJFS that are ministerial in nature.
2. Actions of ODJFS that are subject to hearings under an administrative review procedure other than the review provided by Chapter 119. of the Revised Code.
3. Denial, termination, suspension, conversion, or non-renewal of a provider agreement exempted from the hearing procedures of Chapter 119. of the Revised Code by division (D) of section 5111.065164.38 of the Revised Code, or by paragraph (A) of rule 5101:3-1-57 5160-1-57 of the Administrative Code.
4. Rate calculations, interim settlements, overpayments, duplicate payments, payments for services not rendered, denied claims, and claim adjustments that may be reconsidered by the appropriate ODJFS staff upon written request by the affected provider to the deputy director of the office of ODJFS where the contestation arose as set forth in paragraph (B) of rule 5101:3-1-57 5160-1-57 of the Administrative Code or as set forth in rule 5101:3-2-07.12 5160-2-07.12 or 5101:3-2-40 5160-2-40 of the Administrative Code.
5. Reviews, notices of operational deficiency, requests for records, and audits that do not result in an adjudication order as provided in rule 5101:3-1-27 5160-1-27 of the Administrative Code.
6. Actions involving type B family day-care homes and in-home aides pursuant to Chapter 5104. of the Revised Code.
7. Hearings, authorized by section 5101.35 of the Revised Code and rules in Chapters 5101:6-1 to 5101:6-9 of the Administrative Code, provided to applicants for, or recipients of, benefits under Ohio works first; prevention, retention or contingency program; temporary assistance for needy families; food stamps assistance; medicaid; social services; adoptions; disability financial assistance; residential state supplement payments; Titles IV-A, IV-B, IV-D, IV-E, XIX, XX, or XXI of the Social Security Act (as in effect on 2/28/14), 49 Stat. 620 or other assistance programs; who are aggrieved because of the actions of ODJFS, other state agencies, or of a county department of job and family services, child support enforcement agency, public children services agency, or other county agencies.
8. Except as provided in paragraph (D) of this rule, disputes involving a Title XX social services contract entered into between ODJFS or a county department of job and family services, public children services agency, or child support enforcement agency and a contractor of services.
9. Personnel action appeals of employees of ODJFS or of a county department of job and family services, public children services agency, or child support enforcement agency.
10. Disputes involving the issuance, denial, or termination of a contract, a grant, or an interagency agreement issued by ODJFS or a protest filed with regard to a request for proposals issued by ODJFS.
11. Administrative actions taken by ODJFS that involve program administration and funding affecting county departments of job and family services, public children services agencies, or child support enforcement agencies.
12. Appeals and disputes arising out of any actions under section 5101.20, 5101.201, 5101.21, 5101.213, 5101.216, 5101.22, 5101.221, 5101.24, 5101.241, or 5101.242 of the Revised Code.
Revised Code, or any other funds for which the United States department of labor is responsible for direct or indirect oversight.

(14) Actions or disputes arising under Chapter 5110. of the Revised Code.

(D) Actions that provide hearing rights under this chapter

Except as provided in paragraph (C) of this rule, those actions of ODJFS that afford the right to a hearing pursuant to ODJFS authority provided in Chapter 119. of the Revised Code include the proposal of the director to do the following:

(1) Enter into or refuse to enter into a provider agreement with a provider, or suspend, terminate, renew, or refuse to renew an existing provider agreement, under circumstances where ODJFS is required by section 5111.065164.38 of the Revised Code to issue an adjudication order in accordance with Chapter 119. of the Revised Code.

(2) Take any action based upon a final fiscal audit.

(3) Refuse to issue a license, whether it is a renewal or a new license, unless a hearing was held before the refusal to issue such license.

(4) Suspend or revoke a license.

(5) Require a person to obtain a license when the person claims that the law does not impose such a requirement, except when ODJFS pursues injunctive relief through division (H) of section 5104.04 of the Revised Code.

(6) Terminate, or refuse to enter into, or refuse to renew, an agreement with a public children services agency or private child placing agency under section 5103.12 of the Revised Code.

(E) See rule 5101:3-1-575160-1-57 of the Administrative Code for additional provisions specific to hearing rights of providers from proposed actions of ODJFS to deny, terminate, or not renew a provider agreement.

(F) See Chapter 5101:6-51 of the Administrative Code for additional provisions specific to hearing rights of providers from actions taken pursuant to section 5111.9145164.58 of the Revised Code by state agencies under contract with ODJFS.

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Written notice of intended action

(1) Whenever ODJFS proposes to take an action that the Ohio general assembly has expressly made subject to the administrative adjudication procedure outlined in Chapter 119. of the Revised Code, ODJFS shall give notice of the intended action to the affected party informing the affected party of the affected party’s right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall, at a minimum, include all of the following:

(a) The specific action or actions ODJFS intends to take;
(b) The charges or other reasons for the proposed action or actions;
(c) The statute or rule directly involved;
(d) A statement informing the affected party that the affected party is entitled to a hearing if the affected party requests it within thirty days of the time of mailing the notice;
(e) A statement informing the affected party that at the hearing the affected party may appear in person or through an attorney;
(f) A statement informing the affected party that the affected party or the affected party's attorney may present the affected party's position, arguments or contentions entirely in writing, and that at the hearing the affected party or the affected party's attorney may present evidence and examine witnesses appearing for and against the affected party; and
(g) A statement informing the affected party that rules governing hearings in accordance with Chapter 119. of the Revised Code are found in Chapter 5101:6-50 of the Administrative Code.

(2) ODJFS shall also mail a copy of the notice to the affected party's attorney or other representative of record. To qualify as an attorney or representative of record, the affected party or the attorney or representative must notify ODJFS, in writing, that the attorney or representative is to be designated the attorney or representative of record. The notification must include the address where ODJFS should mail the notice to the attorney or representative of record. The mailing of notice to the affected party's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record will not result in failure of otherwise perfected service upon the affected party. In those instances where an affected party is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code will perfect service provided that all the requirements of paragraph (A) of this rule have been complied with.

(3) When any notice sent by registered mail pursuant to this rule is returned because the affected party fails to claim the notice, ODJFS shall send the notice by ordinary mail to the affected party at the affected party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

(4) If any notice sent by registered or ordinary mail is returned for failure of delivery, ODJFS either shall make personal delivery of the notice by an employee or agent of ODJFS or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the affected party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the affected party at the affected party's last known address and the
notice shall be deemed received as of the date of the last publication. An employee or agent of
ODJFS may make personal delivery of the notice upon a party at any time.

(5) Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed
to be complete at the time of personal refusal or at the time of receipt by ODJFS of the refused
mail as demonstrated by the ODJFS time and date stamp. Failure of delivery occurs only when
a mailed notice is returned by the postal authorities marked undeliverable, address or
addressee unknown, or forwarding address unknown or expired.

(B) Request for a hearing

(1) Any request for a hearing made as the result of notice issued pursuant to paragraph (A) of this
rule must be made in writing and mailed or delivered to the proper depository agent within thirty
calendar days of the following, as applicable:

(a) The time of mailing the notice if notice is given pursuant to paragraph (A)(1) of this rule;
(b) The date that service is complete if notice is given pursuant to paragraph (A)(3) or (A)(5)
of this rule;
(c) The date of the last publication if notice is given by publication pursuant to paragraph
(A)(4) of this rule; or
(d) The date of personal service.

(2) If a request for a hearing is mailed to the proper depository agent, the request is deemed to
have been made as follows:

(a) If the request is mailed by certified mail, as of the date stamped by the U.S. postal
service on its receipt form (PS form 3800 or any future equivalent postal service form).
(b) If the request is mailed by regular U.S. mail, as of the date of the postmark appearing
upon the envelope containing the request.
(c) If the request is mailed by regular U.S. mail and the postmark is illegible or fails to appear
on the envelope, as of the date of its receipt by the depository agent as evidenced by the
agent's time stamp.

(3) If a request for a hearing is made by facsimile transmission or by electronic mail to the proper
depository agent, the request is deemed to have been made as of the date of its receipt as
evidenced by the receipt date generated by the facsimile transmission or the date of receipt
shown in the source code of the electronic mail received by the proper depository agent.

(4) If a request for a hearing is mailed, personally delivered, made by facsimile transmission, or
made by electronic mail to a party or address other than the proper depository agent, the
request is deemed to have been made as of the date of its receipt by the depository agent as
evidenced by the agent's time stamp.

(5) If a request for a hearing is personally delivered to the proper depository agent, the request is
deemed to have been made as of the date of its receipt as evidenced by the depository agent's
time stamp.

(6) All requests for hearings must clearly identify both the affected individual involved and the
proposed action that is being contested.

(C) Computation of time deadlines

Section 1.14 of the Revised Code controls the computing of time deadlines imposed by Chapter 119.
of the Revised Code and Chapter 5101:6-50 of the Administrative Code. The time within which an act
is required by law to be completed is computed by excluding the first day and including the last day.
When the last day falls on a Saturday, Sunday, or legal holiday, the act may be completed on the next
succeeding day that is not a Saturday, Sunday, or legal holiday. When the last day to perform an act
that is required by law is to be performed in a public office and that public office is closed to the public
for the entire day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

(D) Failure to request a hearing

When an affected party fails to request a hearing or the request is not submitted timely, ODJFS will issue a final and binding order of adjudication adopting and ratifying any or all of the allegations contained in the original notice that shall implement the proposed action.

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Chapter 119. Hearings: Appointment and Powers of a Hearing Examiner and Rules of Practice

Effective Date: February 28, 2014
Most Current Prior Effective Date: October 1, 2008

(A) Initial scheduling of the hearing

(1) When an affected party timely requests a hearing, ODJFS will set the date, time, and place for the hearing and notify the appellant of the scheduling. ODJFS will initially schedule the hearing not earlier than seven calendar days but not later than fifteen days after the hearing was requested. The first notification concerning a scheduled hearing will be written and sent by registered mail, return receipt requested. All subsequent letters and notices will be sent by regular United States mail.

(2) Nothing in this rule shall be construed so as to prevent ODJFS from postponing and rescheduling any hearing upon its own motion or upon the motion of any appellant who can show good cause for such a request.

(3) Nothing in this rule shall be construed from preventing ODJFS and the appellant from entering into a written agreement establishing the time, date, and place of the hearing.

(B) Joinder of individual cases

On its own motion, or on motion of the appellant, ODJFS or the hearing examiner may join any individual cases where there exist incidents of common ownership or interest and where joinder would be appropriate for efficient and economic fairness to the parties.

(C) Computation of time deadlines

Section 1.14 of the Revised Code controls the computing of time deadlines imposed by Chapter 119 of the Revised Code and Chapter 5101:6-50 of the Administrative Code. The time within which an act is required by law to be completed is computed by excluding the first day and including the last day. When the last day falls on a Saturday, Sunday, or legal holiday, the act may be completed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. When the last day to perform an act that is required by law is to be performed in a public office, and that public office is closed to the public for the entire day or before its usual closing time for that day, then the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

(D) Rules of practice in hearings conducted under this chapter

In all hearings conducted under Chapter 5101:6-50 of the Administrative Code where a stenographic record is taken and where the stenographic record may be the basis of an appeal to a court of law, the following rules of practice will be followed:

(1) The attorney general, or assistants or special counsel designated by the attorney general, will represent ODJFS. The director of ODJFS may designate members of ODJFS to assist the attorney general in the preparation and presentation of ODJFS cases and to be present at all times during the hearing and any pre-hearing conferences.

(2) Any person not appearing pro se and any corporation, partnership, association, or other entity must be represented by an attorney admitted to the practice of law in this state. Persons authorized to practice law in any other jurisdiction may be permitted to represent an appellant before ODJFS upon the motion of an attorney licensed to practice before the courts of this state. When the appellant is represented by more than one attorney, one attorney must be designated by the appellant as "trial counsel" and that attorney is deemed the appellant's attorney of record and is primarily responsible for the appellant's case at the hearing. No attorney representing an appellant is permitted to withdraw from any hearing proceeding before ODJFS without prior notice being served upon ODJFS and prior approval by the hearing examiner.

(E) Authority of hearing examiners appointed by ODJFS

The director may assign a hearing examiner to conduct any hearing held subject to Chapter 5101:6-50 of the Administrative Code. Any person assigned to be a hearing examiner must be admitted to the
practice of law in the state of Ohio and have such other qualifications as the director deems necessary. The hearing examiner may be an employee of ODJFS or under contract to ODJFS. The hearing examiner has the same powers as granted to ODJFS in conducting the hearing. These powers include, but are not limited to, the following:

(1) The general authority to regulate the course of the hearing and to issue orders governing the conduct of the hearing.

(2) The authority to administer oaths or affirmations, order the production of documents and the attendance of witnesses, call and examine witnesses in a reasonable and impartial manner, and to determine the order in which the participants to a hearing will present testimony and be examined in a manner consistent with essential fairness and justice.

(3) The authority to pass upon the admissibility of evidence, and rule on objections, procedural motions, and other procedural matters.

(4) The authority to issue orders intended to facilitate settlement of the case, including the scheduling of settlement conferences, directing the exchange of offers and demands, and any other actions that may facilitate the prompt resolution of disputed matters.

(5) The authority to hold one or more pre-hearing conferences of the participants for the purpose of resolving issues that can be resolved by the participants including facilitation of a settlement, identifying the witnesses to be presented and the subject of their testimony, discussing possible admissions or stipulations regarding the authenticity of records, identifying and marking exhibits, and ruling on any procedural motions of the participants, resolving outstanding discovery claims, and clarifying the issues to be addressed at the hearing, and discussing any other matters deemed appropriate by the hearing examiner for the thorough and expeditious preparation and disposition of the case.

(6) The authority to take such other actions as might be necessary to avoid unnecessary delay, prevent presentation of irrelevant or cumulative evidence, prevent argumentative, repetitious, or irrelevant examination or cross-examination, and to assure that the hearing proceeds in an orderly and expeditious manner.

(7) Nothing in this rule nor in any other ODJFS rule is to be construed as granting a hearing examiner the authority to dismiss any hearing. Nothing in this rule nor in any other ODJFS rule limits the director's authority to withdraw a proposal to enter an order of adjudication or limits the authority of the director to define the scope of any hearing.

(8) Upon the motion of the hearing examiner, ODJFS, or the appellant, the hearing examiner may require the submission of briefs and memoranda at any time during the proceeding. The hearing examiner may limit these filings to one or more specific issues and may prescribe procedures and time schedules for their submission. All briefs, memoranda, motions, or other pleadings are subject to the following requirements:

(a) If any unreported court decision is cited in any brief or memorandum, a copy of such decision is to be attached to the brief or memorandum containing the citation.

(b) All briefs, memoranda, motions or other pleadings must be filed with the depository agent within three days after service. A certificate of service is to be attached attesting both to the service of a copy of the pleading on the opposing party and the provision of a copy to the hearing examiner. Service is governed by rule 5 (7/1/20072012) of the Ohio Rules of Civil Procedure except that any reference to "court" in rule 5 will be interpreted to refer to the "depository agent."

(c) Only those pleadings, orders, and other papers filed with the depository agent will be a part of the official record.

(d) All briefs, memoranda, motions, or other pleadings and papers must be on eight-and-one-half-inch by eleven-inch paper and double-spaced.
All orders, reports, recommendations, and rulings issued by the hearing examiner are to be signed, dated, and filed with the depository agent.

Pre-hearing conferences

Reasonable notice of all pre-hearing conferences will be provided to participants in advance of each such conference. Unless otherwise ordered for good cause shown, failure to attend a pre-hearing conference precludes objections to rulings made at such conference, including rulings relating to the merits of the appeal.

1. The first pre-hearing conference is set by ODJFS. ODJFS and the appellant each may file a pre-hearing questionnaire if directed by ODJFS in the letter scheduling such conference. The hearing examiner may require the submission of a pre-hearing questionnaire before the scheduled date of any pre-hearing conference or before any scheduled hearing.

2. Following the conclusion of any pre-hearing conference, the hearing examiner conducting the conference will issue an appropriate pre-hearing report and order reciting or summarizing any agreements reached or rulings made. Unless otherwise ordered for good cause shown, any order issued is binding upon all participants in the hearing, and such orders control the subsequent course of the proceeding. Hearing examiner orders are to be in writing, furnished to the appellant and ODJFS, and be part of the record of the case. However, the hearing examiner may modify such orders if, at or before the hearing, modification becomes necessary or assists to preserve the essential fairness and progress of the hearing.

3. The appellant and ODJFS must file a final pre-hearing questionnaire at least ten business days before the final hearing. The questionnaire must include, at a minimum, a statement of the questions of law or fact to be decided at the hearing, a list of expert and non-expert witnesses, a list of all exhibits expected to be introduced at the hearing, suggested stipulations, estimated number of days required for hearing, and a statement that all discovery, when applicable, and motion proceedings have been completed or that a reasonable opportunity has been afforded. If discovery is incomplete, a statement of an agreed cut-off date is to be included. The questionnaire must be signed by trial counsel. No further additions to the proposed list of witnesses and exhibits will be permitted without good cause shown and the permission of the hearing examiner or the director.

4. ODJFS, upon its own motion or that of the hearing examiner, may waive any pre-hearing conference or questionnaire and may issue a written notice to the parties scheduling the hearing and setting forth the conditions applicable to the conduct of the hearing.

Withdrawal of proposed adjudication orders

ODJFS, upon its own motion, at any time before the issuance of an order of adjudication, may withdraw its proposal to implement such an order without prejudice to the rights of the parties. An appellant may withdraw a request for a hearing only with the prior approval of the hearing examiner.

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Hearing examiner may allow pre-hearing discovery

(A) As a part of the authority to conduct the hearing, and except as provided in paragraph (B) of this rule, the hearing examiner may allow pre-hearing discovery of any matter that is not privileged or confidential and is relevant to the subject matter of the proceeding, provided that such discovery is necessary to facilitate the thorough and adequate preparation of the hearing. The participants to any hearing governed by this chapter may also conduct pre-hearing discovery by mutually agreeable methods or by stipulations subject to approval by the hearing examiner. When a method of pre-hearing discovery is permitted, it shall be conducted in accordance with the Ohio Rules of Civil Procedure (7/1/2007-2012) unless the hearing examiner orders otherwise, and except as modified by paragraph (B) of this rule. Use of discovered material at any hearing shall also be governed by the Ohio Rules of Civil Procedure (7/1/2007-2012).

(2) When permitted pursuant to this rule, pre-hearing discovery may begin immediately after a hearing request is timely made, and must be completed before the actual commencement of the hearing. The hearing examiner may limit the length of the time allowed for discovery and may shorten the time allowed for response to discovery requests. Pre-hearing discovery may be obtained through use of interrogatories, requests for the production of documents, permission to enter upon land or other property, depositions, and requests for admissions.

(3) Nothing in this rule prohibits an appellant or ODJFS from gaining access to any information made public by the operation of state law.

(B) Discovery not permitted in specified certain hearings

(1) Discovery is not available in hearings requested pursuant to Chapters 5103. and 5104. of the Revised Code unless the parties stipulate to limited or full pre-hearing discovery.

(2) Section 5101.29 of the Revised Code designates the following records held by ODJFS or a county department of job and family services or a public children services agency as not being public records and these records are not discoverable:

(a) Names and other identifying information regarding children enrolled or attending a child day care center or home subject to licensure, certification, or registration under Chapter 5104. of the Revised Code.

(b) Names and other identifying information regarding children placed with an institution or association certified under section 5103.03 of the Revised Code.

(c) Names and other identifying information regarding a person who makes a written or oral complaint regarding a child day care center or home subject to licensure, certification or registration under Chapter 5104. of the Revised Code.

(C) Depositions

For the purpose of conducting a hearing, ODJFS or any appellant may take depositions of witnesses residing within or without the state in the same manner as is prescribed by law for the taking of depositions in civil actions in the court of common pleas of this state. Depositions of ODJFS employees are to be conducted in the Columbus offices of ODJFS during normal business hours unless other arrangements are approved by ODJFS.

(D) Subpoena issuance and enforcement

ODJFS, upon its own motion or that of any appellant, will issue a subpoena requiring the attendance of witnesses and the production of books and records as are necessary for the purpose of conducting a hearing.
(1) Upon the request of the appellant, ODJFS will issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. ODJFS will issue such subpoena in blank to a party requesting it, who is solely responsible for completing the subpoena form, including the address where the person is to be served, and returning it to the depository agent along with a written request for service. The written request along with the completed subpoena must be received by the depository agent no later than twenty-one business days before the commencement of the hearing or deposition, unless otherwise ordered for good cause shown. Upon its own initiative and for its own use, ODJFS may issue a subpoena for any purpose set forth in this rule or otherwise authorized by law. At its discretion, ODJFS may make available electronically a subpoena in blank and may authorize electronic submission of a completed subpoena.

(2) All subpoenas issued under this rule are to be directed to the sheriff of the county where the person to be served resides or is found. The subpoena is to be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage of the sheriff and the witness will be the same as that allowed in the court of common pleas in criminal cases. ODJFS will pay allowable fees and mileage.

(3) In any case of disobedience or neglect of any subpoena served upon any person, or the refusal of any witness to testify to any matter in which there may be lawful interrogation, ODJFS will apply to the court of common pleas where such disobedience, neglect, or refusal occurs for an order to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein.

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Most Current Prior Effective Date: January 20, 2011

(A) Conduct of the hearing

(1) The date, time, and place of any hearing before ODJFS is set by ODJFS or the hearing examiner. The hearing examiner will provide written or electronic notice before the date of the hearing to all participants in the hearing and file a copy of the written notice with the depository agent. Hearings are to be scheduled in accordance with the following requirements.

(a) All hearings will be conducted in Columbus during normal business hours unless other times are authorized by the director.

(b) Upon the written request of the appellant, the director may designate the site of the hearing to be the county seat of the county wherein the appellant resides or, alternately, a place within fifty miles of the appellant's residence. The approval of an alternative location is at the discretion of the director. Requests for an alternative hearing site must be filed with the depository agent at least thirty days before the scheduled date of the hearing and served as provided in rule 5101:6-50-07 of the Administrative Code.

(c) Once begun, any hearing normally continues day to day until completed, unless continued by the hearing officer for good cause shown.

(2) Subject to the prior approval of the hearing examiner, any appellant may choose to present the case entirely in writing provided that a written request is made by the appellant no later than fourteen business days before the date scheduled for the hearing. Any request to present the case entirely in writing must be filed with the depository agent and served as provided in rule 5101:6-50-07 of the Administrative Code. Any appellant who elects to present the case entirely in writing must do so in accordance with procedures ordered by the hearing examiner. The hearing examiner's order must be in writing and filed with the depository agent. In the event that the appellant elects to present its case in writing, ODJFS, with the consent of the appellant, may elect to present its case entirely in writing. Nothing in this rule is to be construed as preventing ODJFS from compelling the attendance of the appellant or other witnesses at the hearing and questioning the appellant or other witnesses as if on cross-examination. Nothing in this rule is to be construed as preventing any appellant from examining any witnesses or evidence presented by ODJFS at the hearing.

(3) During the course of any hearing, the participants to the proceeding may enter into oral stipulations of fact, procedure, or the authenticity of documents, which will be incorporated into the record and will bind the conduct of the participants. The hearing examiner conducting the case may require oral stipulations to be reduced to writing and submitted to the hearing examiner. The hearing examiner assigned to conduct a hearing has the power to rule on the admissibility of evidence or testimony, but a participant may make objections to the rulings thereon. If the hearing examiner refuses to admit evidence or testimony, the participant seeking admission of same must make a proffer thereof and such proffer will be made a part of the record of the hearing. The hearing examiner may refer to the guidelines contained in the Ohio Rules of Evidence (7/1/2007-2012) in making decisions on admissibility.

(4) Any audit report, report of examination, exit conference report, or report of final settlement issued by ODJFS and entered into evidence is to be considered prima facie evidence of what it asserts and its admissibility is not subject to the consent of the appellant pursuant to paragraph (B) of this rule.

(B) Findings of fact, conclusions of law, recommendations, and objections

(1) Upon the conclusion of any hearing, the hearing examiner will prepare a written report of findings of fact, conclusions of law, and recommendations of action to be taken by ODJFS in
disposition of the hearing. The report must be filed with the depository agent. Within five days of
the report's filing with the depository agent, as evidenced by the time stamp of the agent,
ODJFS will send by certified mail, return receipt requested, to the appellant, the appellant's
attorney, or other authorized representative of record a copy of the hearing examiner's report.
The report will be considered to have been mailed as of the mailing date appearing on United
States postal service form 3800 (rev. 8/2006), or any future equivalent postal service form. If
delivery is not successful by certified mail, the applicable provisions of section 119.07 of the
Revised Code shall be followed.

(2) An appellant may file written objections to the hearing examiner's report. Any such objections
must be received no later than ten days after the appellant receives the report. The director may
grant an extension of time to file objections if the appellant's written request for an extension is
received by ODJFS no later than ten days after the appellant's receipt of the report. The date
the appellant receives the hearing examiner's report is the receipt date indicated on the United
States postal service form 3800, or any future equivalent postal services form. The director will
consider timely written objections before approving, modifying, or disapproving the
recommendations of the hearing examiner.

(C) Final order of adjudication

(1) Recommendations of the hearing examiner may be approved, modified, or disapproved by the
director. The director may order additional testimony to be taken and permit the introduction of
further documentary evidence. In those instances where the director modifies or disapproves
the recommendations of the hearing examiner, the director will include the reasons therefor and
incorporate said reasons into the final order of adjudication.

(2) After the director has entered an order approving, modifying, or disapproving the hearing
examiner's recommendation on the ODJFS journal of proceedings, the director will mail to the
appellant by certified mail, return receipt requested, a copy of the order and a statement of the
time and method by which an appeal may be perfected. A copy of such order shall be mailed to
the attorney or other authorized representative of record representing the party.

(D) Appeal of final adjudication order

(1) Any appellant other than a licensee against whom a final order of adjudication is entered,
pursuant to this rule, may appeal that order to the Franklin county court of common pleas. Any
licensee against whom a final order of adjudication is entered, pursuant to the this rule, may
appeal that order to the court of common pleas of the county in which the place of business of
the licensee is located or the county in which the licensee is a resident.

(2) Any party desiring an appeal pursuant to this rule must file a notice of appeal with the proper
depository agent setting forth the order appealed from and stating that the agency's order is not
supported by reliable, probative, and substantial evidence and is not in accordance with the law.
The notice may, but need not, set forth the specific grounds of the party's appeal beyond the
statement that the agency's order is not supported by reliable, probative, and substantial
evidence and is not in accordance with the law. In order to be determined filed with ODJFS, the
notice of appeal must be received by the proper depository agent, as evidenced by an ODJFS
date and time stamp, no later than fifteen days after the mailing to the affected party, as
evidenced by the mailing date on the United States postal service form 3800, or any future
equivalent postal service form, of the order to be appealed from. Appellant shall also file the
notice of appeal with the court of common pleas no later than fifteen days after the mailing to the
affected party, as evidenced by United States postal service form 3800, or any future equivalent
postal service form, of the order to be appealed from. In filing a notice of appeal with the agency
or court, the notice that is filed may be the original notice or a copy of the original notice.

Effective: 02/28/2014
R.C. 119.032 review dates: 11/18/2013 and 02/01/2019
Certification: CERTIFIED ELECTRONICALLY