
**STATE HEARING AND REQUEST FOR REVIEW
STATE HEARING - GENERAL**

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DIVISION 22 STATE HEARING AND REQUEST FOR REVIEW

CHAPTER 22-000 STATE HEARING - GENERAL

22-000 STATE HEARING - GENERAL 22-000

- .1 The responsibility for providing a full and impartial hearing to the claimant rests jointly with the county and the state department.

HANDBOOK BEGINS HERE

- .11 The state department is responsible for the overall administration of the hearing process and the conduct of each hearing.

HANDBOOK ENDS HERE

- .12 Since the right to request a state hearing belongs to the claimant, the regulations in this chapter shall be interpreted in a manner which protects the claimant's right to a hearing.
- .13 Although the specific duties and responsibilities of each agency are set forth in the following regulations, these rules shall not be used to suppress the claimant's right to a hearing. For example, although the county shall justify its action when appropriate, the county shall not discourage the claimant from proceeding with the hearing request nor relinquish its responsibility to assist the claimant in this process. The Administrative Law Judge shall conduct the hearing according to applicable procedures and the claimant shall be allowed to present evidence relevant to his/her own case.
- .14 The regulations in this chapter shall apply to all public social services programs subject to a state hearing.
- .15 Any part of these regulations which apply only to specific aid programs shall be so designated.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10051, 10553, 10554 and 10950, Welfare and Institutions Code and 45 CFR 205.10.

22-001 **DEFINITIONS** 22-001

The following definitions shall apply wherever the terms are used throughout Division 22.

- (a) (1) Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, if the county action is upheld, that the aid paid pending must be repaid. In the Food Stamp Program, see Section 63-504.2.
- (2) Administrative Law Judge - A person designated by the Director and thereafter assigned by the Chief Administrative Law Judge to conduct state hearings and administrative disqualification hearings.

HANDBOOK BEGINS HERE

The Administrative Law Judge shall prepare fair, impartial and independent decisions.

HANDBOOK ENDS HERE

- (3) Aid - For purposes of this Division "aid" includes all public social services programs subject to a state hearing.
 - (A) Such public social services programs include, but are not limited to, CalWORKs, the State administered programs for recipients of SSI/SSP (Division 46), Refugee Resettlement Program (RRP), the Cuban/Haitian Entrant Program (CHEP), the Food Stamp Program (FS), the California Medical Assistance Program (Medi-Cal), Stage One Child Care, California Assistance Program for Immigrants (CAPI), Personal Care Services Program (PCSP), Kinship Guardian Assistance Program (Kin-GAP), AFDC-Foster Care, California Food Assistance Program (CFAP), the Social Services Programs described in Divisions 30 and 31 of the Manual of Policies and Procedures (MPP), Aid for the Adoption of Children Program (AAC), Adoption Assistance Program (AAP), and Multipurpose Senior Services Program (MSSP).
- (4) Alternate Decision - A decision issued by the Director which differs from the Administrative Law Judge's proposed decision. See Section 22-062.

22-001 **DEFINITIONS (Continued)** **22-001**

- (5) Attorney - an active member of the California State Bar.
- (6) Authorized Representative - An individual or organization that has been authorized by the claimant or designated by the Administrative Law Judge or Department pursuant to Sections 22-085 and 22-101 to act for the claimant in any and all aspects of the state hearing or administrative disqualification hearing.

HANDBOOK BEGINS HERE

- (A) An authorized representative may include an attorney, a relative, a friend, or other spokesperson.

HANDBOOK ENDS HERE

- (B) Any references to claimant shall also apply to the authorized representative unless otherwise stated.

- (C) Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.

(b) Reserved

(c) (1) Chief Administrative Law Judge - The person designated and employed by, and directly responsible to the Director of the California Department of Social Services and charged with the administration of state hearings and administrative disqualification hearings.

(2) Claimant - The person who has requested a state hearing and is or has been any of the following:

(A) An applicant for or recipient of aid, as defined in Section 22-001a.(3).

(B) A foster parent or foster care provider who requests a hearing on behalf of the foster child where the CWD takes action to affect the child's aid and the child resides with or has resided with the foster parent or foster care provider.

1. There is no right to a state hearing concerning the placement or removal of a foster child. For grievance procedures applicable to the placement or removal of a foster child, see Section 31-020.

2. There is no right to a hearing concerning group home rates established by the state. For administrative review procedures concerning group home rates established by the state, see Section 11-430 et seq.

22-001	DEFINITIONS (Continued)	22-001
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- (C) A representative of the estate of a deceased applicant or recipient (see Sections 22-004.4 and .5).
 - (D) The relative caring for a child with regard to the child's application for or receipt of aid.
 - (E) The guardian or conservator of an applicant or recipient.
 - (F) The sponsor of an alien, see MPP Sections 43-119, 44-353, and 63-804.1.
 - (G) A foster care provider, including group homes and foster family agencies, who request a hearing to challenge a county action to recover an overpayment under Sections 45-304, 45-305, and 45-306, except for overpayments requests made by a county pursuant to Section 45-304.124.
-
- (3) Compliance issue - An allegation by the claimant that the county has failed to abide by a state hearing decision concerning issues clearly resolved in the order where the county did not have to make further determinations regarding the claimant's eligibility or amount of benefits.
 - (4) Compliance related issues - Issues which were not resolved in the prior state hearing decision or resulted from the prior hearing decision requiring the county to make further determinations regarding the claimant's eligibility or amount of benefits.
 - (5) County or CWD - For purposes of this division, "county" or "CWD" generally refers to the county welfare department. The term "county welfare department" is used in Sections 22-001c.(7), 22-003 and 22-073 to mean the welfare department in the county in which the recipient resides or the county that has taken the action or inaction with which the recipient is dissatisfied. Any references to "county" or "CWD" may also refer to any state department or contractor whose actions may be subject to a state hearing. For purposes of Sections 22-053.165, 22-073.13, 22-073.252, .253, and .254, "county" or "CWD" shall not include the California Department of Health Services.
 - (6) County Action - All actions which require adequate notice (see Section 22-071) and any other county action or inaction relating to the claimant's application for or receipt of aid.
 - (7) County or CWD Representative - An employee who is assigned the major responsibility for preparing and/or presenting a hearing case on behalf of the CWD. (See Section 22-073.13.)
-
- (d) (1) Days - Days shall refer to calendar days unless otherwise specified.

22-001 **DEFINITIONS (Continued)** **22-001**

(2) Decision of the Director - The decision issued by the Director which resolves a state hearing case and is one of the following:

(A) A final decision issued by an ALJ that is not subject to review before issuance;

(B) A proposed decision by an ALJ which has been adopted as final by the Director; or

(C) An alternate decision of the Director that overrules an ALJ's proposed decision and has been adopted as final.

(3) Department - The California Department of Social Services or the California Department of Health Services, whichever is appropriate.

(4) Director - Refers to the Director of the California Department of Social Services or the Director of the California Department of Health Services, whichever is appropriate.

(e) Reserved

(f) (1) Filing Date

(A) All written requests for hearings shall be date stamped by the State Hearings Division or the CWD on the day the request is "received". Unless the evidence indicates otherwise, the filing date of the claimant's written request for a state hearing shall be determined as follows:

1. If the request is mailed to the State Hearings Division, or to the CWD, the postmark date of the envelope.

2. If the request is delivered by hand to the State Hearings Division or to the CWD, the date stamped on the request for hearing.

3. If the date cannot be determined by the methods described above, three days before the request was stamped "received" by the State Hearings Division or the CWD.

4. If the date cannot be determined by Sections 22-001f.(1)(A)1., 2., or 3., the date the request was signed.

(B) The filing date of an oral request shall be the date the request is received by the Department.

22-001 **DEFINITIONS (Continued)** **22-001**

(C) If a written request is filed erroneously with the State Hearings Division or with a CWD in a county in which the claimant does not reside and in which the CWD has not taken any action or inaction with which the claimant is dissatisfied, the filing date shall be determined in the same manner as set forth above in Subsection (A).

(2) Final Decision - The decision prepared and adopted by the Administrative Law Judge resolving a state hearing case and which is not subject to review prior to issuance.

(g) Reserved

(h) (1) Holiday - A Saturday, Sunday, and the holidays as specified in Government Code Sections 6700 et seq. which result in a postal holiday or the closing of Department or county offices.

(i) Reserved

(j) Reserved

(k) Reserved

(l) (1) Language-Compliant Notice - A notice of action that meets the applicable requirement in (a) or (b) below:

(a) For notices of action provided by the California Department of Social Services (CDSS) in the claimant's primary language:

A written notice of action that complies with the requirements of Section 21-115.2 for a claimant who chose to receive written communications offered in his/her primary language pursuant to Section 21-116.21. There shall be a rebuttable presumption that a claimant chose to receive written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

(b) For CDSS notices of action that CDSS does not provide in the claimant's primary language:

The county must offer and provide interpretive services for the notice of action if either of the following applies:

(1) The claimant contacts the county about that notice of action prior to the deadline for a timely request for hearing on an adequate notice of action and indicates a need for interpretive services; or

22-001 **DEFINITIONS (Continued)** **22-001**

- (2) The claimant previously identified a primary language other than English to the county and contacts the county about that notice of action prior to the deadline for a timely request for hearing on an adequate notice of action.

HANDBOOK BEGINS HERE

Section 21-115.2 provides as follows:

“Forms and other written material required for the provision of aid or services shall be available and offered to the applicant/recipient in the individual’s primary language when such forms and other written material are provided by CDSS. When such forms and other written material contain spaces (other than “for agency use only”) in which the CWD is to insert information, this inserted information shall also be in the individual’s primary language.”

HANDBOOK ENDS HERE

(m) Reserved

(n) Reserved

(o) Reserved

(p) (1) Precedent Decision - A decision or part of a decision that is designated and indexed as such by the Director, pursuant to the California Administrative Procedure Act, because it contains a significant legal or policy determination of general application that is likely to recur.

(2) Proposed Decision - The decision prepared by the Administrative Law Judge concerning a state hearing case which he/she recommends to the Director for adoption.

HANDBOOK BEGINS HERE

(A) A proposed decision has no effect unless it has been adopted by the Director or adopted by operation of law. (See Section 22-062, Action by the Director.)

HANDBOOK ENDS HERE

22-001	DEFINITIONS (Continued)	22-001
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- (q) Reserved
- (r) Reserved
- (s) (1) State Hearing - A form of administrative hearing mandated by federal and state law whereby a dissatisfied claimant may obtain an impartial review of a county action.
- (t) (1) Timely Notice - A written notice that is mailed to the person affected at least 10 days before the effective date of the action. See Section 22-072.4 for computation of the 10-day period.
- (u) Reserved
- (v) Reserved
- (w) Reserved
- (x) Reserved
- (y) Reserved
- (z) Reserved

NOTE: Authority cited: Sections 10553, 10554 and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10051, 10613, 10950, 10963, 11209, 11323.6, 11323.8, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; Sections 6700, 6701, 11425.10, and 11425.60, Government Code; 45 CFR 205.10; 45 CFR 205.10(a)(4)(i)(B); and 45 CFR 255.4(j)(1) and Part 256.

22-002 DETERMINATION OF TIME LIMITS

22-002

- .1 If the last day for the performance of any act required by these regulations is a holiday, then such period shall be extended to the next day which is not a holiday.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-003 RIGHT TO A STATE HEARING

22-003

- .1 A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a hearing in the manner set forth below.
- .11 There is no right to a state hearing regarding a Food Stamp or CalWORKs administrative disqualification, unless the issue is the CWD's method of implementing a Food Stamp or CalWORKs administrative disqualification hearing decision. (See Division 22, Chapters 22-200 and 22-300, Division 20, Chapter 20-300, and Division 63, Section 63-805.)
- .12 Notwithstanding any other regulation, there is no right to a state hearing when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for the request for the state hearing is incorrect grant computation.
- .121 In the event of such automatic grant adjustment, the State Hearings Division shall promptly review the requests for a state hearing to determine whether the basis for a request is the automatic grant adjustment. See Section 22-054.
- .122 In the CalWORKs Program, all those who request a hearing when the change is because either state or federal law required an automatic grant adjustment shall be treated as though the subject of the hearing was not a law change until the time of the hearing.
- (a) If the Administrative Law Judge determines that the subject of the hearing was the wisdom or validity of such a law change, the request shall be permitted to be dismissed pursuant to Section 22-054.31.

22-003	RIGHT TO STATE HEARING (Continued)	22-003
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- .13 Complaints as to discourteous treatment by a county employee shall not be subject to the state hearing process.

- .14 There is no right to a state hearing regarding child custody and child welfare service issues while that child is under the jurisdiction of the juvenile court. All issues regarding the child's custody shall be heard by the juvenile court, including but not limited to those issues left to the discretion of the welfare department or probation department by the juvenile court.

- .15 There is no right to a state hearing regarding overpayments made to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement, under Section 45-305.231.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10613, 10950, 11209, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.4(j)(1) and 256.4(b); and Madrid v. McMahon (1986) 183 Cal. App. 3rd 151, In Re Jennifer G. (1990) 221 Cal App. 3rd 752 and In Re Moriah T. (1994) 23 Cal. App. 4th 1366.

22-004 REQUEST FOR A STATE HEARING **22-004**

- .1 A request for a state hearing may be either written or oral.

- .2 A written request concerning county administered state aid programs shall be filed with the CWD, and for all other state aid programs, the request shall be filed with the California State Department of Social Services in Sacramento.
 - .21 A written request for hearing may be made in any form, including, but not limited to, the reverse side of the Notice of Action.
 - .211 The county agency shall assist the claimant in filing a request for a state hearing. The request for a state hearing should identify the aid program involved, as well as, the reason for dissatisfaction with the particular action or inaction involved in the case. If an interpreter will be necessary, the claimant should so indicate on the hearing request.

 - .22 When a written request for a state hearing is received by the CWD, a copy of the written request shall be forwarded to the State Hearings Division in Sacramento within three working days after receipt unless the CWD is given authority by the Chief Administrative Law Judge to directly enter the hearing request into the state hearing computer system online. The county shall retain the original hearing request and shall provide it to the Administrative Law Judge at the hearing.

22-004 **REQUEST FOR A STATE HEARING (Continued)** **22-004**

- .221 If the request for hearing concerns an action which is subject to the adequate notice provisions, a copy of the applicable Notice of Action, if available, shall be sent with the request.

- .3 An oral request shall be filed in person or by telephone at the California Department of Social Services in Sacramento.

HANDBOOK BEGINS HERE

- .31 A toll-free number is available for this purpose.

HANDBOOK ENDS HERE

- .4 If a claimant dies after a request for a state hearing has been filed, yet before a hearing has been held, the proceeding may only be continued by, or on behalf of, the representative of the claimant's estate.

- .41 The representative of a decedent's estate is the executor/executrix or administrator/administratrix of the estate. If the decedent's estate is not in probate, the representative may also be an heir (e.g., parents, spouse, children, siblings, grandparents or grandchildren of the decedent).

- .5 If the prospective claimant dies before filing a request for a state hearing, a request may only be filed by those individuals specified in Section 22-004.41.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10965, Welfare and Institutions Code; and Section 44, Probate Code.

22-005 **REQUEST FOR REVIEW** **22-005**

Repealed by Manual Letter No. CFC-95-02, effective 5/12/95.

22-009 **TIME LIMIT ON REQUEST FOR A STATE HEARING** **22-009**

- .1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.

- .11 Except as provided for in Section 45-306.3 if the claimant received an adequate and language-compliant notice of the county action, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant. If adequate notice was required but a notice was not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request.

- .12 In the Food Stamp Program, the time limits for state hearing requests are set forth in Sections 63-802.4 and 63-804.5.

- .2 A recipient shall have the right to request a state hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the request for hearing is filed and shall include review of any benefits issued during the entire first month in the 90-day period. This review shall only apply to facts that occurred during the review period.

HANDBOOK BEGINS HERE

- .21 Example #1: The county issues the claimant adequate and language-compliant notice on January 20, 2005 advising him/her that the Medi-Cal share of cost is increased from \$100 to \$200 effective February 1, 2005. The claimant receives this notice but does not request a hearing until July 6, 2005. Although the claimant's hearing request is filed more than 90 days after the January 20, 2005 notice was issued, the claimant has the right to a state hearing to review the share of cost for the current month (i.e., July 2005) and the review will extend back 90 days to include all of April, May and June 2005. There can be no review of the February or March 2005 share of cost because the hearing request is untimely as to those months. The review will be based only on the relevant facts that occurred during April, May, June, and July, 2005, including the claimant's income and deductions for those months as relevant to the share of cost. The review will not include facts that occurred prior to the review period.

- .22 Example #2: The county issues an adequate and language-complaint notice of action on March 15, 2005. The notice advises the recipient of a first instance sanction in the CalWORKs program effective May 1 for failure to participate in welfare-to-work. A first instance sanction lasts until the recipient complies with welfare-to-work requirements or becomes exempt from participation. The recipient receives the notice of action but does not request a hearing until October 25, 2005.

HANDBOOK CONTINUES

22-009	TIME LIMIT ON REQUEST FOR A STATE HEARING (Continued)	22-009
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HANDBOOK CONTINUES

The recipient's hearing request is untimely under Section 22-009.1, but the recipient is entitled to a hearing on the current amount of aid under Section 22-009.2, limited to the facts that occurred during July, August, September and October, 2005. The ALJ will not review whether the sanction action was correct, nor the recipient's sanction from April through June. The recipient will be entitled to have the CalWORKs grant reviewed for July, August, September and October, as appropriate, and may be added back to the assistance unit (AU) effective in those months if facts establish that the recipient was exempt or welfare-to-work compliant during those months.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32 and 33. Reference: Sections 10950, 10951, 11466.23, 11466.235, and 11466.24, Welfare and Institutions Code and Morales v. McMahon (1990) 223 Cal App. 3rd 184, 272 Cal. Rptr. 688.

22-010	AUTHORIZED REPRESENTATIVE	22-010
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

STATE HEARING AND REQUEST FOR REVIEW		
Regulations	STATE HEARING - GENERAL	22-024
22-015	COUNTY WELFARE RESPONSIBILITY	22-015
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	
22-017	EXPLANATION OF RIGHT TO STATE HEARING	22-017
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	
22-021	ADEQUATE NOTICE	22-021
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	
22-022	TIMELY NOTICE - AID PENDING HEARING	22-022
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	
22-023	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING	22-023
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	
22-024	PRELIMINARY HEARING PROCEDURE	22-024
	Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.	

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22-025	DISMISSAL OF A PRELIMINARY HEARING	22-025
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

22-026	PROCEDURE AFTER THE PRELIMINARY HEARING	22-026
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

22-027	HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID	22-027
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

22-028	COMPLIANCE WITH STATE HEARING DECISIONS	22-028
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

22-043	ACKNOWLEDGEMENT OF REQUEST FOR A STATE HEARING	22-043
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.1 The State Hearings Division shall mail to the claimant acknowledgement in writing of all requests for state hearings.

.11 Such acknowledgement shall also be sent to the county if the county did not receive the original request.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

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22-045	SETTING THE HEARING	22-045
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- .1 The state hearing shall be held in California in the county in which the claimant is living at the time of the hearing unless the parties agree to conduct the hearing at another location. (See Section 22-056 for out-of-state residents.)
 - .11 If the claimant is unable to attend the hearing at the hearing location for reasons of poor health, the hearing shall be held in the claimant's home or in another place agreed to by the county and the claimant.
 - .12 The State Hearings Division may request verification from the claimant to support the reason why he/she cannot attend the hearing at the hearing location, and shall deny a request for a different hearing location in the absence of such requested verification.
 - .13 The State Hearings Division shall be permitted to schedule hearings to be conducted by telephone or video conference in lieu of an in-person hearing. Such hearings shall be conducted by telephone or video conference only if the claimant agrees.
 - .131 If the claimant later rescinds the agreement for a telephone hearing up to the time of the commencement of the hearing, an in-person hearing will be scheduled and this shall be considered a postponement for good cause.
 - .132 The Administrative Law Judge may terminate the telephone hearing or video conference at the request of either party or on his/her own motion and order an in-person hearing when he/she determines that a party's right to due process is being prejudiced by the telephone hearing or video conference procedure.
- .2 The hearing shall be conducted at a reasonable time, date, and place.
 - .21 In the Food Stamp Program, the State Hearings Division shall expedite the scheduling of hearings requested by households who expect to leave the State. See Section 22-073.243.
- .3 The State Hearings Division shall mail or provide to the claimant and the county a written notice of the time and place of the hearing at least ten days prior to the hearing.
 - .31 The time of notice shall be permitted to be shortened with the consent of the parties.
 - .32 Any party shall be permitted to waive notice.
 - .33 If either party has not received notice of the hearing at least ten days prior to the hearing date, such party shall be granted a postponement, if it requests a postponement.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code; 7 CFR 273.15(b); and 45 CFR 205.10(a)(2).

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22-047	GROUP HEARINGS	22-047
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- .1 A group of claimants with a common complaint may request that the State Hearings Division establish a group hearing.
- .2 The State Hearings Division may schedule a group hearing when in a series of individual requests for a state hearing the sole issue set forth in the request is one involving state or federal law or changes in state or federal law.
- .3 In all group hearings, each individual claimant shall be permitted to present his/her own case, and shall be permitted to be represented by any person he/she may desire.
- .4 A separate written decision shall be issued to each claimant in a group hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES

22-049

- .1 Attendance at the hearing is ordinarily limited to the claimant, authorized representative (as defined in Section 22-001(a)(6)), county representative, legal counsel, authorized interpreter, and witnesses relevant to the issue. Other persons may attend the hearing if the claimant agrees to or requests their presence and the Administrative Law Judge determines that their presence will not be adverse to the hearing.
 - .11 Appearance by the claimant (in person or by the authorized representative) shall be required at the hearing, unless the hearing is a rehearing or further hearing.
 - .111 The claimant shall not be required to designate an authorized representative and may represent him/herself at all stages of the hearing process. Also see Section 22-085 and Section 22-101.
- .12 The Administrative Law Judge shall be permitted to exclude a witness during the testimony of other witnesses.
- .13 Both the county and the claimant shall have the right to have a representative present throughout the hearing. Both the county representative and the claimant's authorized representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, he/she may not be present as an advisor until after he/she has testified.
- .14 The Administrative Law Judge shall have the authority to exclude persons who are disruptive of the hearing.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES (Continued) 22-049

- .2 The hearing shall be conducted in an impartial manner.
- .3 All testimony shall be submitted under oath, affirmation, or penalty of perjury.
- .4 The proceedings at the hearing shall be reported by tape recorder or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
- .5 The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or claimant which they have jointly agreed, prior to or at the state hearing, to discuss.
 - .51 If the rights of any party will be prejudiced by the consideration of a reasonably related issue raised at the hearing, the hearing shall be continued or the record held open subject to the provisions of Section 22-053.3 so that such party may prepare his/her case.
 - .52 If the claimant contends that he/she is not adequately prepared to discuss the issues because he/she did not receive the notice required by Section 21-115.2 or 22-071.1, this issue shall be resolved by the Administrative Law Judge at the hearing.
 - .521 If the Administrative Law Judge determines that adequate and language-compliant notice was provided, the claimant shall agree to discuss the substantive issues or the case will be dismissed.
 - .522 If the Administrative Law Judge determines that adequate and/or language-compliant notice was required but not provided, the case shall be postponed unless the claimant waives the adequate and language-compliant notice requirements, as applicable, for purposes of proceeding with the hearing, and agrees to discuss the substantive issues at the hearing.
 - (a) A postponement for this reason shall be deemed a postponement for good cause.
 - (b) When the Administrative Law Judge has determined that adequate and/or language-compliant notice was not provided but the claimant waives those requirements, as applicable, the Administrative Law Judge shall conduct the hearing on the substantive issues and submit a decision on those issues.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES (Continued) 22-049

- .523 If adequate and/or language-compliant notice was required but not provided and involved a discontinuance, suspension, cancellation, termination or reduction of aid, other than those referred to in Sections 22-072.1 through .13, aid shall be reinstated retroactively and the provisions of Section 22-072.5 shall apply.
- .53 If a jurisdictional issue is raised, the county must prepare a position statement on both jurisdictional and substantive issues. The parties must be prepared to submit evidence, on both the jurisdictional and substantive issues, except as provided in Sections 22-049.531, 22-049.532 and 22-054.4.
- .531 Prior to the hearing, a party may request in writing to the regional Presiding Administrative Law Judge that a hearing be limited to the jurisdictional issue. A copy of that request shall be sent to the other party. The Presiding Administrative Law Judge shall make a preliminary determination and inform the parties that:
- (a) the hearing shall proceed only on the jurisdictional issue; or
 - (b) the hearing shall proceed on both jurisdictional and substantive issues.
- .532 If, prior to or at the hearing, both parties agree to discuss only the jurisdictional issue, or the Administrative Law Judge on his/her own motion determines that only the jurisdictional issue will be discussed, the parties need not submit evidence on the substantive issues and the Administrative Law Judge shall take evidence only on the jurisdictional issue. The Administrative Law Judge shall:
- (a) Inform the parties orally at the hearing or in writing within ten days after the hearing that the hearing will not proceed on the substantive issues and a decision will be prepared solely on the jurisdictional issue, or
 - (b) Inform the parties orally at the hearing or in writing within ten days after the hearing that an additional hearing will be held on the substantive issues, and provide the parties a minimum of ten days in which to prepare on the substantive issues.
- .6 An interpreter shall be provided by the state if, prior to the hearing, a party requests an interpreter or if at the hearing, the Administrative Law Judge determines that an interpreter is necessary.
- .61 When the state hearing is to be held with the assistance of an interpreter, the Administrative Law Judge shall determine if the interpreter has been certified by the Department.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES (Continued) 22-049

- .611 If the interpreter has been certified, the qualifications and competency of the interpreter need not be further examined except that the Administrative Law Judge shall examine the interpreter with regard to any personal or economic interest in the matter and shall disqualify an interpreter with any such interest.

- .612 If the interpreter has not been certified, the Administrative Law Judge shall:
 - (a) Examine the qualifications and competency of the interpreter.
 - (b) Disqualify any interpreter determined by the Administrative Law Judge not to be competent for interpretation purposes.
 - (c) Assure objective interpretation by, at his/her discretion, disqualifying interpreters who are:
 - (1) Claimant's relatives, friends, or an authorized representative.
 - (2) County staff who participated in making the decision complained of.
 - (3) The county appeals representative.
 - (4) Any other individual determined by the Administrative Law Judge to be detrimental to the hearing process or having a bias or the appearance of being biased.

- .62 When the state hearing is held with the assistance of an interpreter the Administrative Law Judge shall assure objective interpretation.

- .63 A separate oath or affirmation to translate accurately and maintain confidentiality shall be administered to all interpreters.

- .7 The rights of the claimant and the county shall include the right to:
 - .71 Examine parties and witnesses.
 - .72 Conduct such cross-examination as may be required for a full disclosure of the facts.
 - .73 Introduce exhibits.

22-049 THE HEARING - GENERAL RULES AND PROCEDURES (Continued) 22-049

- .74 Bring witnesses.
- .75 Examine all documents prior to and during the hearing.
- .76 Question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination.
- .77 Make oral or written argument.
- .78 Rebut the evidence.
- .8 The following shall apply to communications concerning the hearing:
 - .81 All documents submitted by either the claimant or the county shall be made available to both parties.
 - .811 Copies of all such documents shall be provided to the claimant free of charge.

HANDBOOK BEGINS HERE

- (a) See Section 22-073.25 regarding position statement requirements.

HANDBOOK ENDS HERE

- .82 Merits of a pending state hearing shall not be discussed between the Administrative Law Judge and a party outside the presence of the other party.
- .9 Whenever it is necessary that another county be joined as a party to the action in order to dispose of all issues, the Administrative Law Judge shall so order and shall, subject to Section 22-053.3, postpone the hearing, hold the record of the hearing open, or continue the hearing as necessary.
 - .91 A postponement for this reason shall be deemed a postponement for good cause.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10955, 10958.1 and 10967, Welfare and Institutions Code; and Section 11435.65, Government Code.

22-050 EVIDENCE 22-050

- .1 The taking of evidence in a hearing shall be conducted by the Administrative Law Judge in a manner best suited to ascertain the facts and to control the conduct of the hearing.
 - .11 Prior to taking evidence, the Administrative Law Judge shall identify the issues and shall state the order in which evidence shall be received.
- .2 Except as provided below, evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
 - .21 The Administrative Law Judge shall not be bound by rules of procedure or evidence applicable in judicial proceedings.
 - .22 The Administrative Law Judge shall be permitted to exclude evidence which is irrelevant, cumulative or unduly repetitious.
 - .23 The Administrative Law Judge shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law.
- .3 Although evidence may be admissible under Section 22-050.2, the Administrative Law Judge shall consider the nature of the evidence in assessing its probative value.
- .4 "Official Notice" describes the manner in which an Administrative Law Judge or the Director will recognize the existence and truth of certain facts which have a bearing on the issue in the case, without requiring the actual production of evidence to prove such facts. Official notice may be taken of either a proposition of law or a proposition of fact.
 - .41 The Administrative Law Judge or Director shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code.

HANDBOOK BEGINS HERE

- .411 Generally, Section 451 of the Evidence Code provides that judicial notice must be taken of laws, statutes, regulations, official records, and facts and propositions which are of such universal knowledge that they are not reasonably subject to dispute.

HANDBOOK ENDS HERE

22-050 EVIDENCE (Continued) 22-050

.42 The Administrative Law Judge may take official notice of those matters set forth in Section 452 of the Evidence Code.

HANDBOOK BEGINS HERE

.421 Generally, Section 452 of the Evidence Code provides that official notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

HANDBOOK ENDS HERE

.43 The Administrative Law Judge may take official notice of any generally accepted technical fact relating to the administration of public social service.

.44 With respect to matters under Subsection 22-050.43 above and subdivision (f) of Section 451 and Section 452 of the Evidence Code which are of substantial consequence to the determination of the action, each party shall be given reasonable opportunity, before the decision is submitted, to respond to the propriety of the Administrative Law Judge taking official notice of some facts.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-051 THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS 22-051

.1 Upon request, the CWD shall allow the claimant to examine the case record during regular working hours (see Section 19-005).

.11 If portions of the case record are privileged under the provisions of Section 19-006, the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege.

.2 The claimant shall have the right prior to and during the hearing, to examine nonprivileged information which the county has used in making its decision to take the action which is being appealed.

22-051 THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS 22-051
(Continued)

- .3 The CWD shall reproduce without charge, or at a charge related to the cost of reproduction, the specific policy materials, including regulations, necessary for an applicant or recipient, or his/her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing.

- .31 In the Food Stamp Program, such material shall be made available to the household or its authorized representative at no charge.

- .4 Before the hearing has commenced, the Chief Administrative Law Judge or his/her designee shall be permitted to, upon the written or oral request of the claimant or the CWD, issue a:
 - .41 Subpoena requiring the presence of any witness whose expected testimony has been shown to be relevant, and not cumulative or unduly repetitious.

 - .42 Subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records.
 - .421 The person who requests the subpoena duces tecum shall submit a statement under penalty of perjury describing the materials desired to be produced and their relevancy.

 - .422 A witness may comply with the subpoena duces tecum by providing certified copies of the material requested.

- .5 After the hearing has commenced, the Administrative Law Judge assigned to the case shall be permitted to issue a subpoena or subpoena duces tecum as necessary.

- .6 The party requesting the subpoena or subpoena duces tecum shall have the responsibility of having it served. The service of the subpoena shall be made to allow the witness subpoenaed a reasonable time for preparation and travel to the place of attendance.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and Code of Civil Procedure Section 1987.

22-052 WITNESS FEES AND MILEAGE**22-052**

- .1 A witness who is subpoenaed at the request of the claimant and who appears at the hearing shall be permitted to demand payment for witness fees and mileage from the Department on a form specified by that Department.
 - .11 The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.
- .2 A witness who is subpoenaed at the request of the county and who appears at the hearing shall be permitted to demand payment for witness fees and mileage from the county on a form specified by the county.
 - .21 The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

22-053 POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE**22-053**

- .1 Postponements are subject to the following conditions.
 - .11 Claimant requests.
 - .111 If a hearing request includes an issue regarding the Food Stamp Program, a claimant's first request for a postponement made prior to hearing shall be granted. The hearing shall be postponed for no more than 30 days. A claimant in a Food Stamp case may request additional postponements under Section 22-053.112.
 - .112 A hearing may be postponed upon the request of a claimant if such request meets the good cause criteria set forth in Section 22-053.113.

The Department shall have the authority to request verification from the claimant that there is good cause for a requested postponement.
 - .113 Good cause applies if the claimant or authorized representative establishes that the hearing should be postponed for reasons that include, but are not limited to, the following:
 - (a) A death in the family.
 - (b) Personal illness or injury.

22-053 POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE (Continued) **22-053**

- (c) Sudden and unexpected emergencies that prevent the claimant or the claimant's authorized representative from appearing.
 - (d) A conflicting court appearance that cannot be postponed.
 - (e) The claimant contends that he/she is not adequately prepared to discuss the issues because he/she did not receive an adequate and/or language-compliant notice, and the Administrative Law Judge determines that the required notice was not received. (See Section 22-049.52.)
 - (f) The county, when required, does not make a position statement available to the claimant at least two working days prior to the date of the scheduled hearing, or the county has modified the position statement (as defined in Section 22-073.253) after providing the statement to the claimant, and the claimant has waived decision deadlines contained in Section 22-060.
- .12 County requests.
- .121 The Administrative Law Judge at the hearing shall have the authority to postpone the hearing, at his or her discretion, at the request of the county.
 - .122 Any postponement granted pursuant to Section 22-053.121 shall be deemed a postponement for good cause for aid pending purposes.
- .13 Administrative Law Judge postponements.
- .131 The Chief Administrative Law Judge or his/her designee shall have the authority to postpone a hearing prior to the hearing at his or her discretion.
 - .132 Any postponement granted pursuant to Section 22-053.131 shall be deemed a postponement for good cause.
 - .133 The Administrative Law Judge shall have the authority to postpone a hearing, at the hearing, at his/her discretion.
- .14 Hearing notice not received.
- .141 A hearing shall be postponed if either party has not received notice of the time and place of the hearing at least ten days prior to the hearing and that party requests a postponement.

22-053 **POSTPONEMENTS AND CONTINUANCES FOR** **22-053**
ADDITIONAL EVIDENCE (Continued)

- .142 Any postponement granted pursuant to Section 22-053.141 shall be deemed a postponement for good cause.

- .2 Continuances for additional evidence shall be granted under limited conditions.
 - .21 If the Administrative Law Judge conducting the hearing determines that evidence not available at the hearing is necessary for the proper determination of the case, the Administrative Law Judge shall have the authority to continue the hearing to a later date or close the hearing and hold the record open for a stated period not to exceed 30 days in order to permit the submission of additional documentary evidence.

- .3 When a hearing is postponed, continued, or reopened at the claimant's request, the 60-day or 90-day period provided in Section 22-060 shall be extended. Any such requests for postponement, continuance, or reopening of a hearing may not exceed 30 days each. Every time a claimant requests a postponement, continuance, or reopening, he/she must be given a written notice that explains that the time for rendering a decision will be extended for a period not to exceed 30 days.

- .4 Aid Pending Hearing
 - .41 If a first postponement of a case in the Food Stamp Program is granted at the claimant's request under Section 22-053.111, any aid pending shall continue until at least the earlier of the next scheduled hearing or the end of the certification period. See Section 63-804.64.
 - .42 If a postponement is granted under Section 22-053.133, the Administrative Law Judge shall order that aid pending be continued only if the postponement was for good cause.
 - .43 Except in the Food Stamp Program as provided in Section 22-053.431, if a postponement is granted for good cause, aid pending shall be continued at least until the next scheduled hearing.
 - .431 If a postponement is granted for good cause on a food stamp issue after the initial postponement, aid pending shall continue until at least the earlier of the next scheduled hearing or the end of the certification period.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10952, 10952.5, and 10957, Welfare and Institutions Code and 7 CFR 273.15(c) and (k)(2)(i).

22-054 DISMISSALS**22-054**

- .1 Except in the CalWORKs Program, the State Hearings Division shall deny or dismiss a request for a hearing where the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
- .11 Aid shall not be continued in the amount that claimant would have been paid if the adjustment had not been made.
- .2 In cases other than those specified in .1 above, and .4 below, a request for hearing shall not be dismissed prior to the hearing unless it has been withdrawn or abandoned.
- .21 Withdrawal
- .211 The claimant may withdraw his/her hearing request any time before a decision of the Director is signed.
- (a) Such withdrawal shall be submitted in writing. If the claimant has verbally withdrawn the hearing request prior to the hearing, and such withdrawal is unconditional, the Department will send the claimant a letter confirming the withdrawal of the request. The letter shall serve as the written withdrawal. The request for hearing shall be considered withdrawn unless within 15 days of the mailing of such letter, the Department receives notice, either submitted in writing or orally, that the claimant has not withdrawn the request for hearing.
- (b) A withdrawal may be unconditional or conditional.

HANDBOOK BEGINS HERE

- (1) See Section 22-072.71 regarding the effect of withdrawal on aid pending.

HANDBOOK ENDS HERE

22-054 DISMISSALS (Continued)

22-054

- (2) If the withdrawal is unconditional, the hearing request shall be immediately dismissed.
 - (A) The dismissal shall be without prejudice in that the claimant may be permitted to file a new hearing request raising the identical issue provided that the request is filed timely pursuant to Section 22-009.
- (3) If the withdrawal is conditional:
 - (A) The withdrawal shall be accompanied by an agreement signed by the claimant and by the county.
 - (B) Any agreement under this provision shall provide that the actions of both parties will be completed within 30 days from the date the conditional withdrawal form is signed by both parties and received by the county. See Section 22-071.14 regarding adequate notice with conditional withdrawal.
 - (C) After the county issues notice of its redetermination, if the claimant does not reinstate the hearing request within the time limits set forth in Section 22-009, the request shall be dismissed.

.22 Abandonment

- .221 If the claimant fails to appear by him/her self or by authorized representative at the scheduled hearing, the request for hearing shall be considered abandoned and a written decision shall be issued dismissing the claim.

22-054 DISMISSALS (Continued)

22-054

.222 The claimant shall have the right to request that the dismissal decision be set aside and to have a new hearing if good cause is established for not attending the hearing. Such request must be made within 15 days of the date the dismissal decision is received by the claimant.

(a) The criteria for good cause shall include, but not be limited to:

(1) The failure of the claimant to receive notice of the time and place of the hearing. The notice of the time and place of the hearing shall be mailed to the claimant's last known address and good cause shall not be established if the claimant failed to notify the county or Department of any change of address while the appeal was pending.

(2) The criteria set forth in Section 22-053.113.

(b) If a new hearing is granted and a decision dismissing the claim is set aside, any applicable aid paid pending shall be reinstated as specified in Section 22-072.611.

(c) If a new hearing is not granted and a decision dismissing the claim is not set aside, the claimant shall be notified in writing as to the specific reasons the decision was not set aside and the right to appeal such dismissal in Superior Court.

(d) The Department shall have authority to request a written declaration or other verification from the claimant to support the reason for the nonappearance.

.3 A request for hearing or portion thereof shall be dismissed by a written hearing decision when:

.31 The issue is not within the jurisdiction of a state hearing as defined in Section 22-003.1 and Welfare and Institutions Code Section 10950.

22-054	DISMISSALS (Continued)	22-054
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- .32 The request for hearing is filed beyond the time limit set forth in Section 22-009.
- .33 The Administrative Law Judge determines at the hearing that the claimant or authorized representative is unwilling to present his/her case.
- .34 The Administrative Law Judge determines that the identical issue has been the subject of a previous state hearing involving the claimant.
- .35 The person who requests the hearing does not have standing to request the hearing. See Section 22-001c.(2).
- .36 The Administrative Law Judge fails to receive a written authorization following the hearing as specified in Section 22-085.2.
- .37 The request for hearing raises a compliance issue, e.g., an allegation that the county has failed to comply with a previously adopted state hearing decision. See Section 22-078.
- .4 The Chief Administrative Law Judge, or his/her designee, shall have authority to dismiss, without a hearing and written decision, a hearing request which is subject to dismissal under Sections 22-054.31, .32 or .37.
 - .41 Prior to such dismissal, a letter setting out the reasons for the dismissal shall be sent to the claimant indicating that a dismissal shall occur within 15 days unless the claimant sets forth further facts and/or argument, orally or in writing, which would indicate that the matter should not be dismissed.
 - .42 If the claimant presents information that may indicate that the matter should not be dismissed, a hearing shall be scheduled.
 - .43 If the claimant presents information but it fails to establish that the matter should be heard, the request shall be dismissed and a hearing will not be scheduled. The claimant shall be notified of the reasons for such action.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and 45 CFR 205.10(a)(5)(8).

22-055 DISQUALIFICATION OF AN ADMINISTRATIVE LAW JUDGE 22-055

- .1 An Administrative Law Judge shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he/she cannot give a fair and impartial hearing or in which he/she has an interest.

- .2 A party may request at any time prior to the close of the record, that the Administrative Law Judge be disqualified upon the grounds that a fair and impartial hearing cannot be held or a decision cannot be rendered.
 - .21 Such request shall be ruled upon by the Administrative Law Judge prior to the close of the record. The Administrative Law Judge's determination is subject to rehearing review and judicial review in the same manner and to the same extent as other determinations of the Administrative Law Judge in the proceeding.

- .3 If, at the beginning or during the hearing, the Administrative Law Judge upholds a party's motion for disqualification, the matter shall be postponed. A postponement due to a disqualification of an Administrative Law Judge shall be considered a postponement with good cause. If, after the hearing, but before the close of the record the Administrative Law Judge determines that disqualification is appropriate, the provisions of Section 22-061 shall apply.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-056	CLAIMANT LIVING OUTSIDE OF CALIFORNIA/ INSTITUTIONALIZED CLAIMANTS	22-056
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.1 When a request for a state hearing is received from a person presently living outside of the state, or from an inmate or patient of a California penal institution or other institution, it shall be acknowledged and reported in the same manner as other requests for a state hearing.

.11 Unless the claimant voluntarily offers to return to California for the hearing or authorizes a representative in California, the parties shall be advised that the hearing will be conducted by telephone.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-059	COMMUNICATIONS AFTER HEARING	22-059
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- .1 After the hearing record is closed, communications to the Department concerning a case shall be excluded from the record and shall be disregarded prior to the adoption and release of the decision of the Director except that:
 - .11 Oral and written communications concerning the status of the decision, or the date of delivery of additional evidence to be submitted under the provisions of Section 22-053.21, or protesting an Administrative Law Judge's determination under Section 22-072.63 with respect to aid pending a hearing or a disqualification request under the provisions of Section 22-055, are not improper; and
 - .12 An Administrative Law Judge shall have authority on his/her own motion or at the request of either party to reopen the record for receipt of additional information, if all parties are notified of the reason for the reopening and the submission of such evidence conforms to the requirements of Sections 22-053.21 and .3.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code; and 11430.10(a), Government Code.

22-060	DISPOSITION OF STATE HEARINGS	22-060
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- .1 All state hearings shall be decided or dismissed within 90 days from the date of the request for state hearing except in those cases where the claimant waives such requirement or the claimant withdraws or abandons the request for hearing.
 - .11 If the claimant conditionally withdraws the hearing request under the provisions of Section 22-054.21, the 90-day period shall extend from the date on which the request for hearing is reinstated.
 - .12 In the Food Stamp Program, all state hearings shall be decided or dismissed and the claimant and CWD notified of the decision within 60 days from the date of the request for a state hearing. The same exceptions apply as stated in .1 above.
 - .121 If the issues at a state hearing concern both public assistance and food stamp benefits, the hearing shall be conducted according to public assistance procedures and the 90-day rather than the 60-day period shall apply.

22-061 SUBMISSION OF PROPOSED DECISION/ADOPTION**22-061**

- .1 After the hearing has been closed, the Administrative Law Judge shall submit a proposed decision for review by the Chief Administrative Law Judge and submission to the Director, or shall adopt a final decision pursuant to the authority delegated to the Administrative Law Judge by the Director.
- .2 If the Administrative Law Judge who heard the case is unavailable to prepare the proposed decision, the Chief Administrative Law Judge or his/her designee shall contact the claimant and the county and notify each party that the case is being assigned to another Administrative Law Judge for preparation of the decision on the record.
 - .21 The notice shall inform the claimant that he/she may elect to have a new oral hearing held in the matter, provided that he/she agrees to waive the 90-day or 60-day period set forth in Section 22-060.
 - .22 An Administrative Law Judge shall be considered unavailable within the meaning of this section if he/she:
 - .221 Is incapacitated.
 - .222 Has ceased employment as an Administrative Law Judge.
 - .223 Is disqualified under Section 22-055.
- .3 The Department shall be deemed to have received the proposed decision on the date such decision has been certified for the review of the Chief Administrative Law Judge.
- .4 Decisions rendered by Administrative Law Judges pursuant to the authority delegated to them by the Director shall be considered final upon signing and dating by the Administrative Law Judge.
- .5 Decisions issued by Administrative Law Judges shall be based exclusively on the evidence and other material introduced at the hearing, or after the hearing but while the record is open, and shall specify the reasons for the decision and identify the supporting evidence and regulations.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and 45 CFR 205.10(a)(15)(ii).

22-062 ACTION BY THE DIRECTOR 22-062

- .1 The Director after receiving the proposed decision shall:
 - .11 Adopt the decision in its entirety; or
 - .12 Decide the matter on the record, including the transcript, with or without taking additional evidence-an alternate decision; or
 - .13 Order a further hearing to be conducted.
- .2 If the Director fails to act in the manner specified in .1 above within 30 days after the Department's receipt of the proposed decision, the proposed decision shall be deemed adopted.
- .3 The decision of the Director shall be in writing.
 - .31 The decision shall include:
 - .311 A statement of the facts.
 - .312 The statutes and regulations involved.
 - .313 The reasoning which supports the decision.
- .4 The decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties.
- .5 In cases involving allegations of discrimination and preparation of a report in accordance with Section 21-203.2, the case shall be remanded to the county for the preparation of a report in accordance with Section 21-203.12.

22-063 NOTICE OF DECISION**22-063**

- .1 After the Administrative Law Judge's proposed or final decision is adopted or an alternate decision is rendered by the Director, a copy shall be mailed to the claimant and the county.
 - .11 The notice of decision shall contain:
 - .111 Applicable rehearing rights.
 - .112 A statement concerning the right to judicial review.
 - .113 A statement advising the claimant that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of the suit.
- .2 If the Director:
 - .21 Renders an alternate decision, a copy of both the Administrative Law Judge's proposed decision and the Director's alternate decision shall be mailed to the claimant and the county.
 - .22 Orders a further hearing, the State Hearings Division shall mail a copy of the voided proposed decision with the notice of the scheduled further hearing.
- .3 The Director retains jurisdiction to rectify clerical errors contained in the decision after the decision has been issued.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10959, Welfare and Institutions Code.

22-064 AVAILABILITY OF STATE HEARING RECORDS**22-064**

- .1 The recording of the hearing, or an official report containing the substance of what transpired at the hearing, together with all papers and the request filed in the proceedings, and any final, proposed or alternate decision shall constitute the exclusive record. Such materials shall be available to the claimant and the county during normal working hours at the State Hearings Division or at a mutually agreed-upon location for three years after the date of any decision issued by the Director.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10956, Welfare and Institutions Code.

22-065 REHEARING 22-065

- .1 The claimant or the county may file a request for a rehearing.
 - .11 Such request shall be in writing and shall be filed with the State Hearings Division not more than 30 days after receipt of the hearing decision.
 - .111 The request shall not be required to be in any particular form.
 - .112 For requests involving a decision issued by the California Department of Health Services, the request shall be mailed to the California Department of Social Services.
 - .113 Such request shall specify the reasons for the rehearing request.
 - .12 If the request is to permit presentation of additional evidence, the request shall:
 - .121 Describe the additional evidence;
 - .122 State why it was not previously introduced; and
 - .123 Explain its materiality.
 - .124 Explain how the additional evidence will change the outcome of the hearing decision.
 - .13 The request shall state the date the decision was received.
 - .131 In the absence of such statement, the date of receipt shall be either three days after the date of the postmark on the envelope containing the decision or three days after the date the decision was released by the Department, whichever is later.

22-065	REHEARING (Continued)	22-065
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.14 The postmark on the envelope containing the rehearing request shall be the filing date.

.141 If the postmark on the envelope is unreadable, the filing date shall be the date the request for rehearing is signed.

.142 If the postmark is unreadable and the request for rehearing is undated, the filing date shall be three days prior to the date the rehearing request is stamped "received" by the Department.

.2 Upon receipt of a timely rehearing request, the Director shall mail a copy of the request to the other party to the hearing.

.21 This party shall be permitted to file a statement supporting or opposing the rehearing request.

.211 Such statement shall be in writing and shall be filed with the Director not later than five days after service.

(a) The filing date shall be determined in accordance with the provisions of .14 above.

.3 The Director shall grant or deny the request no earlier than five nor later than 15 working days after it is received by the State Hearings Division.

.31 If the Director does not act within this period, the request for rehearing shall be deemed denied.

.4 If a request for rehearing is granted, the Director may order the Administrative Law Judge to review one, several, or all issues which were presented for review at the original state hearing. The Director may:

.41 Order a rehearing on the record to consider the evidence in the record and any additional written or documentary evidence which may be submitted by the claimant or the county. Any evidence obtained shall be submitted to the opposing party for rebuttal.

.42 Order an oral rehearing.

22-065	REHEARING (Continued)	22-065
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- .5 Where the Director orders a rehearing on the record, the claimant and the county shall be informed that either party may request that the rehearing be conducted as an oral rehearing.
 - .51 Any such requests received within 15 days of the date of the notice advising of the rehearing on the record shall be honored.

- .6 The following shall not be subject to a rehearing:
 - .61 A rehearing decision, except on an issue that was decided for the first time on the merits in the rehearing decision.
 - .62 A hearing request that has been dismissed pursuant to Section 22-054.4.
 - .63 A compliance issue as defined in Section 22-001(c)(3).

- .7 When a request for rehearing is denied, the Notice of Denial shall contain a statement concerning a right to judicial review and shall advise the claimant that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of the suit.

- .8 A rehearing request shall be permitted to be withdrawn anytime before the Department has acted upon the request.

- .9 After a rehearing request has been granted, it shall be permitted to be withdrawn by the requesting party subject to the approval of the Chief Administrative Law Judge, his/her designee or the Administrative Law Judge.

NOTE: Authority cited: Sections 10553, 10554 and 10960, Welfare and Institutions Code. Reference: Sections 10553, 10554, and 10960, Welfare and Institutions Code.

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22-069 COUNTY WELFARE RESPONSIBILITY 22-069

- .1 Each county shall furnish to the State Hearings Division the name of an individual who, in coordination with the Chief Administrative Law Judge, is responsible for discharging the requirements of Sections 22-069 through 22-078.

HANDBOOK BEGINS HERE

- .11 Sections 22-069 through 22-078 describe the responsibilities of the county in the state hearing process.

HANDBOOK ENDS HERE

- .12 The county responsibility shall include:

| .121 Submission of the original hearing request to the Administrative Law Judge at the hearing.

| .122 Review of the case and assistance to the claimant prior to the hearing; and

| .123 Presentation of the county's position during the hearing; and

| .124 Compliance with state hearing decisions.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-070 EXPLANATION OF RIGHT TO STATE HEARING 22-070

- .1 At the time of application, the county agency shall provide the applicant with the following:
- .11 A thorough explanation of the right to request a state hearing.
- .12 Pamphlet PUB 13 (1/98), "Your Rights Under California Welfare Programs," prepared by the Department concerning client rights, complaints and state hearings.
- .2 The county shall also provide the explanation required in Sections 22-070.11 when a claimant makes an informal complaint with the county agency.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-071 ADEQUATE NOTICE 22-071

- .1 Except as provided in Section 22-071.2, the county shall give the claimant adequate notice as defined in Section 22-001(a)(1) in the following instances:
 - .11 When aid is granted or increased.
 - .12 For CalWORKs and Food Stamp cases, Section 22-071.12(MR) shall become inoperative and Section 22-071.12(QR) shall become operative in a county on the date Quarterly Reporting/Prospective Budgeting (QR/PB) becomes effective in that county, pursuant to the Director's QR/PB Declaration.
 - (MR) For CalWORKs and Food Stamp cases, when aid is denied, decreased, suspended, cancelled, discontinued, or terminated.
 - (QR) For CalWORKs and Food Stamp cases, when aid is denied, decreased, not changed following a recipient mid-quarter report, cancelled, or discontinued. When aid is not changed due to a voluntary recipient mid-quarter report, the notice shall be sent as soon as administratively possible but no later than thirty days from the date the voluntary report is made.
 - .13 For all cases other than CalWORKs and Food Stamp cases, when aid is denied, decreased, suspended, cancelled, discontinued, or terminated.
 - .131 For purposes of Sections 22-071.12 and .13, a decrease shall include an overpayment adjustment and balancing.
 - .14 When the county demands repayment of an overpayment or a food stamp overissuance.
 - .15 When the county takes action after the claimant has conditionally withdrawn a request for a state hearing (see Section 22-054).
 - .16 When a food stamp application is pended (see Section 63-504.24).
 - .17 When the county determines that immediate need does not exist (see Section 40-129).
 - .18 When the county takes action regarding compliance related issues resulting from state hearing decisions (see Sections 22-001c.(3) and 22-078).
 - .19 When the county takes action to change the manner or form of payment to a protective or vendor payment.
- .2 The adequate notice requirement is not applicable to certain actions involving Social Services (Division 30) and Food Stamps (MPP Section 63-504.266).
- .3 In all cases, the notice shall be prepared on approved Department forms or a county substitution which has been approved by the California Department of Social Services, including but not limited to a county-developed computer equivalent.

22-071	ADEQUATE NOTICE (Continued)	22-071
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- .4 The notice shall be prepared in clear, nontechnical language.
- .5 If a claimant submits a request for a state hearing on the back of the notice, a duplicate copy of the notice shall be provided to the claimant on request.
- .6 When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, 11265.2, and 11265.3, Welfare and Institutions Code; and 45 CFR 255.4(j)(1) and 256.4(b).

22-072	TIMELY NOTICE - AID PENDING HEARING	22-072
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- .1 Except as provided below, in all instances where the county action would result in a discontinuance, termination, suspension, cancellation, or decrease of aid, or in a change in the manner or form of payment to a protective or vendor payment, the county shall mail timely and adequate notice as defined in Sections 22-001a.(1) and 22-001t.(1) to the persons affected.
 - .11 The provisions of Section 22-072 shall not apply to certain actions involving Social Services (see Division 30).
 - .12 In the Food Stamp Program the provisions of Section 22-072 shall be limited and modified by Sections 63-504.266, .267, 63-804.6, and 63-107.9.
 - .13 When either state or federal law requires automatic grant adjustments for classes of recipients, the Department shall provide timely and adequate notice to the persons affected or shall direct the county to give such notice at least ten days prior to the effective date of the adjustment.
- .2 Timely notice shall not be required in the following instances, although the county shall send adequate notice no later than the effective date of the action:
 - (a) The county has factual information confirming the death of the person affected.
 - (b) The county receives a clear written statement signed by the person affected that:
 - (1) He/she no longer wishes aid, or

22-072	TIMELY NOTICE - AID PENDING HEARING (Continued)	22-072
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- (2) Gives information which requires discontinuance or reduction of aid and the person has indicated, in writing, that he/she understands that this must be the consequence of supplying such information.

- (c) The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state's plan.

- (d) The person affected has been placed in a skilled nursing facility, intermediate care facility or long-term hospitalization.

- (e) The whereabouts of the person affected are unknown and the county mail directed to him/her has been returned to the Post Office indicating no known forwarding address.
 - (1) The person's aid payment shall be made available to him/her if his/her whereabouts become known during the payment period covered by the returned check.

- (f) A CalWORKs child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his/her parent or legal guardian.

- (g) The person affected has been accepted for aid in a new jurisdiction, and that fact has been established by the county previously providing aid.

- (h) A change in level of medical care is prescribed by the recipient patient's physician or modified by utilization review.

- (i) A special allowance granted for a specific period is terminated, and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

- (j) Section 22-072.2(j)(MR) shall become inoperative and Section 22-072.2(j)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

- (MR) The county receives a complete Monthly Eligibility Report (CA 7) after the eleventh calendar day of the report month and the county's action to discontinue or decrease aid is a result of the information on the CA 7 or the recipient's failure to submit a timely or complete report of earnings without good cause as specified in Section 40-181.23(MR).

22-072 **TIMELY NOTICE - AID PENDING HEARING** **22-072**
(Continued)

(QR) The county receives a complete Quarterly Eligibility Report (QR 7) after the eleventh calendar day of the QR Submit Month and the county's action to discontinue or decrease aid is a result of the information on the QR 7 or the recipient's failure to submit a timely or complete report of earnings without good cause as specified in Section 40-181.23(QR).

HANDBOOK BEGINS HERE

(1) Subsection (j) is enjoined by the injunction in Saldivar v. McMahon.

HANDBOOK ENDS HERE

(k) The CWD has made a presumption of mismanagement of CalWORKs funds based upon a recipient's nonpayment of rent.

(1) A presumption of mismanagement based upon nonpayment of rent includes the inability of a recipient to provide verification that CalWORKs Homeless Assistance was spent on shelter/housing, in accordance with Section 44-211.514(e).

(l) Section 22-072.2(l)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's AR/PB Declaration.

(QR) For CalWORKs and Food Stamp cases, the county determines there will be no change in a recipient's cash aid as a result of a recipient mid-quarter report.

.3 If timely notice is not required under the provisions of Section 22-072.2, and the claimant requests a state hearing within ten days of the required adequate notice, aid shall be reinstated retroactively, according to the provisions of Section 22-072.5.

.31 Aid shall not be reinstated retroactively if the CWD has made a presumption of mismanagement of CalWORKs funds based on the claimant's nonpayment of rent.

.4 In computing the notice period required by Section 22-072.1, the 10-day period shall not include the date of mailing, or the date that the action is to take effect.

HANDBOOK BEGINS HERE

.41 Thus, if the effective date of the action is to be June 1, the notice shall be mailed no later than May 21.

HANDBOOK ENDS HERE

22-072 **TIMELY NOTICE - AID PENDING HEARING** **22-072**
(Continued)

.5 Except as provided in Sections 22-054.1 and 22-072.7, when the claimant files a request for a state hearing prior to the effective date of the Notice of Action, which is subject to Section 22-072.1, aid shall be continued in the amount that the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid. This section shall not apply to CalWORKs (Welfare to Work) supportive services payments (see Section 42-750.213). In the Food Stamp Program, benefits shall be continued on the basis authorized immediately prior to the notice of adverse action.

HANDBOOK BEGINS HERE

.51 **EXAMPLE:** If the notice is mailed on April 20th to be effective May 1st, the request shall be filed before May 1.

HANDBOOK ENDS HERE

.52 If the notice proposing action is required to be timely and is not, the hearing request shall be required to be filed before the next date on which the proposed action could become effective based on timely notice.

HANDBOOK BEGINS HERE

.521 **EXAMPLE:** If the notice is mailed April 21 to be effective May 1, the hearing request must be filed before the next regular benefit issuance date which occurs at least ten days after the April 21 notice.

HANDBOOK ENDS HERE

.522 In the Food Stamp Program if a recipient fails to file a hearing request before the effective date of the proposed action, aid pending is appropriate provided the recipient establishes good cause with the State Hearings Division or the Administrative Law Judge (see Section 63-804.613).

22-072	TIMELY NOTICE - AID PENDING HEARING	22-072
	(Continued)	

(a) The criteria for good cause shall be as follows:

- (1) The claimant contends that he/she did not receive adequate and/or language-compliant notice and the Administrative Law Judge determines that the required notice was not received.
- (2) Any other substantial and compelling reason as determined by the Administrative Law Judge.

22-072 TIMELY NOTICE - AID PENDING HEARING
(Continued)**22-072**

.6 Aid pending shall cease when:

.61 The claimant withdraws or abandons the request for a state hearing (see Section 22-054.2). If the withdrawal is conditional, the county shall provide aid pending retroactively and prospectively if the request for a hearing is subsequently reinstated (see Section 22-054.211, provided that the claimant has complied with conditions set forth in the agreement accompanying the conditional withdrawal.

.611 If a hearing request is dismissed because the claimant failed to attend the scheduled hearing, but the decision dismissing the claim is set aside and a new hearing is granted as specified in Section 22-054.222, the county shall reinstate any applicable aid pending.

.62 The Administrative Law Judge determines, based on the record of the state hearing, that the issue involved in such hearing is one of law or change in law and not one of incorrect application of law.

.621 If the request for hearing involves multiple issues, the Administrative Law Judge shall determine that as to certain issues aid pending is appropriate while as to other issues aid pending is not appropriate. In such cases, aid may be reduced to the extent aid pending is not appropriate.

.622 If the matter is rescheduled for further hearing as specified in Section 22-062.13, the aid pending determination made by the Administrative Law Judge at the original hearing shall be considered void. Aid shall be retroactively reinstated and continued until at least the date of the further hearing in the amount the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid.

.63 The claimant voluntarily and knowingly, in writing, waived the continuation of aid.

.631 The county representative shall be permitted to explain to the claimant the right to waive aid pending but shall not be permitted to request such a waiver.

22-072	TIMELY NOTICE - AID PENDING HEARING (Continued)	22-072
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.64 The claimant is granted a postponement of the hearing by the Administrative Law Judge at the hearing for a reason that does not constitute good cause as specified in Section 22-053.113.

.641 This provision shall not apply to a first time postponement in the Food Stamp Program.

.65 In the Food Stamp Program, the certification period expires (see Section 63-804.642(a)).

.7 After the hearing, and within ten days from receipt of the aid paid pending decision, the claimant or the county may submit a written request to the State Hearings Division for reconsideration of the aid paid pending decision.

.71 Each party shall be notified of the request and the result of the reconsideration.

.8 Nothing in this chapter shall prohibit the county from instituting any appropriate changes in the recipient's grant while a state hearing is pending, provided that the factual basis of the proposed action is different from the action upon which the recipient is receiving aid pending.

.81 All such actions shall otherwise be subject to the provisions of this chapter.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, and 11265.1, Welfare and Institutions Code; 7 CFR 273.15(c)(4); 45 CFR 205.10; 45 CFR 255.2(h)(2); 45 CFR 256.2(c); and 45 CFR 256.4(d).

22-073

**COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE
STATE HEARING**

22-073

- .1 Upon receipt of a request for hearing or notice from the Department that a recipient has filed a request for a state hearing, the county shall provide aid pending the state hearing in accordance with Section 22-072, when entitlement exists.
 - .11 Such payment shall be either placed in the U.S. Mail or available for hand-delivery to the recipient (if agreed to by the county and recipient) within five working days of the receipt of the hearing request by the appropriate agency as specified in Section 22-004, or the date the regular scheduled aid payment would otherwise have been paid to the recipient, whichever is later.
 - .12 If the claimant is not entitled to aid pending the hearing, the county may continue with its proposed action.
 - .121 Unless the evidence indicates otherwise, the receipt date for purposes of providing (issuing) aid paid pending shall be determined as follows:
 - (a) The date the written request is received by the CWD for county administered aid programs or the date the request is received by the Department for all other state aid programs.
 - (b) The date the oral request is received by the Department in Sacramento.
 - .122 The CWD shall compute the five day time limitation for paying aid paid pending from the date:
 - (a) A written request for a state hearing is received by the CWD.
 - (b) The CWD is notified by the State Hearings Division that it has received a written request for a state hearing.
 - (c) An oral request for hearing is received by the Department in Sacramento.

22-073 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued) 22-073

- .123 Upon receipt of an oral hearing request, the Department shall, within one working day of that receipt, notify the county that an oral hearing request has been filed and provide the county with sufficient information to provide aid paid pending when appropriate.

- .124 Misdirected Requests
 - (a) In the event that a written hearing request is filed erroneously with the State Hearings Division, rather than with the CWD, such requests shall be forwarded to the county.

 - (b) For requests filed erroneously in a county in which the claimant does not reside, and in which the CWD has not taken any action or inaction with which the claimant is dissatisfied, these requests shall be forwarded to the Department. The Department shall forward such requests to the proper county as defined in Section 22-001c.(4).

 - (c) The provisions of Sections 22-073.122(a) and (b) shall be applicable to misdirected requests.

- .125 For state aid programs not administered by the CWD, the Department shall issue aid paid pending, when entitlement exists, to a recipient within five working days of the date a written or oral request for a state hearing is received by the Department.

- .13 Each case for which a state hearing request has been filed shall be assigned to a county representative who shall assume the major responsibility for preparing the case in accordance with the requirements of this Division and/or presenting it at the hearing. The county representative shall not have had immediate prior involvement with the case.

- .2 Prior to the hearing, the county representative shall:
 - .21 Determine the issues raised by the hearing request.
 - .211 If the request for hearing does not clearly set forth the claimant's basis for appeal, the county representative shall immediately contact the claimant for clarification.

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .22 After determining the issues, the county representative shall review the applicable statutes, regulations and policies in light of the evidence which exists in the case record.
 - .221 In conducting this initial review, the representative shall contact the eligibility worker and other county personnel as appropriate.
 - .222 When assistance of the Department is required to clarify any questions, such assistance shall be sought without delay.

- .23 After conducting the initial review, the county representative shall make a determination concerning the appropriateness of the county action and the need for and advisability of a hearing. Disagreements and misunderstandings shall be resolved quickly, at the lowest possible administrative level, thereby avoiding unnecessary hearings.
 - .231 If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant and attempt to resolve the case without a hearing.
 - (a) The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054.21 is usually appropriate in such instances.

 - .232 If the county representative concludes that the county action was correct, the county representative shall contact the claimant and:
 - (a) Inquire if the claimant plans to attend the hearing;
 - (b) Determine if there are any further contentions which the claimant will attempt to raise at the hearing; and

22-073 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued) 22-073

- (c) Provide any and all information which can be of assistance to the claimant in preparing for the hearing. This shall include revealing to the claimant any and all regulations and evidence including that which might be favorable to the claimant's case. The county representative may explain to the claimant the right to withdraw the request for hearing but shall not be permitted to request such a withdrawal. The claimant shall also be informed of the availability of any free legal representation. If the claimant is not fluent in English and if bilingual services apply as specified in Section 21-115, an explanation of the hearing procedures shall be made in the claimant's language.
- .24 The county representative shall advise the State Hearings Division if an interpreter may be necessary at the hearing or if a home hearing might be appropriate.
- .241 The county representative shall notify the State Hearings Division if the claimant has requested an interpreter or home hearing.
- .242 The county representative shall report without delay to the State Hearings Division any known changes in the claimant's address or any other circumstances which might affect the necessity for or conduct of the hearing.
- (a) This responsibility to report known changes in the claimant's circumstances continues after the hearing until a decision is rendered.
- .243 In the Food Stamp Program if a household requests a state hearing and informs the county that the household expects to leave the State prior to a normally scheduled hearing date, the county representative shall inform the State Hearings Division so that a hearing date may be scheduled and a decision rendered on an expedited basis.
- .25 Prior to each hearing, the county representative shall prepare a typewritten position statement.

22-073 COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued) 22-073

- .251 The position statement shall summarize the facts of the case and set forth the regulatory justification for the county's action.
- (a) If the issue concerns the amount of aid, grant adjustment, or a demand for repayment, the county representative shall include in the position statement a complete final budget computation, month by month, for the period in issue.
 - (b) The county shall include as attachments to the position statement copies of documentary evidence and a list of witnesses which the county intends to use during the hearing.
 - (1) The documents shall be itemized on the last page of the position statement and attached as exhibits.
- .252 If the county has received a 10-day prior notice of the date and time of the scheduled hearing, a copy of the position statement shall be made available to the claimant at the CWD, not less than two working days prior to the date of the scheduled hearing.

HANDBOOK BEGINS HERE

Example:

The hearing is scheduled for Friday. Absent any intervening holidays, the position statement shall be available by the opening of business the preceding Wednesday.

HANDBOOK ENDS HERE

- .253 If the county, when required, does not make the position statement available at least two working days prior to the date of the scheduled hearing, or if the county modifies the position statement after providing the statement to the claimant, the hearing shall be postponed upon the request of the claimant conditioned upon the waiver of decision deadlines contained in Section 22-060. A modification is defined as a change which substantively revises the position statement.

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .254 A postponement due to the county not making the position statement available within not less than two working days prior to the date of the scheduled hearing or due to the county modifying the position statement after providing the statement to the claimant, shall be considered postponement with good cause. (See Section 22-053.)

- .26 The county representative shall determine if the presence of the eligibility worker or other county witnesses would be helpful for the resolution of the issue and may have such persons available as witnesses at the hearing.

- .3 At the hearing, the county representative shall assume full responsibility for presentation of the county's case. Such presentation shall include:
 - .31 Summarizing the written position statement.
 - .32 Examining county witnesses.
 - .33 Cross- examining the claimant and the claimant's witnesses.
 - .34 Responding to any questions from the claimant or Administrative Law Judge concerning the case; and
 - .35 Having the county case record available at the hearing.
 - .36 Having the burden of going forward in the hearing to support its determination.
 - .37 Having authority at the hearing to make binding agreements and stipulations on behalf of the CWD.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-074	PRELIMINARY HEARING PROCEDURE	22-074
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| Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-075	DISMISSAL OF A PRELIMINARY HEARING	22-075
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| Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-076	PROCEDURE AFTER THE PRELIMINARY HEARING	22-076
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| Repealed by Manual Letter No. CFC-07-01, effective 1/24/07.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-077 HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID 22-077

- .1 If the hearing is to be held in a county other than the responsible county, the responsible county shall comply with one of the following procedures:
 - .11 Send a county representative, with the case record and the required position statement, to the hearing.
 - .12 Submit a written position statement that meets the requirements of Section 22-073.251.
 - .121 The position statement shall be signed under penalty of perjury and contain a waiver of procedural defects of proceeding with the hearing in the absence of the county representative.
 - .122 The position statement and pertinent documents shall be mailed at least five days prior to the hearing to the claimant, the authorized representative, and to the place of the hearing.
 - .123 If the county in which the hearing is held does not receive the position statement and attachments from the county of responsibility prior to the hearing, it shall contact the responsible county concerning such position statement and shall attend the hearing on the responsible county's behalf to provide information to the Administrative Law Judge.
 - .13 Send the case record, or a certified copy thereof, containing all relevant information in the county's possession and the required position statement, to the county in which the claimant is living, with the request that the county represent the responsible county at the hearing.
 - .131 The responsible county shall declare under penalty of perjury that the record submitted is the case record of the claimant.
 - .132 If certified copies of the record are sent instead of the original, the responsible county shall declare under penalty of perjury that the copies are true copies of the original records.

22-077 HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID 22-077
(Continued)

.133 The request shall be made in sufficient time to allow the county in which the claimant is living to arrange for representation or to notify the responsible county of its inability to provide such representation. The responsible CWD would then, necessarily follow one of the other two procedures.

.2 The responsible county shall be authorized to participate in the hearing by telephone. The responsible county shall still send the position statement to the hearing location as required by Section 22-077.12 or .13 above.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-078 COMPLIANCE WITH STATE HEARING DECISIONS 22-078

- .1 Immediately upon receipt of a decision of the Director, the county shall initiate action to comply with such decision.
 - .11 The county shall comply with such decision even if a rehearing is requested.
 - .12 The duty to comply continues if the request for rehearing is granted.
 - .13 If a rehearing decision is issued, the county shall comply with that rehearing decision to the extent it differs from the original decision.

- .2 If the decision of the Director is wholly or partially in favor of the claimant, the county shall, within 30 days of receipt of the decision, submit a compliance report, on a form approved by the Department, to the State Hearings Division.
 - .21 The compliance report shall set forth the specific manner in which the county has complied and/or is complying with the order in the decision.
 - .22 In the Food Stamp Program, decisions which result in an increase in household benefits shall be implemented according to the provisions of Section 63-804.7.
 - .221 Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

- .3 The claimant may contact the Department, orally or in writing, if he/she is dissatisfied with the compliance.
 - .31 There is no right to a state hearing if the request for hearing is based solely on a compliance issue, i.e., an allegation that the county has failed to comply with a previously adopted state hearing decision. In this situation, the substantive issue has already been resolved and the remaining issue is one of enforcement only.

22-078 **COMPLIANCE WITH STATE HEARING DECISIONS** **22-078**
(Continued)

- .4 Upon notification that the county has failed to comply with a decision, the Department is authorized to take appropriate action to ensure compliance with such decision, including seeking injunctive relief in Superior Court, as appropriate.

- .5 The claimant shall be permitted to request a new state hearing concerning his/her dissatisfaction with compliance related issues. See Section 22-001c.(3).

HANDBOOK BEGINS HERE

- .51 See Section 22-009 for the time limit on requesting a hearing.

HANDBOOK ENDS HERE

- .52 The time limitations for requesting a state hearing shall not be suspended during the period the Department is reviewing the compliance as specified in Section 22-078.6.

- .53 The county shall send adequate notice regarding compliance related issues resulting from state hearing decisions.

- .6 Upon receipt of the compliance report submitted under Section 22-078.2, the Department shall make a determination regarding the appropriateness of the compliance.
 - .61 If it is determined that the compliance is appropriate, a notification shall be sent to the claimant and the county that the compliance has been approved.

 - .62 If it is determined that the compliance is not appropriate, a notice shall be sent to the county with a copy to the claimant, with instructions regarding what steps must be taken to ensure proper compliance with the decision.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10605, and 10961, Welfare and Institutions Code.

22-085 AUTHORIZED REPRESENTATIVE

22-085

- .1 The claimant may authorize a person or organization to represent him/her during all aspects of the hearing process by signing and dating a written statement to that effect or by stating at the hearing that the person is so authorized. If the claimant is not present at the hearing, the written statement authorizing a representative to act on behalf of the claimant for hearing purposes shall be signed and dated by the claimant on or after the date of the action or inaction with which the claimant is dissatisfied.
- .11 The authorization may be limited in scope or duration by the claimant, and may be revoked by the claimant at any time. The authorization shall be presumed to be a valid authorization. Such presumption is rebuttable.
- .12 If the claimant is not present at the hearing and the written authorization does not meet the requirements set forth in Section 22-085.1, the Administrative Law Judge may proceed with the hearing if the circumstances indicate that the claimant wishes to proceed with the hearing process. In such cases, an amended authorization shall be submitted after the hearing as described in Sections 22-085.221 and .222.

HANDBOOK BEGINS HERE

- .13 The above requirements are for hearing purposes only. For pre-hearing requirements and the release of information to authorized representatives, see Section 19-005.

HANDBOOK ENDS HERE

- .2 If the claimant has not authorized the representative in writing and is not present at the hearing, the person may be recognized as the authorized representative as follows:
- .21 If the person is an attorney as defined in Section 22-001(a)(5), and he/she states on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representative regarding the issue(s) to be addressed at the hearing, the attorney shall be recognized as an authorized representative without being required to submit an authorized representative form.

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22-085 AUTHORIZED REPRESENTATIVE 22-085
(Continued)

.22 If the person is not an attorney, and he/she swears, affirms or states under penalty of perjury that the claimant is mentally competent and has authorized him/her to act as the claimant's authorized representative, and the Administrative Law Judge determines the person is so authorized, the non-attorney may represent the claimant at the hearing, subject to the following:

.221 A written authorization shall be submitted by the non-attorney within ten days of the hearing unless this time period is extended by the Administrative Law Judge.

.222 If no written authorization is submitted, the case shall be dismissed by written decision.

.23 If, at the hearing, the person cannot swear or affirm under penalty of perjury that the claimant has authorized him/her to act as the claimant's authorized representative because the claimant is incompetent, in a comatose condition, suffering from amnesia or a similar condition, the hearing may proceed at the Administrative Law Judge's discretion if the person is a relative, or a person who has knowledge of the claimant's circumstances and who completed and signed the Statement of Facts on the claimant's behalf.

.24 If the attorney or non-attorney does not state on the hearing record that the claimant is mentally competent and has authorized him/her to act as authorized representative, the attorney or non-attorney shall not be recognized as authorized representative, the hearing shall not proceed and the hearing request shall be dismissed by written decision unless Section 22-085.23 applies.

.3 Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant.

.4 After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall send copies of any subsequent notices and correspondence that it has with the claimant regarding the state hearing, to the claimant and the authorized representative simultaneously.

.41 The county's duty under Section 22-085.4 shall include the requirement to send the authorized representative any notices and/or correspondence related to a conditional withdrawal or compliance with a state hearing decision.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10950, and 10955, Welfare and Institutions Code and 45 CFR 205.10.

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**STATE HEARING AND REQUEST FOR REVIEW
REQUEST FOR REVIEW**

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DIVISION 22 STATE HEARING AND REQUEST FOR REVIEW

CHAPTER 22-100 REQUEST FOR REVIEW

22-101 DEFINITIONS 22-101

- (a) The following definitions shall apply wherever the terms are used in describing and reporting review activities in this chapter.
- (1) Complaint-A communication received from an applicant for or recipient of public social services or food stamps; a person acting for the applicant or recipient such as a legal guardian, relative, friend, or other spokesperson who has knowledge of his/her need; relatives found liable for contributions; another person, including an anonymous person; which includes but is not limited to:
 - (A) A request or implication of a request for some review or service by the CWD or the Department.
 - (B) An expression of misunderstanding or dissatisfaction with some specific action, lack of action, or series of actions by a county or counties affecting an application for or receipt of public social services or food stamps.
 - (C) A request or implication of a request for review and negotiation with the county regarding possible adjustment rather than a state hearing.
 - (D) A report of fraud or misuse of funds by recipients or misues of food stamps.
 - (2) State Hearing-An administrative hearing procedure established pursuant to Sections 10950 through 10965 of the Welfare and Institutions Code, see Operations Manual Section 22-001.

22-105 REQUEST FOR REVIEW -- GENERAL 22-105

- .1 Any expression of misunderstanding or dissatisfaction, oral or written, shall be accepted as a request for review.
- .11 At such time the right to a state hearing and aid paid pending shall be explained.

22-107	COUNTY DEPARTMENT OR CALIFORNIA DEPARTMENT OF SOCIAL SERVICES REVIEW	22-107
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- .1 A dissatisfied person may request the CWD or the Department to review county action, or failure to act in any matter relating to his/her grant, food stamps, or treatment.
 - .11 The individual shall be encouraged to exhaust CWD adjustment procedures before requesting the Department to review his/her problem.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-109	CWD RESPONSIBILITY	22-109
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- .1 Availability of Review
 - .11 In all individual relationships the CWD shall strive for prompt, simple, and precise explanations of its actions to assure the maximum understanding on the part of the individuals.
 - .111 If this is not achieved between the individual and the social worker, the CWD shall be responsible for providing, administratively, a process through which the individual will receive an appropriate explanation or a resolution of his/her problem.
- .2 Designation of Staff to Conduct Review
 - .21 The CWD, in accordance with its size and/or administrative structure, shall specifically designate staff to be responsible for the activities connected with requests for review.
 - .211 Such staff shall:
 - (a) Be in a position to reassess promptly the client's situation in the light of applicable regulations with freedom to consider alternatives other than confirmation of the action under review.

22-109	CWD RESPONSIBILITY (Continued)	22-109
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(b) Have authority to take immediate action and effect any adjustment as may be appropriate.

.212 The staff review shall discover and correct any of the following:

(a) Failures of communication between complainant and worker.

(b) Erroneous application of public social service or food stamp regulations.

(c) Failure to provide aid and services promptly and humanely, without discrimination, and in a manner as to encourage self-respect and self-reliance.

.3 Dissatisfaction with Review

.31 As part of the review process, the client shall be informed by county staff of his/her right to a state hearing.

.4 Complaint Records and Analysis

.41 In the Food Stamp Program, counties shall maintain records of complaints received and their dispositions (see Section 22-101(a)(1)), and shall review records at least annually to assess whether patterns of problems exist in local offices or throughout the county.

.411 The results of this review shall be reported annually to the Department on the report form provided by the Department.

22-113 CALIFORNIA DEPARTMENT OF SOCIAL SERVICES RESPONSIBILITY 22-113

- .1 The Department shall be responsible for providing a process whereby the individual who has not achieved an understanding with the county may have his/her situation reassessed and reviewed promptly.

HANDBOOK BEGINS HERE

- .11 The review by the Department is conducted by the Public Inquiry and Response Unit. A request for review is to be distinguished from the preliminary hearing procedure described in Section 22-074.

HANDBOOK ENDS HERE

- .2 The Department's complaints staff shall:
 - .21 Receive the request for review;
 - .22 Contact the designated staff in the appropriate county;
 - .23 Inform the county of the client's problem; and
 - .24 Request that the problem be promptly reassessed.
- .3 The Department staff may inform the county of the intent or meaning of applicable regulations.
- .4 As part of the review process the client shall be informed of his/her right to a state hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

**STATE HEARING AND REQUEST FOR REVIEW
ADMINISTRATIVE FRAUD HEARINGS - GENERAL**

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22-201 **GENERAL PROVISIONS (Continued)** **22-201**

| .4 Definitions

| .41 The definitions in Section 22-001 shall apply to this chapter. The following additional definitions, in alphabetical order, shall apply wherever the terms are used in this chapter:

| .411 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an administrative disqualification hearing at the state level and by the CWD-designated hearing official after a local level hearing.

| .412 Notice of Hearing - Means the written notification which initiates an administrative disqualification hearing (see Section 22-202.3) and is provided as follows:

| (a) At the state level, CDSS shall provide written notification to the respondent and the CWD and

| (b) At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

| .413 Respondent - Means the household member(s) who the CWD has determined may be subject to administrative disqualification. To the extent the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the administrative disqualification hearing.

| .5 Procedures Governing State Hearings Also Applicable to Administrative Disqualification Hearings

| (a) The following provisions of Chapter 22-000 shall be applicable to administrative disqualification hearings:

| (1) Section 22-002 relating to determination of time limit;

| (2) Section 22-010 relating to authorized representatives;

22-201	GENERAL PROVISIONS (Continued)	22-201
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- (3) Section 22-023.13 relating to assignment of county representatives;
 - (4) Section 22-023.2 relating to duties of county representatives prior to and at the hearing;
 - (5) Section 22-025 relating to situations where the hearing is held in a county other than the responsible county;
 - (6) Sections 22-045.1 and .2 relating to the time and place of the hearing;
 - (7) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
 - (8) Section 22-050 relating to evidence;
 - (9) Section 22-051 relating to the examination of records and issuance of subpoenas;
 - (10) Section 22-052 relating to witness fees and mileage;
 - (11) Section 22-053.2 relating to continuances for additional evidence;
 - (12) Section 22-055 relating to disqualification of hearing officers;
 - (13) Section 22-059 relating to communications after the hearing.
- .6 Both the CWD's representative and the claimant's representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, then he/she may not be present as an adviser until after he/she has testified.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i).

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22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (ADH) 22-202

- .1 When the CWD determines, based on clear and convincing evidence, that a household member(s) is subject to disqualification from the Food Stamp Program because of a suspected intentional Program violation and believes the household member(s) should be disqualified in accordance with Division 20, Chapter 20-300 the CWD shall:
 - .11 Notify the Chief Administrative Law Judge in writing; and,
 - .12 Request that an administrative disqualification hearing be scheduled.
 - .121 The notification shall set forth the charges against the respondent and contain a summary of the evidence.
- .2 The request for a state or local level hearing shall be reviewed and signed by a county supervisory employee to ensure that clear and convincing evidence exists for an IPV hearing request.
- .3 CDSS shall monitor that the requests sent pursuant to Sections 22-201.1 and .2 are appropriate for IPV consideration in that they represent cases in which clear and convincing evidence has been identified to warrant the scheduling of such hearing.
 - .31 Upon receipt of the request described in Section 22-201.1 or .2, the Department or the CWD shall schedule an administrative disqualification hearing.
- .4 Waiver of Right to an Administrative Disqualification Hearing
 - .41 A waiver request form shall be sent with the Notice required by Section 22-202.5 to the respondent. The waiver request form shall be a written notification which informs respondent of the possibility of waiving the ADH. This waiver request form shall include:
 - (a) The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing or to the CWD in the case of a local level hearing. If the respondent fails to sign the return the waiver request to the Department within 20 days from the date of the notice, the ADH shall be held as scheduled.
 - (b) A signature block for the respondent's and the head of household's signature.

22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING 22-202
(Continued)

- (c) A statement that the head of the household must sign if the respondent is not the head of the household.
- (d) A statement of the respondent's right to remain silent concerning the charge(s) against the respondent and that anything said or signed by the respondent concerning the charge(s) can be used against the respondent in a court of law.
- (e) A statement indicating that the waiver of the respondent's right to an ADH will result in disqualification and a reduction in benefits for the period of disqualification even if the respondent does not admit to the facts as presented by the CWD.
- (f) Statements indicating whether the respondent wishes to admit that facts as presented are correct. Those statements shall be worded as follows:
 - (A) I admit to the facts as presented, and understand that a disqualification penalty shall be imposed if I sign this waiver.
 - (B) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty shall result.
- (g) The telephone number and name of the CWD representative to contact for additional information about the ADH, and the waiver request.
- (h) A statement informing the remaining household members that they shall be held responsible for repayment of the resulting claim, unless the claim has already been paid.
- (i) A statement that the signing of the waiver form is entirely voluntary and that failure to sign the form shall not affect eligibility.
- (j) A statement that the respondent's income and resources shall continue to be counted in the food stamp household's eligibility determination even though the respondent is disqualified from participation in the Food Stamp Program.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING	22-202
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(Continued)

- (k) A warning of the disqualification penalties which could be imposed (as provided in Section 20-300.31) and a statement of which penalty shall be imposed as a result of the respondent having consented to disqualification.
 - (l) A statement in bold print that says, "DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!."
- .42 If the respondent voluntarily and knowingly submits a signed waiver of his/her right to an ADH within the 20-day period to the Department in a state level hearing, or to the CWD in a local level hearing, the Department in a state level hearing, or the CWD in a local level hearing, shall submit a signed copy of the waiver to the CWD and shall notify the CWD to initiate the notification of disqualification action and imposition of disqualification penalties in accordance with CDSS' Manual of Policies and Procedures, Division 20, Sections 20-300.24, .3, and .4.
- .43 No further administrative appeal procedure exists after a respondent waives his/her right to an ADH and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent ADH or a state hearing decision. The respondent, however, is entitled to seek relief in a court having appropriate jurisdiction.
- .44 The CWD shall inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
- .441 The written notice shall be provided in person or by mail pursuant to Section 22-202.511 et seq., except Section 22-202.511(a).
- (a) The notice shall contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
- .442 The waiver shall be as described in Section 22-202.4.
- (a) The notice shall contain language that informs the respondent that he/she may rescind the waiver within seven (7) working days after the date the waiver was signed if, after signing the waiver, the respondent changes his/her mind.
 - (b) The notice shall contain language that informs the respondent how to obtain a copy of the state's applicable published hearing procedures.

22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING 22-202
(Continued)

.443 The CWD shall not use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.

.5 Notice of Hearing

.51 CDSS for the state level hearing, or the CWD for the local level hearing, shall send a written notice to the respondent, with a copy to the CWD at least 30 days in advance of the date of the hearing or of a consolidated hearing.

.511 The notice shall either be personally served or sent by first class regular mail. If no proof of receipt is obtained, evidence of nonreceipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain, at a minimum:

- (a) The date, time, and place of the hearing.
- (b) A statement that the respondent is entitled to one postponement and may receive additional postponements for good cause. The total period for all postponements shall not exceed 30 days, and the request for postponement must be made at least 10 days in advance of the date of the scheduled hearing.
- (c) The charges against the respondent.
- (d) A summary of the evidence, and how and where the evidence can be examined.
- (e) A warning that the decision will be based solely on information provided by the CWD if the respondent fails to appear at the hearing.
- (f) A warning that an individual found to have committed an intentional Program violation shall be ineligible to participate in the Food Stamp Program for six months for the first violation, 12 months for the second violation, and permanently for the third violation and a statement of which penalty the CWD believes is applicable to the respondent's case.

22-202	NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (Continued)	22-202
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- (g) A listing of the respondent's rights as contained in Section 22-049.7.
- (h) A statement that the hearing does not preclude the County, State or Federal government from prosecuting the respondent for the intentional Program violation in a civil or criminal court action, or from collecting an overissuance related to the alleged intentional Program violation.
- (i) A statement that the respondent can call the CWD to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the CWD shall provide when called, the phone number of a lawyer referral service or the local bar association.
- (j) Language that informs the respondent how to obtain a copy of the state's applicable published hearing procedures.
- (k) A statement that in order to reschedule the hearing, the respondent shall have 10 days from the date of the scheduled hearing to present good cause for failure to appear, as set forth in Section 22-053.14.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e) and (f); and United States Department of Agriculture, Food and Consumer Service, Waiver Number 950048.

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22-210 HEARING PROCEDURE 22-210

- .1 Local level and state level IPV ADHs shall be conducted pursuant to the applicable provisions of Chapter 22-000.
 - .11 The hearing officer shall advise the respondent that he/she may refuse to answer questions during the hearing.
 - .12 The hearing shall be conducted by an impartial ALJ at the state level, or an impartial hearing official at the local level who has not had previous involvement in the case.
 - .13 The ALJ and local level hearing officials shall prepare fair, impartial, and independent decisions.

HANDBOOK BEGINS HERE

- .14 See Section 22-330 for instances when a Food Stamp ADH can be combined with an AFDC ADH.

HANDBOOK ENDS HERE

.2 Postponements

At the request of the respondent, the Office of the Chief Administrative Law Judge shall be permitted to postpone the hearing for a period of up to 30 days provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

- .21 The Office of the Chief Administrative Law Judge shall be permitted to limit the number of the postponements to one unless there is good cause established in accordance with Section 22-053.14.
- .22 The total period for one or more postponements shall not exceed 30 days.
- .23 The time limit for rendering a decision on the hearing may be extended for the length of time the hearing is postponed.

.3 Cancellation of Hearing

If after a hearing has been scheduled, the CWD finds that further evidence indicates that an administrative disqualification is no longer appropriate, it shall notify the Chief Referee.

22-210 **HEARING PROCEDURE (Continued)** **22-210**

.31 The Chief Referee shall then notify the respondent and the CWD that the administrative disqualification hearing is cancelled.

.4 Respondent Fails to Attend Hearing

.41 If the respondent cannot be located or fails to appear at a hearing, the hearing shall be conducted in the absence of the respondent.

.411 The hearing officer shall review the evidence presented by the county and prepare a decision based upon that evidence.

.42 If the respondent establishes good cause for failure to attend the hearing, a new hearing shall be scheduled.

.421 The criteria for good cause shall be the criteria set forth in Section 22-053.14.

.422 The respondent shall establish good cause for failure to attend the hearing no later than 10 days after receiving the hearing decision.

.423 The respondent shall establish good cause by contacting the Chief Referee by letter or by telephone.

(a) The Chief Referee shall have authority to require that the respondent submit verification of good cause.

.424 The respondent and the CWD shall be notified in writing of the good cause determination and the determination shall be placed into the hearing record.

.425 If good cause is established, the hearing decision shall have no affect on the respondent's status. Nor shall it affect the household's continuing benefit, except as provided in Section 63-805.2.

(a) Pending the rehearing decision, any benefits lost to the household as a result of the rescinded decision shall be restored in accordance with Section 63-802.1.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16.

22-215 LOCAL LEVEL HEARINGS **22-215**

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-220.2 shall also inform the household member:
 - .21 Of the right to appeal the local level decision within 25 days after the date the notice has been sent to the respondent by the county (see Section 22-340.6);
 - .22 Of the date the disqualification shall take effect unless a state level hearing is requested; and
 - .23 That benefits shall be continued pending a state level de novo hearing if the household is otherwise eligible.
- .3 If the household member appeals the local level decision, the advance notice of the state level hearing, as specified in Section 22-202 shall be mailed to the respondent at least 15 days prior to the date of the scheduled state level hearing and shall also inform the household member that the local hearing decision shall be upheld if the household or its representative fails to appear without good cause for the hearing.
- .4 The local level hearing decision shall be made within 90 days from the date of the notice scheduling the hearing.
- .5 When a local level decision is appealed, CDSS shall conduct the state level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .51 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .6 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i).

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22-220	HEARING DECISION	22-220
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- .1 After the hearing has been closed, the hearing officer shall prepare a written decision.
- .2 The decision shall include:
 - .21 A statement of facts.
 - .22 The statutes and regulations involved.
 - .23 The reasoning which supports the decision.
 - .24 Responses to arguments raised by the respondent.
- .3 Any determination of an intentional Program violation which is made in such a decision shall be based upon clear and convincing evidence.
- .4 The hearing officer's proposed decision shall be subject to the review of the Chief Referee and the Director.
 - .41 The Chief Referee or Director shall have the authority to reject the proposed decision of the hearing officer and prepare a separate decision based upon the record in the case or to order an additional hearing.
 - .42 Any such decision shall be subject to the provisions of Section 22-220.2.
- .5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
 - .51 If the decision is adverse to the respondent, the decision shall notify the respondent of the right to judicial review, and shall advise the respondent that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of suit.

22-230 DISPOSITION OF ADMINISTRATIVE DISQUALIFICATION HEARINGS 22-230

- .1 All administrative disqualification hearing decisions shall be mailed within 90 days of the date of the notice of hearing described in Section 22-202.3.
 - .11 If the decision results in upholding the disqualification of the respondent, the CWD shall initiate the administrative action in accordance with SDSS' Manual of Policies and Procedures, Division 20, Chapter 20-300.
 - .12 If the hearing is postponed (see Section 22-210.2), the 90-day period shall be extended by the period of time that the case is postponed.
 - .13 If a new hearing is scheduled pursuant to Section 22-210.42, a new 90-day period shall commence from the date the respondent and CWD are notified of the new hearing.
 - .14 If a hearing is continued or postponed, (see Section 22-053) the respondent shall be given a written notice that explains that the time limit for rendering a decision will be extended by the same number of days as the hearing is postponed or continued.
 - .15 An administrative disqualification decision is not subject to the provisions of Section 22-065.
 - .151 There is no right to a rehearing regarding a finding of intentional Program violation.
 - .152 A decision finding intentional Program violation shall inform the respondent concerning the right to judicial review.

22-240 CONSOLIDATION OF ADMINISTRATIVE DISQUALIFICATION HEARING WITH STATE HEARING 22-240

- .1 At his/her discretion or upon the request of the respondent or the CWD, the Chief Referee shall have the authority to consolidate requests for a state hearing with an administrative disqualification hearing.
 - .11 If the factual issues arise out of the same, or related circumstances and the household receives prior notice (as required in Section 22-202.3) then the hearings will be combined. However, the respondent, upon request, shall be allowed to waive the 30-day advance notice when the hearing requests are consolidated.

22-240	CONSOLIDATION OF ADMINISTRATIVE DISQUALIFICATION HEARING WITH STATE HEARING (Continued)	22-240
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- .12 In such cases, although only one actual hearing may be held, the procedures governing the administrative disqualification hearing aspect of the case and the state hearing aspect shall be separately identified and followed.
 - .13 The hearing officer shall have the authority to:
 - .131 Sever the proceedings and hold each hearing separately.
 - .132 Postpone or continue the state hearing and not postpone or continue the administrative disqualification hearing or vice versa.
 - .14 If a state hearing case is consolidated under this section, the time limits for its disposition, shall be the same as for the administrative disqualification hearing, (see Section 22-230).
 - .15 If a state hearing case is consolidated under this section, for the purpose of settling the amount of the claim at the same time as determining whether or not an intentional Program violation has occurred, the respondent shall lose the right to a subsequent state hearing on the amount of the claim.
- .2 A pending administrative disqualification hearing shall not affect the individual's or household's right to be certified or to participate in the Food Stamp Program.
- .3 In the Food Stamp Program, when the determination of intentional Program violation is reversed by the court, the CWD shall reinstate the individual if the household is eligible in accordance with procedures in CDSS' Manual of Policies and Procedures, Division 63, Section 63-805.2.

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**STATE HEARING AND REQUEST FOR REVIEW
AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL**

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STATE HEARING AND REQUEST FOR REVIEW

Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-305 (Cont.)

CHAPTER 22-300 AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL

22-301 ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADHs) - GENERAL 22-301

- .1 The regulations in this chapter shall apply to hearings resulting from a county welfare department's (CWD's) determination, supported by documentation in the CWD's possession, that an individual has allegedly committed an intentional program violation (IPV) in the AFDC program as set forth in the California Department of Social Services (CDSS) Manual of Policies and Procedures, Division 20, Chapter 20-350.
- .2 Administrative disqualification hearings are distinct from the state hearings discussed in Chapter 22-000.
- .3 Those cases in which the prosecuting authority has determined (a) that facts do not warrant prosecution, or (b) those cases previously referred for prosecution and declined, shall be returned to the CWD and the CWD shall initiate referral action for an ADH through CDSS, in accordance with CDSS Manual of Policies and Procedures, Division 22.
- .4 The CWD shall not initiate an ADH against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of the appropriate jurisdiction, if the factual issues of the case arise out of the same or related circumstances.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(a)(1) and 45 CFR 235.112(a).

22-305 GENERAL PROVISIONS 22-305

- .1 An ADH at the state level shall be initiated when a CWD informs the Department that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
 - .11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.
- .2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.

22-305 GENERAL PROVISIONS 22-305
(Continued)

- .21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.
- .3 In both state and local level hearings, the CWD shall remain responsible for:
 - .31 Investigating the case and assisting the respondent prior to the hearing;
 - .32 Presenting the CWD's position during the hearing; and
 - .33 Complying with the hearing decision.

.4 Definitions

The definitions in Section 22-001 shall apply unless they are specifically provided for in this chapter. The following additional definitions, in alphabetical order, shall apply wherever the terms are used in this chapter:

- .41 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an ADH at the state level and by the CWD-designated hearing official after a local level hearing.
- .42 Intentional Program Violation (IPV) - Means an action by an individual, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant, which is intentionally:
 - .421 A false or misleading statement or misrepresentation, concealment, or withholding of facts, or
 - .422 Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

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(a) To determine what constitutes an IPV, CDSS recognizes a distinction in the following:

(1) Handbook Section 22-305.422(a)(1)(MR) shall become inoperative and Handbook Section 22-305.422(a)(1)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

Intentional concealment or willful misrepresentation which may result in an IPV.

(MR) EXAMPLE: In completing the Monthly Eligibility Reports (CA 7), respondent checks the box indicating family has no income. Respondent also checks box indicating that no one had started employment that month. County evidence indicates respondent did start work during the month it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

(QR) EXAMPLE: In completing the Quarterly Eligibility Report (QR 7), respondent checks the box indicating the family has no income. Respondent also checks box indicating that no one had started employment in the QR 7 Reporting Period. County evidence indicates respondent did start work during the QR Data Month, but it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

(2) Handbook Section 22-305.422(a)(2)(MR) shall become inoperative and Handbook Section 22-305.422(a)(2)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

Incorrect representation, negligence, or omissions because of a mistake or a lack of understanding of eligibility requirements which do not result in an IPV.

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(MR) EXAMPLE: Respondent reports that he/she began employment the last week of the reporting month, and that he/she will be paid every two weeks. Respondent completes the next CA 7 and checks the: "No" box for income received in the month.

(QR) EXAMPLE: Respondent reports on the QR 7 that he/she began employment the last week of the Data Month, and that he/she will be paid every two weeks. Respondent completes a subsequent QR 7 and checks the "No" box for income received in the month.

(3) Handbook Section 22-305.422(a)(3)(MR) shall become inoperative and Handbook Section 22-305.422(a)(3)(QR) shall become operative in a county on the date QR/PB becomes effective in that county, pursuant to the Director's QR/PB Declaration.

The CWD's omission, neglect, or error in explaining requirements for assistance or in processing information, which does not result in an IPV.

(MR) EXAMPLE: Respondent completes CA 7 without answering question relating to household's receipt of income during the month. Respondent does this for five months and CWD fails to return the CA 7 as incomplete. Evidence establishes respondent had income in each of these months.

(QR) EXAMPLE: Respondent completes QR 7 without answering question relating to household's receipt of income during the Data Month. Respondent does this for two quarters and the county fails to return the QR 7 as incomplete. Evidence establishes respondent had income during the Data Month.

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STATE HEARING AND REQUEST FOR REVIEW

Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-305 (Cont.)

22-305 GENERAL PROVISIONS 22-305
(Continued)

- .43 Notice of Hearing - Means the written notification, as specified in Section 22-315.5, which initiates an ADH and is provided as follows:
 - .431 At the state level, CDSS shall provide written notification to the respondent and the CWD and
 - .432 At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

- .44 Respondent - Means the member(s) of the assistance unit (AU) who the CWD has determined may be subject to administrative disqualification. To the extent that the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the ADH.

22-305 GENERAL PROVISIONS 22-305
(Continued)

- .45 Sufficient Evidence - Means the documentary and other evidence in the CWD's possession that the CWD determines may establish that the respondent has committed an IPV based on a preponderance of evidence as the standard of proof.
- .5 The following provisions of Chapter 22-000, State Hearings - General, shall be applicable to ADHs:
- (a) Section 22-002 relating to determination of time limit;
 - (b) Section 22-010 relating to authorized representatives;
 - (c) Section 22-023.13 relating to assignment of county representatives;
 - (d) Sections 22-023.2 and .3 relating to duties of county representatives prior to and at the hearing;
 - (e) Section 22-027 relating to situations where the hearing is held in a county other than the responsible county;
 - (f) Sections 22-045.1 and .2 relating to the time and place of the hearing;
 - (g) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
 - (h) Section 22-050 relating to evidence;
 - (i) Section 22-051 relating to the examination of records and issuance of subpoenas;
 - (j) Section 22-052 relating to witness fees and mileage;
 - (k) Section 22-053.2 relating to continuances for additional evidence;
 - (l) Section 22-055 relating to disqualification of ALJs;
 - (m) Section 22-059 relating to communications after the hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 11265.1, 11265.2, and 11265.3, Welfare and Institutions Code; and 45 CFR 235.112(b) and .113(b)(2).

22-315 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING 22-315
(Continued)

- .5 CDSS for the state level hearing, or the CWD for the local level hearing, shall send a written notice to the respondent alleged to have committed the IPV which is received by the respondent at least 30 days prior to the date of the disqualification hearing. The notice shall be either personally served or sent by first class regular mail. If no proof of receipt is obtained, evidence of nonreceipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall include the following:
- (a) The date, time and location of the hearings;
 - (b) The charge(s) against the respondent;
 - (c) A summary of the evidence, and how and where the evidence can be examined;
 - (d) A warning that the respondent's failure to appear without good cause shall result in a decision by the ALJ or hearing official based solely on the information provided by the CWD at the hearing;
 - (e) A statement that the respondent may request a postponement of the hearing as specified in Section 22-325 provided that such request is made to CDSS, or CWD in the case of a local level hearing, at least 10 days in advance of the scheduled hearing;
 - (f) A statement that the respondent may request a postponement within 10 days of the hearing if good cause is present;
 - (g) A statement that the respondent has 10 days from the date of the scheduled hearing to present to CDSS at the state level, or CWD in the case of a local level hearing, good cause for failure to appear in order to receive a new hearing;
 - (h) A description of the penalties that can result from a determination that the respondent has committed an IPV and a statement of which penalty is applicable to the respondent;
 - (i) A statement that the hearing does not preclude the county or state government from prosecuting the respondent for an IPV in a civil or criminal court action, or from collecting an overpayment;

STATE HEARING AND REQUEST FOR REVIEW

Regulations **AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL** **22-315**

22-315 **NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING** **22-315**
(Continued)

- | (j) A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed IPV's;

- | (k) An explanation that the respondent may waive his/her right to appear at an ADH (see Section 22-320); and

- | (l) A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him/her in a court of law.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR | 235.113(b)(2), (b)(3), and (b)(8).

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STATE HEARING AND REQUEST FOR REVIEW

Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-320 (Cont.)

22-320 WAIVER OF THE ADMINISTRATIVE DISQUALIFICATION HEARING 22-320

- .1 The respondent shall be allowed to waive his/her right to appear at an ADH.
- .2 The respondent shall be informed by the written notice as specified in Section 22-315.5(k) of the opportunity to waive his/her right to a hearing.
 - .21 The statement that the respondent may waive the right to appear at an ADH shall include at a minimum:
 - .211 The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing, or to the CWD in the case of a local level hearing. If the respondent fails to sign and return the waiver request within such time period, the ADH shall be held as scheduled.
 - .212 A signature block for the respondent's and the caretaker relative's signature.
 - (a) A statement that the caretaker relative must sign if the respondent is not the caretaker relative.
 - .213 A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him or her in a court of law;
 - .214 A statement of the fact that waiver of the respondent's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the respondent does not admit to the facts as presented by the CWD; and
 - .215 A statement specifying that the respondent has an opportunity to specify whether or not he/she admits to the facts as presented by the CWD.
 - .216 A statement in bold print that says, "DO NOT SIGN THIS IF YOU DO NOT KNOW WHAT IT MEANS!."
 - .3 The CWD shall inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
 - .31 The written notice shall be provided in person or by mail pursuant to Section 22-315.5 et seq., except Section 22-315.5(a).

22-320 WAIVER OF THE ADMINISTRATIVE DISQUALIFICATION HEARING 22-320
(Continued)

- .311 The notice shall contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
- .32 The waiver shall be as described in Section 22-320.21.
- .321 The notice shall contain language that informs the respondent that he/she may rescind the waiver within seven (7) working days after the date the waiver was signed if, after signing the waiver, the respondent changes his/her mind.
- .33 The CWD shall not use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.
- .4 When the respondent waives his/her right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the respondent admits or denies the charges.
 - .41 CDSS, or the CWD in the case of a local level hearing, shall send a written notice informing the respondent of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period.
 - .42 If a case has been terminated the disqualification period shall be imposed after a reapplication for AFDC assistance is approved.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10); 7 CFR 273.16(f)(1); and 45 CFR 235.113(c)(1), (2), and (3).

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STATE HEARING AND REQUEST FOR REVIEW

Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-330 (Cont.)

22-330 HEARING PROCEDURES

22-330

- .1 Local level and state level IPV ADHs shall be conducted pursuant to the applicable provisions of Chapter 22-000.
- .11 The hearing shall be conducted by an impartial ALJ at the state level, or an impartial hearing official at the local level who has not had previous involvement in the case.
- .12 The ALJ and local level hearing officials shall prepare fair, impartial, and independent decisions.
- .2 Medical assessments shall be obtained at the expense of CDSS and made part of the record if the ALJ or hearing official considers it necessary.
- .3 The respondent or his/her representative shall have adequate opportunity to:
 - .31 Examine the contents of the case file, and all documents and records to be used at the hearing by CDSS at the state level, or the CWD at the local level, at a reasonable time before the date of the hearing, and during the hearing;
 - .32 Present the case himself/herself or with the aid of an authorized representative;
 - .33 Bring witnesses;
 - .34 Establish all pertinent facts and circumstances;
 - .35 Advance any arguments without undue influence; and
 - .36 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- .4 CDSS at the state level, or the CWD at the local level, shall combine a respondent's Food Stamp and AFDC ADHs into a single hearing if the factual issues arise out of the same or related circumstances.
- .5 CDSS at the state level may consolidate a respondent's state hearing governed by 45 CFR 205.10 with a disqualification hearing based on the same or related circumstances provided that the respondent receives prior written notice of the consolidation.
 - .51 If the hearings are combined, CDSS shall follow the time frames for conducting ADHs.

22-330 HEARING PROCEDURES 22-330
(Continued)

- .6 Both the CWD and the claimant shall have the right to have a representative present throughout the hearing.
- .7 Both the CWD's representative and the claimant's representative as specified in Section 22-330.6 shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and, in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, then he/she may not be present as an adviser until after he/she has testified.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(a) and 45 CFR 235.113(b)(1), (5), (6), and (7).

22-335 LOCAL LEVEL HEARINGS 22-335

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-340.7 shall also inform the household member:
 - .21 Of the right to appeal the decision within 25 days after the date the notice has been sent to the respondent by the county (see Section 22-340.6);
 - .22 Of the date the disqualification will take effect unless a state level hearing is requested; and
 - .23 That benefits shall be continued pending a state level hearing if the household is otherwise eligible.

22-335 LOCAL LEVEL HEARINGS 22-335
(Continued)

- .3 If the household member appeals the local level decision, the advance notice of the state level hearing, as specified in Section 22-315 shall be mailed to the respondent at least 15 days prior to the date of the scheduled state level hearing.

- .4 When a local level decision is appealed, CDSS shall conduct the state level de novo hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .41 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.

- .5 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 7 CFR 273.16(e)(10)(i); 45 CFR 235.113(b), (b)(2), (b)(11), and (b)(12).

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS 22-340

- .1 Decisions made by the ALJ or hearing official shall be based exclusively on evidence and other material introduced in the hearing record.
 - .11 The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the ALJ or hearing official shall be made available to the respondent or to his/her representative at a reasonable time and place.

- .2 After the hearing has been closed, the ALJ or hearing official shall prepare a written decision.

- .3 Decisions by the hearing authority shall:
 - .31 In the event of a local level hearing, consist of a decision memorandum summarizing the facts and identifying the regulations supporting the decision;

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS **22-340**
(Continued)

- .32 In the event of any CDSS hearing, specify the reasons for the decision and identify the supporting evidence and regulations; and
- .33 Be made within 90 days from the date of the notice scheduling the hearing. (Sixty days from the request for a state level de novo hearing after a local level hearing decision.)
- 4 The Director or Chief Administrative Law Judge or his/her designee shall have the authority to reject the proposed decision of the ALJ and prepare a separate decision based upon the record in the case or to order an additional hearing.
- 5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
- 6 The CWD may not disqualify a respondent unless the decision of the ALJ finds that the respondent has committed an IPV or the respondent fails to request a state level de novo hearing within 25 days of the notice of an adverse local level hearing decision that proposes to disqualify the respondent has been sent to the respondent.
- .61 The CWD is not precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

HANDBOOK BEGINS HERE

- .611 For example, the CWD may have facts which substantiate that the AU failed to report a change in circumstances even though the CWD has not yet demonstrated that the failure to report was an IPV.

HANDBOOK ENDS HERE

- .7 If the decision of the ALJ, or hearing official at the local level hearing, finds that the respondent committed an IPV, the CWD shall provide a written notice to the respondent prior to disqualification.
- .71 The notice shall inform the respondent of the following:
 - .711 The decision and the reason for the decision;

STATE HEARING AND REQUEST FOR REVIEW

Regulations AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL 22-345 (Cont.)

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS 22-340
(Continued)

.712 The period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice); and

.713 The amount of payment the AU will receive during the disqualification period.

.72 In cases of a respondent's disqualification resulting from a prior receipt of assistance, the disqualification shall be postponed until after a reapplication for AFDC assistance is approved.

.8 If the respondent does not appear at the state level or local level hearing, a reopening of the case may be requested within 10 days of the hearing by the respondent. If good cause is established, a new hearing shall be scheduled.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.113(b)(3)(ii)(F) and (b)(8) through (12).

22-345 DISQUALIFICATION PENALTIES 22-345

.1 A respondent who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an IPV pursuant to this chapter by a state or local level ADH or by a state or federal court shall be treated in the following manner:

.11 The CWD shall not take the respondent's needs into account when determining the AU's need and amount of assistance.

.12 Any resources and income of the disqualified respondent shall be considered available to the AU. The respondent's needs shall not be taken into account for six months for the first occasion of any such offense, one year for a second offense, and permanently for a third offense.

.2 Any period for which a disqualification penalty is imposed shall remain in effect without possibility of an administrative stay unless, and until, the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such penalty is imposed be subject to review.

22-345 DISQUALIFICATION PENALTIES 22-345
(Continued)

- .3 A disqualification penalty imposed on a respondent by one Title IV-A (Social Security Act) state agency may be used in determining the appropriate disqualification penalty for the individual by another Title IV-A state agency.
 - .31 When a respondent with a prior violation(s) moves from one state to another and has been found to have committed an IPV(s), the state agency may impose the penalty based on the number of such violations committed in other states.
 - .32 A state may establish interstate agreements with other states to share appropriate information.
- .4 In cases where a disqualification penalty and other sanctions or penalties apply:
 - .41 The disqualification penalties in Section 22-345 shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses; and
 - .42 The disqualification penalties imposed under this program only affect the respondent concerned and cannot substitute for other sanctions under the AFDC program (e.g., failure to participate in JOBS or to cooperate in obtaining child support).

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: 45 CFR 235.112(c)(1) through (3).