



TANF 1506-3 Fair Hearing

Supersedes: TANF 1506-3 (1/1/10)

Reference: ARM 37.5.101, .103, .301, .304, .305, .307, .313, .316, .318, .322, .325, .328, .331, .334, .337, 503, 505; ARM 37.78.505; 42 CFR 431.200 through .246; 45 CFR 205.10

Overview: The Department is responsible to assure all individual's right to due process and the right to a hearing is protected. An impartial Department official who has not been directly involved in the initial determination of the action in question conducts hearings.

SCHEDULING A HEARING/CLIENT NOTIFICATION:

The client will receive timely notice by certified mail. Notification will include date, time and hearing location.

CLIENT RIGHTS AND ROLE:

The client has the right to examine the contents of his/her case file at any reasonable time prior to the hearing as well as during the hearing.

Copies of all exhibits entered into record must be sent to the client and Fair Hearings Officer at least five (5) days prior to the hearing.

The client may not examine those portions of the case file which:

1. Are precluded by federal regulation;
2. Are precluded by a medical professional directive; or
3. Contain confidential information about someone other than the client.

The client may:

1. Examine all materials the department intends to introduce at the Fair Hearing;
2. Present his/her case to establish all pertinent facts and circumstances;
3. Bring witnesses and/or legal representation;
4. Advance arguments without undue interference;
5. Submit evidence to establish all pertinent facts and circumstances in the case at least five (5) days prior to the hearing (evidence presented during the hearing must be considered even if it was not submitted five (5) days prior to the hearing); and,

6. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

DEPARTMENT'S ROLE:

Department staff must attend the hearing and present the case on the Departments behalf.

The Department's representative may:

1. Examine all materials the client intends to introduce at the hearing;
2. Present its own evidence;
3. Bring witnesses to testify on the Department's behalf;
4. Question or refute testimony of the client and his/her witnesses; and
5. Confront and cross-examine the client and his/her witnesses.

MATERIALS PRESENTED:

The Department will introduce only documents, records, papers and materials which were previously available for examination by the client. Documents or records which the household will not otherwise have an opportunity to contest or challenge, will not be introduced at the hearing or affect the Hearings Officer's decision.

The Hearings Officer may request a document be made part of the record during the hearing. The client is then given time to review such evidence generally during a brief hearing recess.

Hearsay evidence may or may not be allowed. It is preferred that the individual attend the hearing. Notarized affidavits are also suggested.

HEARINGS OFFICER'S ROLE:

The Hearings Officer may require:

1. Witnesses;
2. A party to comply with reasonable and appropriate orders or requests not in conflict with the rules and necessary to assure the orderly conduct of pre-hearing and hearing procedures or to avoid unnecessary proceedings or expense;
3. Depositions upon oral examination or written questions;
4. Written interrogatories; and
5. Other materials as necessary for the hearing.

For this purpose, the Hearings Officer may, upon request of any party to the hearing, issue subpoenas for witnesses or subpoenas duces tecum.

The Hearings Officer has the right to:

1. Disqualify himself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;
2. Direct the parties to appear and confer in a pre-hearing conference to consider definition and simplification of the issues or other matters to aid in the orderly and efficient conduct of the hearing;
3. Allow, for good cause shown, a third party to represent a client as an authorized representative in those instances where written authorization of the client is not obtainable;
4. Take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public; and,
5. Grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure.

The Hearings Officer will:

1. Administer required oaths or affirmations;
2. Consider all relevant issues;
3. Request, receive and make part of the record all evidence presented;
4. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing; and
5. Render a decision in the name of the Department's Board of Public Assistance consisting of:
 - a. findings of fact;
 - b. conclusions of law; and
 - c. recommended order deciding the case based on the evidence and testimony in the hearing record.

DECISION TIME FRAME:

The Hearings Officer's decision will be made within 90 days from the request date.

APPEAL REQUEST:

The Fair Hearing decision becomes final unless the Department or the client appeals the decision within 15 days of the Fair Hearing decision notice. If the party is able to show good cause for failure to appeal timely, the 15-day period is extended, but the time period will never extend beyond 45 days.

DECISION ACTION:

Decisions favorable to the client:

1. Correct any benefit under issuance within ten (10) days.
 - a. Benefit corrections distributed in the next month's issuance may take longer than ten (10) days.

Decision favorable to the Department:

1. After the 15-day appeal time frame has expired:
 - a. Establish an over issuance/overpayment claim to recover benefits issued pending the decision, if appropriate, and/or impose the adverse action prior to the next benefit issuance if timely notice can be provided.
 - b. If the client seeks judicial review, suspend benefit recovery pending the outcome of the judicial review.

CLIENT'S WITNESS EXPENSES:

The Hearings Officer may order the Department, to pay witness fees, mileage and other actual and necessary expenses of a witness subpoenaed at the client's request; if, in the judgment of the Hearings Officer, the witness's testimony is essential to the client's case.

The Hearings Officer may order, where relevant and useful, an independent medical assessment or professional evaluation from a source satisfactory to the client and the Department. The costs will be paid by the Department.

HEARING RECORDING and TRANSCRIPTION:

The hearing must be recorded and may have to be transcribed. The Office of Fair Hearings will record the oral proceedings and the Department is responsible for transcribing the proceedings.

Transcription is only necessary when a case is appealed to the Board of Public Assistance or upon a client's request.

When a hearing is transcribed:

1. Text must be accurate. That is, neither words nor grammar can be changed from what was actually said;
 - a. Filler sounds/words can be left out.
2. The last page must contain the statement: "I hereby certify that the above is a true and correct transcription of the Fair Hearing for (name of client). This transcript was prepared by (name of the typist preparing the transcript)";
3. Statement must be signed by transcriptionist; and
4. All pages must be numbered.

HEARING RECORD:

A hearing proceedings record is compiled. The hearing record is made up of:

1. The Hearings Officer's decision;
2. The verbatim transcript (if requested) or recording of testimony and exhibits; and
3. All exhibits, papers and requests filed in the proceeding.

The record is available to:

1. The client
 - a. At an agreed upon location accessible and acceptable to all parties, at a reasonable time.
 - b. He/she is allowed to inspect and/or copy the record.
2. The public
 - a. Client name, address and any other identifying information must be kept confidential.
 - b. He/she is allowed to inspect and/or copy the record.

Effective Date: January 01, 2018