

HA3 (98-119) HEARINGS/APPEALS
(DOA)

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-119

AN ORDER to create chapter HA 3, relating to the procedure and practice for fair hearings regarding the food stamp and medicaid programs.

Submitted by **DIVISION OF HEARINGS AND APPEALS**

08-21-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-21-98 REPORT SENT TO AGENCY.

RS:LR:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-119

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section HA 3.01 (1) cites in part ss. 46.016 and 49.45 (5) and (10), Stats., as statutory authority for the promulgation of ch. HA 3 by the Division of Hearings and Appeals. These statutes appear to relate to responsibilities and functions of the Department of Health and Family Services and not directly to the authority of the division to undertake the hearings described in ch. HA 3. An additional citation to s. 227.43, Stats., as affected by 1997 Wisconsin Acts 3 and 27, would make the statement of statutory authority more accurate. The statement of authority also should support the division's activities with respect to hearing appeals of decisions made by the Department of Administration. Finally, s. HA 3.12 provides for a division review of a Wisconsin Works agency fact-finding decision. However, both s. 49.152, Stats., as affected by 1997 Wisconsin Act 27, and s. DWD 12.22 (2) and (3) appear to provide for review of Wisconsin Works agency decisions by the Department of Workforce Development (DWD), rather than by the Division of Hearings and Appeals. Since the review by DWD is not a hearing of a contested case, and since the authority of the division under s. 227.43 (1) (by), Stats., is to preside over a hearing of a contested case, what statutory authority exists for the division to review decisions of a Wisconsin Works agency?

2. Form, Style and Placement in Administrative Code

a. The rule-making order does not contain an introductory clause, a plain language analysis or a fiscal estimate. These should be inserted into the rule. [s. 1.02 (1), (2) and (7), Manual.]

b. In s. HA 3.01 (2), the phrase “These rules govern” should be replaced by the phrase “This chapter.” Also, in the last sentence, the phrase “These rules” should be replaced by the phrase “This chapter.”

c. In s. HA 3.03 (9), it is not necessary to continually repeat par. (am) in subsequent citations to s. 48.57 (3m) (am) 1., Stats.

d. In s. HA 3.03 (6), in order to maintain a parallel structure, the word “only” and the phrase “is appealable” should be deleted.

e. In s. HA 3.05 (2), it appears that the defined term “representative” should be used. [See also s. HA 3.06 (6) (b).]

f. In s. HA 3.05 (3), the introductory material does not grammatically lead into the remaining paragraphs. Consequently, the introductory material should be renumbered as sub. (3) (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly.

g. In s. HA 3.08, the notation “(4)” should be inserted before the paragraph that precedes sub. (5).

h. In s. HA 3.11 (2), the word “must” in the last sentence should be replaced by the word “shall.”

i. Section HA 3.12, pars. (a), (b) and (c) would more appropriately be separate subsections, since they do not all necessarily relate to s. HA 3.12 (1). They should be renumbered accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The reference in s. HA 3.02 (9) to the U.S. Code citation for the Low-Income Home Energy Assistance Program appears to be wrong. The correct citation appears to be 42 U.S.C. s. 8621.

b. The reference to the Wisconsin Works Program in s. HA 3.02 (13) should be made consistent with the statutory references made to that program in s. HA 3.02 (17). Therefore, instead of saying s. 49.141 et. seq., the reference should be to ss. 49.141 to 49.161, Stats.

c. In s. HA 3.02 (17), the word “to” should be inserted between “ss. 49.141 and 49.161, Stats.”

d. Section HA 3.04 is erroneously cross-referenced in ss. HA 3.04 and 3.05 (1) and (3) (intro.) and (a). The correct citation appears to be s. HA 3.03.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HA 3.01 (2), the word “Wisconsin” should be capitalized.

b. In s. HA 3.02 (2), the word “service” on the last line should be “services.”

c. In s. HA 3.02 (4), (8) and (13), the second word of that definition should not be capitalized.

d. Section HA 3.02 (11) defines Medicaid waiver services as home and community-based services under s. 46.27, Stats. There are many other Medical Assistance (MA) waiver programs in other parts of the statutes. Is the appeals procedure only to cover the Medicaid Waiver Program under the Community Options Program? If so, this definition is correct; if not, these statutory references need to be expanded to include the other MA waiver programs.

e. Section HA 3.02 (16) would read more clearly if commas were placed before and after the phrase “other than under local county-funded programs.”

f. In s. HA 3.03 (intro.), the word “action” should be made plural.

g. In s. HA 3.03 (1), the words “determination” in the first line and “in writing” in the second line should be deleted and, instead, the term “written statement” should be inserted after the word “the” on the first line.

h. The mailing address of the Division of Hearings and Appeals set forth in s. HA 3.05 (2) (b) should be placed in a note to the rule.

i. In s. HA 3.06 (7), it should be clarified that the hearing should be tape-recorded, rather than simply “recorded.” Tape-recordings are referred to in s. HA 3.09 (1) and (7).

j. Section HA 3.11 (4) states that the “department or agency has 15 days from receipt of a complete costs motion to respond in writing to the administrative law judge.” This sentence should be rewritten to state that the “department or agency shall respond in writing to the administrative law judge within 15 days of receipt of a complete costs motion.” Further, if the department or agency fails to respond, what is the consequence of that failure?

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

42 C.F.R. s. 431.220 (a) (3) provides for an appeal of an erroneous nursing home transfer or discharge. This is not included in the list of appealable items in s. HA 3.03. The division should consider adding this to the list, in conformity with the federal regulation.

Chapter HA 3

Procedure and Practice for Fair Hearings

authority / fiscal est

HA 3.01	Authority and purpose	HA 3.07	Witnesses and subpoenas
HA 3.02	Definitions	HA 3.08	Administrative law judge
HA 3.03	Right to appeal	HA 3.09	Hearing decision
HA 3.04	Notification of right to appeal	HA 3.10	Rehearing and amendment of decision
HA 3.05	Request for a hearing	HA 3.11	Costs motions
HA 3.06	Hearing arrangements	HA 3.12	Wisconsin works

HA 3.01 AUTHORITY AND PURPOSE. (1) This chapter is adopted pursuant to ss. 15.03, 46.016, 49.45 (5) and (10) and 227.11 (2)(a), Stats. and to conform with the requirements of Titles IV and XIX of the U.S. Social Security Act as amended and the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011 to 2029.

(2) ^{This ch} ~~These rules~~ govern^s the fair hearing process for considering the appeal by affected individuals of decisions made by the departments of health and family services, workforce development and administration and decisions by county social and human service departments and tribal agencies concerning medicaid, food stamps, public assistance and social service programs administered by these departments. These rules also govern the departmental level review process for wisconsin works.

(3) The purpose^s of hearings on department and agency decisions ^{are} ~~is~~ the following:

(a) To provide an opportunity for an applicant to challenge a department or agency finding that he or she is ineligible for medicaid, food stamps, public assistance or social services by establishing that the department's or agency's decision on the application was incorrect.

(b) To provide an opportunity for a recipient of medicaid, food stamps, public assistance or social services to assert continuing eligibility for aid when the department or agency has decided to discontinue aid, or for a recipient of social services to object to aid reduction, sufficiency or form of payment.

HA 3.02 DEFINITIONS. In this chapter:

(1) "Administrative law judge" means an administrative hearing examiner employed by the division of hearings and appeals.

(2) "Agency" means a county department of social services under s. 46.215 or 46.22, Stats., a county department of human services under s. 46.23, Stats., or a tribal agency which administers medicaid, food stamps, social service or public assistance programs.

(3) "COP" means the long term support community options program under s. 46.27, Stats. -5

(4) "Costs Motion" means a request by a prevailing party under s. 227.485, Stats., for a department to pay the costs incurred in connection with a contested case.

(5) "Department" means the Wisconsin department of health and family services, the Wisconsin department of workforce development or the Wisconsin department of administration.

(6) "Division" means the division of hearings and appeals.

(7) "Food stamps" means an assistance program under the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2029.

(8) "Fair ~~hearing~~" or "hearing" means a de novo proceeding before an impartial administrative law judge in which the petitioner or the petitioner's representative presents the reasons why the agency or department action or inaction in the petitioner's case should be corrected. 4/8/21

(9) "Low Income Home Energy Assistance Program" or "LIHEAP" means the federally designated program under 42 U.S.C. s. 1821 as amended, and s. 16.385, Stats. which provides benefits and services to assist low-income households with the costs of energy used for home heating.

(10) "Medicaid" means the medical assistance program under ss. 49.43 to 49.47 and 49.49 to 49.497, Stats., and chs. HFS 101 to 108.

(11) "Medicaid waiver services" means home and community-based services

provided under s. 46.27, Stats.

(12) "Petitioner" means a person on whose behalf a request for a hearing has been filed.

(13) "Public Assistance" means a program, such as LIHEAP, kinship care under s. 48.57(3m) and (3p), stats., caretaker supplement under s. 49.775, stats., or state supplements under s. 49.77, stats., which provides cash benefits to needy individuals and which is administered by a department or by an agency for a department. "Public assistance" does not mean the Wisconsin works program under s. 49.141 et. Seq., stats.

(14) "Representative" means an attorney, guardian, spouse, relative, friend or other spokesperson representing a petitioner for fair hearing purposes.

(15) "Secretary" means the secretary of the department of work force development, the secretary of the department of health and family services or the secretary of the department of administration or their designees.

(16) "Social services" means services, other than under local county-funded programs which are provided by agencies or the departments to individuals, or paid for by agencies or the departments on behalf of individuals, such as, but not limited to, the Alzheimer's family and caregiver support program under s. 46.87, or the family support program under s. 46.985.

(17) "Wisconsin works" or "W-2" means the assistance program for families with dependent children, administered under ss. 49.141, 49.161, Stats.

HA 3.03 RIGHT TO APPEAL. An applicant for or recipient of medicaid, food stamps, social services or public assistance may appeal any of the following administrative actions of the department or an agency:

(1) Denial of an application for benefits or the determination by an applicant who has withdrawn an application in writing that he or she was given incorrect or incomplete information about the covered program or service.

(2) Failure to act on an application with reasonable promptness.

- (3) Reduction, suspension or termination of program benefits.
- (4) The determination of the amount or sufficiency of program benefits excluding COP program benefits.
- (5) A change in the form of payment of benefits.
- (6) For the COP program and medicaid waiver services, ~~only~~ the denial of eligibility for services or reduction or termination of services ~~is~~ appealable, as provided in s. 46.27(7m), Stats.
- (7) An adverse determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Social Security Act of 1935, as amended.
- (8) The determination under s. 49.85, Stats., to recover an overpayment of benefits by means of certification to the Wisconsin department of revenue.
- (9) A denial of an application for kinship care payment on the grounds specified in s. 48.57(3m)(am)1., (am)2., (am)4., (am)4m. and (am)5., Stats.

HA 3.04 NOTIFICATION OF RIGHT TO APPEAL. An agency or department shall in writing inform a person at the time the person applies for medicaid, food stamps, public assistance or social services, and at the time an agency takes an action listed under s. HA 3.04, of the person's right to a hearing under this chapter and of procedures for requesting a hearing.

HA 3.05 REQUEST FOR A HEARING. (1) An applicant or recipient who wishes to contest an action specified under s. HA 3.04 may request a hearing.

(2) A request for a hearing may be made by the applicant or recipient or by an attorney, guardian, parent of a minor applicant or recipient, or other person authorized in writing to represent the applicant or recipient.

use defines term

(a) A request for a hearing may be made in writing or orally and may be made to the agency or the division. An oral request to the agency shall be reduced to writing by the agency and signed by the petitioner, except that a request involving only food stamps need not be signed. An agency receiving a

hearing request shall immediately forward the request to the division.

(b) The hearing request shall include a short statement of the matter to be reviewed. If it is unclear from the request what action the person seeks to appeal or whether the petitioner has standing to obtain a hearing, the division may request clarification before taking action on the request. The mailing address of the division is: Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707.

(3) ^(a) Except as provided in par. ~~(a)~~ or ~~(b)~~, the petitioner shall have 45 days from the effective date of the adverse action specified under s. HA 3.04 in which to file a hearing request.

~~(a)~~ For a hearing request relating to food stamps, the petitioner has 90 days from the date of the action specified under s. HA 3.04 in which to file the hearing request.

~~(b)~~ If a different time limit for a hearing request is specified by state statute, administrative rule or federal regulation, that limit shall apply.

(d) A hearing request shall be considered filed on the date of actual receipt by the division or agency, or the date of the postmark, whichever is earlier. A request filed by facsimile is complete upon transmission. If the request is filed by facsimile transmission and such transmission is completed between 5 p. m. and midnight, 1 day shall be added to the prescribed period.

(4) The division shall deny or dismiss a hearing request under any of the following circumstances:

(a) The division does not have jurisdiction to conduct a hearing on the matter appealed.

(b) The petitioner or the petitioner's representative withdraws the request in writing.

(c) The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients, unless the issue being contested is that eligibility or benefits were improperly computed or that federal law

or regulation is being misapplied or misinterpreted by the department.

(d) The petitioner has abandoned the hearing request. The division shall determine that abandonment has occurred when the petitioner, without good cause, fails to appear personally or by representative at the time and place set for the hearing. Abandonment may also be deemed to have occurred when the petitioner or the authorized representative fails to respond within a reasonable time to correspondence from the division regarding the hearing.

(e) The hearing request is not received within the time period specified in sub. (3).

(5) In cases involving discontinuance, reduction or change in the form of payment of assistance, the division shall order that the adverse action be stayed and benefits continued unchanged pending the hearing decision if the hearing request was filed within the time limits specified in 42 CFR 431.230 and 431.231 for medicaid or within the time limits specified in 7 CFR 273.15 for food stamps or, for social services and public assistance, if the hearing request was filed prior to the effective date of the adverse action.

HA 3.06 HEARING ARRANGEMENTS. (1) A hearing shall be held at a time reasonably convenient to the petitioner, department or agency staff and the administrative law judge, shall be easily accessible to the petitioner and, whenever possible, shall be held on department or agency premises, subject to the judgment of the administrative law judge.

(2) A petitioner in need of special arrangements for the hearing, such as an interpreter or a hearing site other than the county agency, shall notify the division of this need no later than 5 days prior to the hearing.

(3) At least 10 days before the hearing, the division shall provide written notice to the petitioner and the petitioner's representative, if any, of the time, date and place of the hearing.

(4) The division may postpone a hearing for good cause. In food stamp cases, a petitioner may request and is entitled to receive a postponement of

the scheduled hearing for up to 30 days.

(5) The parties may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider how issues might be clarified or simplified, whether facts or documents which may be admitted which will avoid unnecessary proof, or any other matter that may aid in the disposition of the appeal.

(6) The petitioner shall have an opportunity to do all of the following:

(a) Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used or that are used at the hearing, and the content of the applicant's or recipient's case file, in accordance with 7 CFR 273.15(p) or 42 CFR 431.242.

(b) Present the case or have it presented by legal counsel or other representative. *use def. term*

(c) Bring witnesses.

(d) Question or refute any testimony or evidence, and confront and cross-examine adverse witnesses.

(e) Submit relevant evidence to establish all pertinent facts and circumstances in the case.

(f) Advance relevant arguments without undue interference.

(7) A hearing shall be recorded.

(8) If individual issues of fact are not in material dispute and related issues of state or federal law are the sole issues being raised, the division may respond to a series of individual requests for a hearing by conducting one group hearing.

HA 3.07 WITNESSES AND SUBPOENAS. The division or the administrative law judge may issue a subpoena, under the same procedure and in the same form as provided by s. 805.07 (1) Stats., at a party's request if it appears that the testimony will be relevant and reasonably necessary for a full and fair

hearing. The administrative law judge may require the party to provide written justification for the subpoena requested. A subpoena requiring the production of material may be issued if the person requesting the subpoena specifies the documents to be presented by the subpoenaed witness and if the request is found reasonable by the administrative law judge. The party requesting the subpoena is responsible for service and for fees.

HA 3.08 ADMINISTRATIVE LAW JUDGE. (1) An administrative law judge may do all of the following:

- (a) Administer oaths and affirmations.
- (b) Rule on offers of proof, accept relevant evidence and exclude from the record evidence that is irrelevant or repetitious.
- (c) Dispose of procedural requests or similar matters.
- (d) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing.
- (e) Exclude individuals from the hearing, adjourn the hearing or otherwise reasonably respond to contemptuous conduct.
- (f) Have depositions taken. A deposition may be admitted as a substitute for testimony only when the witness is unavailable as defined in s. 908.04, Stats.
- (g) Exclude persons from the hearing to preserve the applicant's or recipient's confidentiality or where an individual's presence is not considered essential, depending on the circumstances of the case including space limitations.

(2) An administrative law judge may at any time disqualify himself or herself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of an administrative law judge, the division or administrative law judge shall determine the matter as part of the record and decision in the case.

(3) The administrative law judge may grant a continuance or additional

time to present evidence once a hearing has started when the administrative law judge finds it necessary to the proceeding or to ensure that the petitioner is given a complete and fair hearing.

(4) If the hearing involves medical issues such as those concerning a diagnosis or an examining physician's report and if the administrative law judge considers it necessary to have a medical assessment other than the one considered in making the original decision, the administrative law judge may order a new assessment to be obtained at department or agency expense and made a part of the record.

(5) The administrative law judge may take official notice of information concerning the petitioner's case which is in the departments' official computer systems, such as, but not limited to, the Client Assistance for Reemployment and Economic Support (CARES) system.

HA 3.09 HEARING DECISION. (1) The tape recording of the hearing, the exhibits, papers and requests filed in the proceeding and matters of which the administrative law judge has taken official notice shall constitute the exclusive record for decision.

(2) The decision shall be in writing in the name of the department by the department secretary or a designee such as an administrative law judge in the division.

(3) The decision shall set forth the issue or issues, the principal relevant facts elicited at the hearing, the reasoning that led to the decision, citation of legal authority, the action taken and the parties' appeal rights. These elements shall be grouped under appropriate headings such as preliminary recitals, findings of fact, discussion, conclusions of law and the order.

(4) Where necessary and appropriate, an interim decision may be issued, where a final decision dispositive of the merits of the case is not possible.

(5) A copy of the decision shall be mailed to the petitioner, the petitioner's representative, if any, and the agency or the department organizational unit charged with the administration of the assistance or services involved. The petitioner's mailing address shall be the address given for the petitioner on the hearing request, unless the petitioner has notified the division of another address in writing or placed it on the hearing record.

(6) The decision shall include the names and addresses of the petitioner and the department or agency. The division shall serve a copy of the decision on each party. The decision is served on a party as of the date it is mailed by the division.

(7) The petitioner may request a copy of the cassette tape recording of the hearing. The division shall furnish the requested recording upon receipt of payment for the cost of duplication and mailing. A written transcript of the hearing shall be prepared only if an appeal is filed with a circuit court pursuant to s. 227.53, Stats. If the petitioner requests a written copy of that transcript following the filing of that appeal, the division may impose a reasonable charge per transcript page.

(8) (a) Except for a proposed decision under par. (b), or by order in a specific case, the decision of the administrative law judge shall be the final decision of the department in proceedings under this chapter.

(b) The administrative law judge shall submit a proposed decision to the secretary or designee for decision in any of the following circumstances:

1. The decision holds that a manual or handbook provision, contract provision, state plan provision, numbered memo administrative directive or other official document is invalid or limited under a statute, administrative rule or federal regulation.

2. The department has not delegated final decision making authority to the division.

(9) When a proposed decision rather than a final decision is issued,

the petitioner and the agency or department have 15 days from the date of service to file written comments with the division. This period may be extended for 10 days upon request of either party. At the close of the comment period, the proposed decision and comments shall be forwarded by the division to the secretary for issuance of a final decision.

(10) The division shall ensure that decisions for medicaid are issued in a timely manner so that final administrative action may be taken within 90 days from the date of filing of the hearing request, and that decisions for food stamps are issued within 60 days from the date of filing of the hearing request.

(11) A final decision is binding upon the department and agency involved and may be enforced by appropriate legal and fiscal sanctions. The agency involved shall implement any food stamp decision within 10 days after the date of the decision.

HA 3.10 REHEARING AND AMENDMENT OF DECISION. (1) When requested by the petitioner or that person's representative, the department or an agency or, upon its own motion, the division, may amend or vacate a decision for the purpose of correcting either plain or administrative errors, or as altered conditions may require.

(2) A petitioner or that person's representative, an agency or the department may request a rehearing pursuant to s. 227.49, Stats. Such a request shall state what error of law or fact is asserted as the basis for the rehearing or what newly discovered evidence has been found which could not have been found earlier with due diligence. Upon granting a rehearing, the division shall determine whether ~~or not~~ a proceeding to consider additional evidence is required.

(3) After a decision has been issued dismissing a hearing request as abandoned by the petitioner, the division may vacate that decision upon the assertion by petitioner in writing that the matter has not been abandoned.

HA 3.11 COSTS MOTION. (1) A petitioner may file a motion for costs under s. 227.485, Stats., with the division and the department or agency within 30 days of service of the final decision if the petitioner was the prevailing party. The petitioner need not be represented by an attorney to file a costs motion.

(2) Although no specific form or format is required, a complete costs motion shall contain an explanation of why the state agency which was the losing party was not substantially justified in taking its position, and an itemized application for fees and other expenses, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the petitioner stating the actual time expended and the rate at which fees and other expenses were computed. A complete motion must also contain an affidavit or other proof that the petitioner has federal adjusted gross income of less than \$150,000 in each of the 3 calendar years or corresponding fiscal years immediately prior to the commencement of the case.

(3) The petitioner's costs may include attorney's fees and any of the following items if the item provided evidence relevant to the hearing issue on which the party prevailed:

- (a) Expert witness fees.
- (b) Any study, analysis, engineering report, test or project determined by the administrative law judge to be necessary for preparation of the case.
- (c) Service of process on relevant witnesses.
- (d) Certified copies of papers and records in any public office.
- (e) Postage.
- (f) Telephone, telegraph or FAX expense.
- (g) Depositions of unavailable witnesses, including necessary photocopies.
- (h) Plats and photographs.

(4) The department or agency has 15 days from receipt of a complete costs motion to respond in writing to the administrative law judge. If the

Handwritten note: If not

petitioner's costs motion contains a request for expert witness fees, the response shall indicate the highest rate of compensation paid by the agency or department to an expert witness in the case.

(5) The administrative law judge may deny a costs motion that is not complete.

(6) The administrative law judge shall prepare a written proposed decision which denies or awards some or all of the requested costs. That proposed decision shall be forwarded by the division to the department for issuance of a final decision.

HA 3.12 WISCONSIN WORKS (1) Upon receipt of a timely petition under s. DWD 12.22(2)(b), (2)(c) or (3), the division shall review the fact-finding decision of the Wisconsin works agency.

(a) The division shall deny a petition or refuse to grant relief if the Wisconsin works applicant or recipient withdraws the petition in writing.

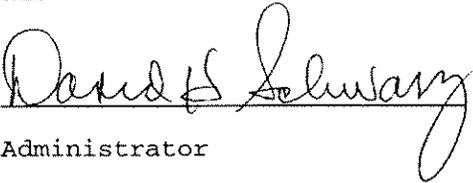
(b) Upon receipt of a petition, the division may make any additional investigation it considers necessary.

(c) The Wisconsin works agency shall forward the fact-finding file to the division within 5 days of notification of the request for review.

(2) If the division or administrative law judge determines that the record provided for review is inadequate or incomplete, the division may conduct a hearing, issue an interim decision directing the Wisconsin works agency to supplement the record, or take further action considered necessary to provide for a meaningful review.

The rules included in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Division of Hearings and Appeals

BY 
Administrator

Dated:

SEAL

F:\DOCS\WFSLETTERS\HA3.DOC