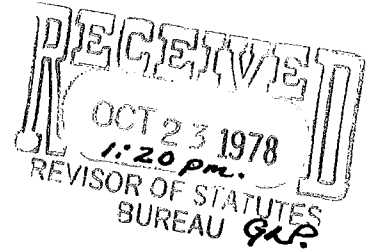


NHFA 1

STATE OF WISCONSIN)
) SS
DIVISION OF NURSING HOME FORFEITURE APPEALS)




TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Joseph Thomas, Administrator of the Division of Nursing Home Forfeiture Appeals and custodian of said division do hereby certify that the annexed rules relating to procedure and practice, were duly approved and adopted by this division on October 23, 1978.

I further certify that said copy has been compared by me with the original on file in this division and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have
hereunto set my hand at
310 North Midvale Boulevard in
the City of Madison, this 23rd
day of October A.D. 1978.



Joseph Thomas

ORDER OF THE DIVISION OF NURSING HOME FORFEITURE APPEALS

ADOPTING RULES

Pursuant to authority vested in the Division of Nursing Home Forfeiture Appeals by sections 15.103(1), 15.03, 15.101(9), 50.04(5)(e), 227.07, 227.09, 227.014, Wis. Stats., the Administrator of the Division of Nursing Home Forfeiture Appeals hereby adopts rules as follows:

RULES OF THE
DIVISION OF NURSING HOME FORFEITURE APPEALS

Chapter NHFA 1

PROCEDURE AND PRACTICE

NHFA 1.01 Definitions. For the purposes of this chapter:

(1) ADMINISTRATOR. Administrator means the administrator of the division of nursing home forfeiture appeals and includes the acting administrator during the absence of the administrator.

(2) APPELLANT. Appellant means the nursing home that is contesting an assessment of forfeiture.

(3) BUREAU. Bureau means the bureau of quality compliance, division of health, department of health and social services.

(4) DIVISION. Division means the division of nursing home forfeiture appeals.

(5) HEARING. Hearing means the procedure in which the parties may publicly be heard and present evidence prior to a decision by the division and includes rehearing.

(6) NURSING HOME. Nursing home is as defined in s. 50.01, Stats.

(7) PREHEARING CONFERENCE. Prehearing conference means a conference as described in s. 227.07(4), Stats. for any of the purposes enumerated therein and attended by the parties and the presiding officer.

(8) PROCEEDING. Proceeding means the course of administrative procedure and actions taken in the conduct of a contested case, and includes a hearing.

(9) STATUTES. Statutes means the Wisconsin Statutes and is abbreviated in these rules as Stats.

NHFA 1.02 Administrative procedure, generally. The operation of the division of nursing home forfeiture appeals shall be consistent with the provisions of ch. 227., Stats.

NHFA 1.03 Mailing address. The mailing address of the division is the Division of Nursing Home Forfeiture Appeals, Madison, Wisconsin, 53702. All pleadings, briefs, and other papers to be filed with the division shall be directed to this address.

NHFA 1.04 Scope of review. The division shall decide those issues relating to the assessment of a forfeiture by the department of health and social services under s. 50.04(5), Stats.

NHFA 1.05 Appeals. (1) FORM. Appeals shall be in writing and whenever possible appellants shall utilize a printed form prepared by the division. Appeal forms are available from the division upon request.

(2) CONTENT. Appeals shall contain:

(a) The name and address of the appellant;

(b) The amount of the assessment that is being contested and the date on which notice of the forfeiture assessment was received;

(c) A concise statement of the reasons for objecting to the assessment of the forfeiture;

(d) The type of relief which is sought;

(e) The name and address of any person who may be expected to appear on behalf of the appellant;

(f) A request for hearing.

(3) FILING AND SERVICE. Appeals shall be filed with the division and must be mailed within 10 days after appellant receives notice of the assessment of forfeiture. Appellant shall serve a copy of the appeal on the Bureau of Quality Compliance, Division of Health, Department of Health and Social Services, Madison, Wisconsin, 53702 on the same date that the appeal is filed with the division.

(4) ANSWERS. The bureau may answer the appeal. For the answer to be considered by the division it shall be served and filed within 7 days after the appeal was served on the bureau.

(5) NOTICE OF HEARING. Notice of hearing and, where appropriate, prehearing conference shall be served on the parties by the division pursuant to s. 227.07(2), Stats. The notice shall name the hearing examiner designated by the division to be the presiding officer.

(6) CONSOLIDATION. The division may, on its own motion, consolidate several pending appeals involving the same appellant or an issue or issues arising substantially out of the same circumstances or closely related circumstances. Consolidation may be for hearing or decision or both. Nothing in this rule shall limit the right of a party to make a motion to consolidate or to object to the division's own motion to consolidate.

NHFA 1.06 Motions. (1) HOW MADE. Unless made during a hearing or prehearing conference, all motions shall be made in writing, shall state with particularity the grounds for the motion and the relief or order sought. A notice of motion is not required, notice being satisfied by service of the copy of the motion.

(2) SUPPORTING PAPERS. A brief or other papers in support of a motion, including affidavits and documentary evidence, shall be served and filed with the motion.

(3) MOTIONS FOR EXTENSION OF TIME. The division may grant a motion for an extension of time if the moving party can show that the necessity for delay is substantially more important than the speedy conclusion of the ongoing proceeding.

NHFA 1.07 Service. Unless otherwise provided by law, all orders, notices and other papers may be served personally, or by first class, certified or registered mail. All papers filed by a party with the division shall be served on the same date by that party on all parties to a proceeding. The filing of any paper required to be served constitutes a certification by the party or attorney effecting the filing, that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise state in writing, and no affidavits, certification, or admission of service need be filed with the division.

NHFA 1.08 Stipulation of facts; settlements. The parties may file a stipulation of facts with the division at any time prior to the conclusion of the submission of evidence. The division may provide assistance to encourage a stipulation of facts as well as to promote a settlement between the parties. Any settlement agreement between the parties relating to the settlement or disposition of an appeal shall not be effective or binding in any respect until approved by the division.

NHFA 1.09 Prehearing conferences. Prehearing conferences as described in s. 227.07(4), Stats. may be held by telephone or with the parties present at a location determined by the hearing examiner. Either party or the division may suggest that a prehearing conference be held.

NHFA 1.10 Subpoenas. The administrator or a hearing examiner designated by the administrator as the presiding officer may sign and issue subpoenas.

NHFA 1.11 Representation. A party is entitled to appear in person or by or with counsel or other person as authorized by the Wisconsin supreme court.

NHFA 1.12 Public hearings. All hearings shall be open to the public except where otherwise provided by law.

NHFA 1.13 Briefs; close of the hearing. (1) BRIEFS, GENERALLY. The presiding officer may request that the parties submit briefs on any issue or issues that arise during the course of the proceedings and may impose a briefing schedule.

(2) POST-HEARING BRIEFS. The presiding officer may establish a schedule for filing post-hearing briefs. If the time for filing post-hearing briefs expires and the brief of one or more parties is not filed, the division may proceed to its determination of the case. Extensions of time to file such briefs may be granted by the presiding officer.

(3) CLOSE OF THE HEARING. For the purpose of s. 50.04(5)(e), Stats., the hearing shall be closed when the time has expired for submitting briefs on a hearing examiner's proposed decision pursuant to s. 227.09, Stats. When the division has eliminated the proposed decision procedure pursuant to s. 227.09 (3)(a) or (b), Stats., the hearing shall be closed upon expiration of the period fixed for filing post-hearing briefs, or if no briefing schedule is set, then on the completion of the submission of all evidence.

NHFA 1.14 Decisions. The division shall issue its final decision to reverse, modify, remand or affirm the contested assessment within 15 days after the close of the hearing, as provided by s. 50.04(5)(e), Stats.

NHFA 1.15 Transcripts. (1) RECORD. A stenographic, electronic or other record of oral proceedings shall be made. A written transcript of the record shall be prepared only as deemed necessary by the division, and unless otherwise prepared by the division for its own use, shall not be prepared at the specific request of any persons unless needed by such persons for court review purposes, or other valid reasons.

(2) COPIES OF TRANSCRIPT; COST. If a transcript has been prepared by the division for its own use, copies may be furnished to all interested parties upon payment of a fee of 10 cents for each page. If no transcript of the record has been prepared by the division and a specific request for a transcript is made, the party making the request shall be responsible for all reasonable costs incurred by the division in transcribing the record and in preparation of the transcript. A party seeking judicial review of a decision shall pay the cost of preparing the transcript submitted to the reviewing court. Notwithstanding any other provisions of this subsection, any party who on the basis of a verified petition can establish to the satisfaction of the division the need for a transcript and financial inability to pay for a copy thereof, may be furnished a copy free of cost.

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The rules contained herein shall take effect on the first day of the month following its publication in the Wisconsin administrative register.

Dated: October 23, 1978

Division of Nursing Home Forfeiture Appeals


Joseph Thomas, Administrator