



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

David H. Schwarz, Administrator
5005 University Avenue, Suite 201
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
E-mail: dha.mail@dha.state.wi.us
Internet: <http://dha.state.wi.us>

July 24, 2002

The Honorable Fred Risser, President
Wisconsin State Senate
1 East Main, Suite 402
Madison WI 53702

The Honorable Scott Jensen
Wisconsin State Assembly
1 East Main, Suite 402
Madison WI 53702

Re: Clearinghouse Rule 02-024

HA 1, relating to the procedure and practice for contested case hearings held under Wis Stat. ch. 227 by the Division of Hearings and Appeals.

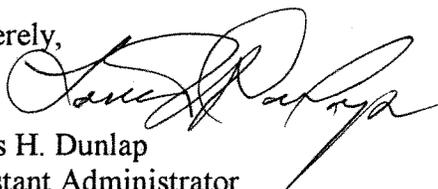
Gentlemen:

In accordance with the provisions of Wis. Stat. § 227.19(2), you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by Wis. Stat. § 227.19(3), are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under Wis. Stat. § 227.15. A copy of the Council's report is also enclosed.

If you have any questions about these rules, please contact Louis Dunlap at 267-7376.

Sincerely,


Louis H. Dunlap
Assistant Administrator

Cc: Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
George Lightbourn, Secretary, DOA



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 02-024

AN ORDER to repeal HA 1.02 (4), 1.05 and 1.19; to renumber and amend HA 1.02 (3) and (5), 1.03 (3), 1.06 to 1.18 and 1.20; to amend HA 1.01, 1.02 and 1.04; and to create HA 1.01 (3), 1.02 (3), (4), (5), (8) and (9), 1.03 (3) (b), 1.10 (2), 1.12 (7) and (8), 1.13 (5) (b) and 1.18 (4), relating to the procedure and practice of conducting administrative hearings before the division.

Submitted by **DIVISION OF HEARINGS AND APPEALS**

02-11-02 RECEIVED BY LEGISLATIVE COUNCIL.

03-11-02 REPORT SENT TO AGENCY.

RNS:PS:tlujal

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 RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-024

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.]

2. Form, Style and Placement in Administrative Code

This rule contains numerous formatting errors. To cite just three examples: first, the introductory clause to the rule should recite all of the types of treatments that occur in the rule, such as renumbering or renumbering and amending certain provisions and repealing others. Instead, it states only that ch. HA 1 is amended.

Second, the numerous changes made in the rule are incorrectly contained in a single SECTION. Following the requirements in s. 1.04, Manual, with regard to arrangement of SECTIONS, there would be a number of sequentially numbered SECTIONS containing the changes in various provisions of the current rule. For example, the treatment of s. HA 1.01 should be divided into three SECTIONS -- one that amends s. HA 1.01 (title), one that renumbers s. HA 1.01 as s. HA 1.01 (2) and amends the renumbered provision, and one that creates s. HA 1.01 (1) and (3).

Third, the rule unnecessarily sets forth the text of current rule subsections which are not modified in any way in the proposed rule, such as ss. HA 1.03 (1) and 1.08 (1) and (2). These should be eliminated.

As an alternative to correcting these and other formatting problems, the department could simply repeal and recreate the rule, as permitted in s. 1.06 (5), Manual, when major changes are being made to an existing rule. As the Manual notes, a repealed and recreated rule is shown *as it will appear after promulgation*, without strike-throughs and underscores. The entire text would

then appropriately be placed in SECTION 1 with the following treatment clause: "HA 1 is repealed and recreated to read:".

However, if the department chooses not to repeal and recreate the rule, it should carefully consult the Manual to correct the numerous formatting problems. These comments do not detail all such errors. Note, in particular, the proper way to amend rules, specifically by striking and underscoring material, amending a single word or changing the beginning of a sentence, pursuant to s. 1.06 (1), (2) and (3), Manual. It is not appropriate to strike or underscore a single digit or letter of a larger number or word. Also note the proper way to revise titles in s. 1.05 (3), Manual.

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

- a. In s. HA 1.02 (7), the word "Agency" should not be capitalized.
- b. The amended fax number in the Note following s. HA 1.03 should be clarified.
- c. The text of s. HA 1.04 (2) (b) does not show all of the current text that is being deleted with strike-throughs.
- d. In s. HA 1.05 (2) (d), the word "per" should be changed to "in accordance with."
- e. In s. HA 1.12 (3) (b), the underscored phrase could be clarified to read: "other than a proceeding under par. (a)".

see RS recitation

Proposed Order of the Division of Hearings and Appeals Amending Rules

To amend HA 1 relating to the procedure and practice of conducting administrative hearings before the Division.

Analysis Prepared by the Division of Hearings and Appeals

These rules describe the requirements and process for the conduct before the Division of all contested case proceedings under Wis. Stat.ch. 227, except as provided otherwise.

Prior to government reorganization, the Office of Administrative Hearings in the Department of Health and Family Services conducted contested case proceedings under ch. 227 for the Department. In the course of reorganization, the Office of Administrative Hearings merged with the Division of Hearings and Appeals. That office also conducts contested case proceedings for several departments and agencies as provided in Wis. Admin. Code ch. HA 1. With the addition of the new types of cases brought about by the merger, the rule requires changes and additions to HA 1 to encompass all of the various types of proceedings conducted in the Division. In addition, HA 1 was generally outdated.

The Division's authority to amend these rules is found in Wis. Stat. §§ 15.03, 227.11(2)(a) and 227.43.

Section 1. HA 1 is amended to read:

HA 1.01 Application of rules this chapter.

(1) ADOPTION. This chapter is adopted pursuant to ss. 15.03, 227.11(2)(a) and 227.43, Stats.

(2) APPLICATION. These rules This chapter shall apply in all contested cases proceedings and hearings before the division of hearings and appeals under ch. 227, Stats., except as specifically provided otherwise. Agencies for which the division conducts proceedings, such as including, but not limited to the departments of natural resources, health and family services, employe trust funds and justice, may have specific regulations administrative code provisions or administrative decisions that govern the conduct of those proceedings. In the event of a conflict between this chapter and an agency administrative code provision or administrative decision, the agency administrative code provision or administrative decision is controlling.

(3) EXCLUSIONS. This chapter does not apply to corrections hearings conducted pursuant to ch. HA 2, fair hearings conducted pursuant to ch. HA 3, or hearings conducted pursuant to s. 115.80, Stats.

HA 1.02 Definitions.

()

as HA 2, probs

all caps

Bad

SEC 2 1.01(3) is created + read

SEC 3

1.02Y is am + read

man. 1.05 (3) (a)

1.01 is

1.02 (4) ~~and (5) for purposes~~
repealed

SEC 4
SEC 6
(3) (4)
(5)
CR

- For purposes of this chapter:
- (1) "Administrative law judge" means an administrative hearing examiner employed by the division of hearings and appeals.
 - (2) "Administrator" means the administrator of the division of hearings and appeals.
 - (3) "Agency" means the Wisconsin land council or a board, commission, committee, department or officer in the state government, except the governor, a district attorney or a military or judicial officer.
 - (4) "Appeal" means a pleading, petition or application made by an appellant.
 - (5) "Appellant" means an applicant, complainant or petitioner.
 - (36) "Division" means the division of hearings and appeals.
 - (4) "Nursing home" has the meaning set forth in s. 50.01, Stats.
 - (57) "Nursing home action" is a proceeding conducted pursuant to s. 50.04 (4) (e) and (5) (e), Stats. "Official of the Agency" means the head of an agency.
 - (8) "Party" means a person or agency named or admitted as a party in a contested case.
 - (9) "Preponderance of the evidence" means the greater weight of the credible evidence.

} shd
elom.

SEC 5
(5) (7)
8 am
SEC 3
(3) (6)

HA 1.03 Service of documents.

Noneed
to show

- (1) BY THE DIVISION. The division may serve decisions, orders, notices and other documents by first class, certified, registered or inter - departmental mail or by facsimile transmission.
- (2) BY A PARTY. Materials filed by a party with the division may be served personally or by first class, certified or registered mail, inter - departmental mail or by facsimile transmission. All correspondence, papers or other materials submitted filed by a party shall be served on the same date by that party on all other parties to the proceeding. No affidavit of mailing, certification, or admission of service need be filed with the division.
- (3) FILING DATE. (a) Materials mailed to the division shall be considered filed with the division on the date of the postmark. Materials submitted by personal service or by inter - departmental mail shall be considered filed on the date they are received by the division. ~~Materials transmitted by facsimile shall be considered filed on the date they are received by the division as recorded on the division facsimile machine.~~
- (b) For materials transmitted to the division by facsimile, the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document shall determine the date and time of filing or of service on the division or the

SEC 7
(103) (2) am

SEC 8
1.03 (3)
MA (3) (a) H
am

SEC 9
(3) (5)
CR

administrative law judge. Documents received after midnight local time shall be deemed filed on the first following business day.

Note: The mailing address of the division is:

5005 University Avenue
Suite 201
Madison, Wisconsin 53705-5400

The facsimile transmission number of the division is:

relate
Dubs (608) 267-274-9885 *undessore*

HA 1.04 Appeals of nursing home actions.

(1) FORM. Appeals shall be in writing and shall conform to the applicable statute as to form, content, number of signatories and verification.

(2) CONTENT. Appeals shall contain the following information:

(a) The name and address of the appellant;.

(b) A description of the action that is being contested, the effective date of the action *and:* and if possible, a copy of the document that prompted the action;.

(c) A concise statement of the reasons for objecting to the action;.

(d) The What type of relief which is sought the appellant is seeking;.

(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 within 10 days after appellant receives notice of the action that is being contested. The appellant shall also 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.~~ All appeals shall be filed within the time specified by statute or administrative code, or, where no time is specified, within 30 days of the date of the order or decision to be reviewed. Appeals shall be filed and served in accordance with s. HA 1.03.

(4) NOTICE OF HEARING. ~~The division shall serve a notice of hearing and, where appropriate, a notice of a prehearing conference on the parties pursuant to s. 227.44 (2), Stats. The notice shall identify the administrative law judge designated by the administrator to be the presiding officer.~~ ADDITIONAL INFORMATION. The division may request additional information concerning an appeal filed under this section and may

*cc 10
1.04 is
am*

↑
→
→

7/2

deny any such petition, complaint or request where the information required or requested is not timely provided.

SEC 11
1.05
w/rep.

HA 1.05 Forms of other petitions for review and complaints.

~~Petitions and complaints shall conform with the applicable statute as to form, content, number of signatories and verifications. All petitions and complaints shall be filed within the time specified by statute or administrative code, or, where no time is specified, within 30 days of the date of the order or decision to be reviewed. Petitions and complaints shall be filed and served in accordance with s. HA 1.03. The division may request additional information concerning any petition, complaint or request filed under this section. The division may deny any such petition, complaint or request where the information required or requested under this section is not provided.~~

SEC 12
1.06-
1.09 are
1.08
am

HA 1.065 Notice of hearing and prehearing.

(1) FORM. The notice of hearing shall be in writing, with a title identifying the matter to be set for hearing and the docket number.

(2) CONTENT. The notice of hearing shall contain the following information:

(a) The date, time and location of the hearing.

(b) The statutory authority for the hearing.

(c) A short summary of the matter to be considered.

(d) The class of the contested case per s. 227.01(3), Stats.

(e) ~~Such~~ Other information as the division or the administrative law judge may deem appropriate.

cr
#2
rule
2nd
am

HA 1.076 Place of hearings.

Unless otherwise specifically provided by law, all hearings shall be held at the offices of the division or at the location designated by the administrative law judge. Hearings may be conducted outside the offices of the division at the discretion of the administrative law judge.

HA 1.087 Changes in time or place of hearing; adjournments; failures to appear.

(1) CHANGES. Requests for changes in the time and place of a scheduled hearing will be granted only for good cause. A request received after any required newspaper publication or legal notice will be rescheduled only if the person requesting the change bears the cost of such change and the administrative law judge deems such change appropriate under the circumstances presented.

delete or add

(2) **ADJOURNMENT.** The administrative law judge may adjourn a hearing for good cause and the hearing shall be reset or reconvened at his or her discretion.

(3) **FAILURE TO APPEAR.** (a) If an appellant applicant, petitioner, or complainant fails to appear at a hearing following due notice, the administrative law judge may dismiss the appeal application, petition or complaint unless the appellant applicant, petitioner, or complainant shows good cause for the failure to appear. If an appellant applicant fails to submit proof of publication and notice as required by statute, the administrative law judge may dismiss the application appeal and cancel the hearing.

(b) If a respondent fails to appear, the administrative law judge may take testimony and issue, modify or rescind the an order or take the allegations in an appeal application, petition, or complaint as true as may be appropriate, unless good cause is shown for the failure to appear.

(c) ~~If a petitioner or appellant in a proceeding fails to appear, the administrative law judge may dismiss the petition unless the petitioner or appellant shows good cause for the failure to appear.~~ For a telephone or video hearing or prehearing, the administrative law judge may find a failure to appear and grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference:

- (1) The failure to provide a telephone number to the division after it had been requested.
- (2) The failure to answer the telephone or videoconference line.
- (3) The failure to free the line for the proceeding.
- (4) The failure to be ready to proceed with the hearing or prehearing conference as scheduled.

HA 1.098 Participation.

Any person desiring to participate in a proceeding before the division, whether on his or her own behalf or as an authorized agent or attorney, shall enter an appearance ~~in person~~ by giving his or her name and address, the name and address of any party being represented, and the capacity in which he or she is representing such party. A person may enter his or her appearance either prior to or at the commencement of a contested case hearing unless otherwise directed in the notice of hearing.

HA 1.109 Witnesses and subpoenas.

An attorney may issue a subpoena to compel the attendance of witnesses under the same procedure as provided by s. 805.07 (1), Stats. The division or the administrative law judge may also issue subpoenas to compel the attendance of witnesses at hearings or discovery proceedings under this section. An attorney may issue a subpoena requiring the production of material ~~may be issued if the person requesting such subpoena~~ he or she specifies the documents material to be presented by the subpoenaed witness and the request is deemed reasonable by the division or the administrative law judge. Sections 814.67, 885.06 and 885.07, Stats., shall govern the payment of witness fees and expenses.

HA 1.140 Preservation of testimony, and discovery and summary judgment.

*sec. 13
1.11/20
nu
1.10 (1)
2nd am
to read*

sec 14 astrac
1.10(2) is not read

(1) PRESERVATION OF TESTIMONY AND DISCOVERY. The division or any party involved in a proceeding before the division may obtain discovery and preserve testimony as provided by ch. 227 and ch. 804, Stats. For good cause, the administrative law judge may allow a shorter or longer time for discovery or preserving testimony than is allowed by ch. 804, Stats. For good cause, the administrative law judge may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden, as provided in s. 804.01 (3), Stats. or orders as provided in s. 804.12, Stats. to compel discovery and for sanctions.

(2) SUMMARY JUDGMENT. The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge.

HA 1.121 Conferences.

(1) CALL AND PURPOSE. The administrative law judge may call a conference at any time prior to or during the course of a hearing, and may require the attendance of all persons who are or wish to be certified as parties to the proceeding. At the discretion of the administrative law judge, a conference may be conducted by telephone. The purposes of such conferences shall be to consider the following matters:

- (a) The clarification of issues;
- (b) Any amendments to the pleadings;
- (c) The admissibility of evidence;
- (d) The possibility of obtaining admissions or stipulations of fact and of documents which that will avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The identification of all parties to the proceeding; and
- (g) Such Other matters as may aid in the disposition of the matter.

(2) RECORDING STIPULATIONS. The administrative law judge may record any stipulations or other agreements made at a conference. Stipulations or other agreements made at a conference shall bind the parties in the subsequent course of the proceeding.

(3) DECISION ON BRIEFS. If a prehearing conference is held and the parties agree that there is no material dispute of fact raised by the pleadings, the administrative law judge may cancel the hearing and may decide the matter on the basis of briefs or stipulations submitted by the parties.

HA 1.132 Conduct of hearings.

sec 15
HA 1.12

(1) PROCEDURE. The administrative law judge will shall open the hearing and may make a concise statement of its scope and purposes. Appearances shall be entered on the record. Parties may make motions or opening statements.

(2) OPENING STATEMENTS. When opening statements are made they shall be confined to:

(a) ~~A brief summary or outline in clear and concise form~~ summary of the evidence intended to be offered; and

(b) A statement of ultimate legal points relied upon.

(3) ORDER OF PROCEEDINGS. (a) In proceedings where an state agency has issued an order or proposed order and the order recipient requests a hearing on the matter, the agency shall proceed first with the presentation of evidence and shall have bear the burden of proof.

(b) In any ~~other~~ proceeding other than par. (a), the administrative law judge will apply normal rules of procedure used in the courts in determining the appropriate order of presentation of a case and on whom the burden of proof should fall.

(4) OFF RECORD. Proceedings may be conducted off the record only when the administrative law judge permits. If a discussion off the record is deemed pertinent by the administrative law judge, he or she may summarize it on the record.

(5) OBJECTIONS TO EVIDENCE. Any argument before the administrative law judge on objections to receipt of evidence or on motions to strike will be recorded, and The parties will be afforded the opportunity to make an offer of proof. ~~An offer of proof which~~ shall be in the form directed by the administrative law judge.

(6) CONTEMPT. Conduct that unreasonably impedes the orderly progress of the hearing or contemptuous conduct at a hearing shall be grounds for exclusion from the hearing. The division or the administrative law judge may take other actions which that are authorized by statute and are appropriate under the circumstances.

(7) EXCLUSION OF WITNESSES. At the request of a party, or on the administrative law judge's own motion, the administrative law judge may order witnesses sequestered in accordance with s. 906.15, Stats.

(8) TELEPHONE AND AUDIOVISUAL TESTIMONY. The administrative law judge may permit oral argument and oral testimony communicated on the record by telephone or live audiovisual means as provided in s. 807.13, Stats.

HA 1.143 Rules of evidence.

(1) RULES. Rules of evidence in contested cases are governed by s. 227.45, Stats.

(2) **ADMISSIBILITY.** Evidence submitted at the time of the hearing need not be limited to matters set forth in the ~~pleadings, petitions or applications~~ appeal. If such variances occur, the ~~pleadings, petitions or applications~~ appeal shall be considered amended by the record. The administrative law judge may grant such continuances as may be necessary to give other parties adequate time to prepare evidence to rebut that involved in any such variances.

(3) **TECHNICAL DATA.** When evidence to be presented consists of ~~technical figures~~ data so numerous complex as to make oral presentation difficult to follow, or if information can be more effectively presented visually, ~~it~~ the data may be presented in exhibit form and supplemented and explained by oral testimony.

(4) **PETITIONS.** Petitions or other written communications not admissible as evidence may be filed with the administrative law judge but may not be part of the record.

WZ
(5) **EXHIBITS AND PREPARED TESTIMONY.** (a) The administrative law judge may order parties offering documentary exhibits or prepared testimony may be ordered by the administrative law judge to furnish copies to all other parties in advance of the hearing and to provide such a reasonable amount of time as the administrative law judge may order to enable review of the prepared testimony and exhibits. Upon compliance with such order, prepared testimony may be admitted in evidence as though given orally, providing the authors are present and available for cross-examination.

WZ
(b) An administrative law judge at his or her discretion may exclude from the record exhibits offered into evidence that are bulky, dangerous, perishable, or otherwise not suitable for inclusion in agency records. Proponents shall make reasonable efforts to use photographs, recordings, or other mechanical or electronic means to substitute for physical evidence excluded by the administrative law judge.

HA 1.154 Close of hearing.

(1) **CLOSING AND BRIEFS.** A hearing in a contested case shall be closed upon completion of the submission of all evidence and expiration of the period fixed for filing of briefs. If the time for filing briefs has expired and the brief of one or more parties is not filed within such time, the administrative law judge may proceed to the determination of the case. The administrative law judge may grant an extension of time to file briefs upon a showing of good cause.

(2) **ADDITIONAL EVIDENCE.** If by stipulation of the parties, ~~documentary~~ evidence is permitted to be submitted after the close of testimony, the record will be closed when the such documentary evidence is received by the division or when the specified time for furnishing it has elapsed without its being furnished. The administrative law judge may, upon the request of a party, extend the time originally prescribed for filing such additional evidence.

HA 1.165 Transcripts.

(1) METHOD AND COPIES. Hearings shall be recorded either stenographically or electronically. A typed transcript will be made when it is determined that one is necessary by the division or the administrative law judge. If ~~a transcript is made by the division~~ makes a transcript, copies shall be furnished to all persons upon request and prepayment of a reasonable fee, as determined by the division. If no transcript is deemed necessary by the division and a party requests that one be prepared, that party shall be responsible for costs of transcript preparation. If several parties request transcripts, the division may divide the costs of transcription equally among the parties. In lieu of a transcript the division may provide any person requesting a transcript with a copy of the tape recording of the hearing upon payment of a reasonable fee. All requests for transcription shall be made at the hearing or in writing and sent to the administrative law judge who presided at the hearing.

(2) FINANCIAL NEED. Any person, who by affidavit or other appropriate means can establish to the satisfaction of the division that the person is indigent and has a legal need, may be provided with a copy of a transcript without charge.

(3) CORRECTIONS. Any party, within 14 days of the date of mailing of the transcript, may file with the administrative law judge a notice in writing of any claimed error, and shall mail a copy of such notice to each party of record. Other parties may contest any claimed error within 20 days of the date of the mailing of the transcript by notifying the administrative law judge and other parties of record. All parties shall be advised by the administrative law judge of any ~~authorized~~ corrections to the record approved by the administrative law judge.

HA 1.176 Briefs.

(1) TIME SCHEDULE FOR FILING OF BRIEFS. Parties shall indicate on the record after the close of testimony at the hearing whether they desire to file briefs. The administrative law judge may establish a schedule for the filing of briefs. The party or parties having the burden of proof shall file the first brief. Other parties may then subsequently file response briefs, which may be replied to. ~~In the a~~ Alternatively, the administrative law judge may direct that the briefs of all parties be filed simultaneously.

(2) NUMBER. ~~Two copies~~ One copy of all each briefs should be filed with the division together with a statement showing upon whom copies have been served. Briefs which contain a summary of evidence or facts relied upon should include, where possible, reference to specific pages of the record containing ~~such~~ the evidence or facts.

(3) EFFECT OF EARLY FILING. The filing of briefs in less time than allowed shall not change the due dates for the remaining briefs.

HA 1.187 Decision.

(1) FORM. After the record is closed in each proceeding the administrative law judge shall prepare written findings of fact, conclusions of law, and, except in the case of proceedings under s. 227.46 (3) (b), Stats., either a proposed or a final decision. Said The decision shall be in accordance with the provisions of ss. 227.46 and 227.47, Stats.

(2) BURDEN OF PROOF. Unless the law provides for a different standard, the quantum of evidence for a hearing decision shall be by the preponderance of the evidence.

~~(1m3)~~ COMMENTS ON PROPOSED DECISIONS. Where a proposed decision is prepared and circulated, comments shall be filed within 15 days of service of the decision unless a different period is specified by the administrative law judge or the administrator specifies a different period. An interim decision may be issued as a proposed decision.

2 ✓ (4) EFFECT OF DECISION. An agency may, by administrative code provision or by order in a particular case or category of cases, direct that a decision of the division be issued as a final decision, in which case the decision is a final decision of the agency. If the agency does not direct that the decision in a case or category of cases be issued as a final decision, the administrative law judge shall issue a proposed decision to the official of the agency.

(25) PARTIES. The administrative law judge shall prepare a list of persons who are certified as parties to the proceeding and set forth such include the list in the decision. For purposes of certifying identifying parties to the proceeding under s. 227.47, Stats., and this section, the administrative law judge shall consider the following criteria:

- (a) The nature of the agency proceeding;
- (b) The persons on whom the decision will have an effect and the amount of that impact; and
- (c) The nature of the participation by those involved in the proceeding, including attendance at hearings, cross-examination of witnesses, and submission of briefs.

(36) SERVICE. Every decision when signed shall be served upon each party to the proceeding or upon the party's attorney of record.

(47) ACTIVITIES AFTER DECISION. Persons certified identified as parties shall be served with post hearing motions, correspondence and other documents submitted by any party after issuance of the decision and directly relating to the case. Such These persons shall also be served with petitions for rehearing and reopening as well as with petitions for administrative and judicial review.

HA 1.19 Reopening hearings.

~~When a hearing in a proceeding has been closed, no further evidence shall be received, except by order of the division or the administrative law judge. A closed case may be reopened for the taking of further evidence upon application of a party showing to the division's or the administrative law judge's satisfaction that the evidence is newly discovered and was not available at the time of the hearing and that the evidence is necessary for a just disposition of the case.~~

SEC 13
1.19 is
repealed

SEC 14
1.2018
M. 18
L am

HA 1.2018 Review.

Each A final decision shall include a notice of any right of the parties to petition for rehearing and to request administrative or judicial review of adverse decisions. Said The notice shall also provide the time allowed for filing each a petition for review and shall identify the party to be named as respondent in such an action.

The amendments and rules contained 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)(intro), Stats.