

173-39-08

Appeal hearings and adjudication orders.

(A) ODA will conduct all appeal hearings resulting from a proposal to deny certification as a community-based long-term care provider or to sanction a provider in accordance with Chapter 119. of the Revised Code.

(1) ODA will employ a hearing examiner to conduct all hearings initiated under rule 173-39-07 of the Administrative Code.

(2) The date, time, and place of any hearing is set by ODA. ODA will provide written or electronic notice prior to the date of the hearing to all participants in the hearing and file a copy of the written notice in the record of the hearing.

(3) Subject to the prior approval of the hearing examiner, any appellant may choose to present the case entirely in writing provided that a written request is made by the appellant no later than fourteen business days prior to the date scheduled for the hearing. Any request to present the case entirely in writing must be filed with the hearing examiner. Any appellant who elects to present the case entirely in writing must do so in accordance with procedures ordered by the hearing examiner. The hearing examiner's order must be in writing and filed in the record of the hearing. In the event that the appellant elects to present its case in writing, the department may elect to present its case entirely in writing. Nothing in this rule is to be construed as preventing the department from compelling the attendance of the appellant or other witnesses at the hearing and questioning the appellant or other witnesses as if on cross-examination. Nothing in this rule is to be construed as preventing any appellant from examining any witnesses or evidence presented by the department at the hearing.

(4) During the course of any hearing, the participants to the proceeding may enter into oral stipulations of fact, procedure, or the authenticity of documents which will be incorporated into the record and will bind the conduct of the participants. The hearing examiner conducting the case may require oral stipulations to be reduced to writing and submitted to the hearing examiner. The hearing examiner assigned to conduct a hearing has the power to rule on the admissibility of evidence or testimony, but a participant may make objections to the rulings thereon. If the hearing examiner refuses to admit evidence or testimony, the participant seeking admission of same must make a proffer thereof and such proffer will be made a part of the record of the hearing. The hearing examiner may refer to the guidelines contained in the "Ohio Rules of Evidence" in making decisions on admissibility.

(B)

(1) Upon the conclusion of any hearing, the hearing examiner will prepare a written report of findings of fact, conclusions of law, and recommendations of

departmental action to be taken in disposition of the hearing. Within five days of its completion, ODA will send by certified mail, return receipt requested, to the appellant or the appellant's attorney, a copy of the hearing examiner's report. The report will be considered to have been mailed as of the date appearing on United States postal service form 3800.

(2) An appellant may file written objections to the hearing examiner's report. Any such objections must be received by ODA no later than ten days after the appellant receives the report. ODA may grant an extension of time to file objections if the appellant's written request for an extension is received by ODA no later than ten days after the appellant's receipt of the report. The date the appellant receives the hearing examiner's report is the date indicated on the United States postal service form 3800. The director of ODA will consider timely written objections before approving, modifying, or disapproving the recommendations of the hearing examiner.

(C)

(1) Recommendations of the hearing examiner may be approved, modified, or disapproved by the director of ODA. The director of ODA may order additional testimony to be taken and permit the introduction of further documentary evidence. In those instances where the director of ODA modifies or disapproves the recommendations of the hearing examiner, the director of ODA will include the reasons therefore and incorporate said reasons into the final order of adjudication.

(2) After ODA's director has entered an order approving, modifying, or disapproving the hearing examiner's recommendation on the department's journal of proceedings, ODA's director will mail to the appellant and any attorney of record by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected.

(D)

(1) Any appellant other than a licensee against whom a final order of adjudication is entered, pursuant to this rule, may appeal that order to the Franklin County court of common pleas. Any licensee against whom a final order of adjudication is entered, pursuant to the this rule, may appeal that order to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.

(2) Any party desiring an appeal pursuant to this rule must file an original notice of appeal with the department setting forth the order appealed from and the grounds of the party's appeal. In order to be determined filed with ODA, the notice of appeal must be received by ODA, as evidenced by an ODA date and

time stamp, no later than fifteen days after the mailing to the affected party, as evidenced by United States postal service form 3800, of the order to be appealed from. Appellant shall also file a copy of the notice of appeal with the court of common pleas no later that fifteen days after the mailing to the affected party, as evidenced by United States postal service form 3800, of the order to be appealed from.

Effective: 03/31/2006

R.C. 119.032 review dates: 10/15/2010

CERTIFIED ELECTRONICALLY

Certification

03/21/2006

Date

Promulgated Under: 119.03
Statutory Authority: 173.02, 173.391
Rule Amplifies: Chapter 119., 173.39, 173.391