

3701-61-04

Written decision, impartial hearing and appeal.

- (A) Upon receiving a request pursuant to section 3721.161 of the Revised Code and paragraph (D) of rule 3701-61-03 of the Administrative Code, the department of health shall conduct hearings under this rule in accordance with 42 C.F.R. 431, subpart E, to determine whether the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code.
- (B) The department shall employ or contract with an attorney to serve as a hearing officer. The hearing officer shall conduct a hearing in the home. The date and time of the hearing shall be determined by the hearing officer, but shall be no later than ten days after the date the department receives a request pursuant to section 3721.161 of the Revised Code and paragraph (D) of rule 3701-61-03 of the Administrative Code, unless the home and the resident or, if the resident is not competent to make a decision, the home and the resident's sponsor, agree otherwise. The hearing shall be recorded on audiotape, but neither the recording nor a transcript of the recording shall be part of the official record of the hearing. A hearing conducted under this rule is not subject to section 121.22 of the Revised Code.
- (C) Notice of the date, time, and place of the hearing shall be sent by certified mail to the administrator, resident, and any sponsor. This notice shall also inform the administrator, resident, and any sponsor that they have a right to appear at the hearing in person or by their attorneys or other representatives. No scheduled hearings may be postponed except by agreement of both parties.
- (D) The administrator shall have the opportunity to present to the hearing officer any oral testimony or written materials to show by a preponderance of the evidence just cause why the proposed transfer or discharge complies with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code. The resident and any sponsor shall also have an opportunity to present to the hearing officer any oral testimony or written material to show just cause why the transfer or discharge does not comply with division (A)(30) of section 3721.13 of the Revised Code and paragraphs (A)(1) to (A)(7) of rule 3701-61-02 of the Administrative Code. The hearing officer, administrator, resident, any sponsor and any representatives of the foregoing may ask questions of any person participating in the hearing. The hearing shall be informal in nature but all parties shall respect directives of the hearing officer for the orderly conduct of the hearing. The evidence shall be presented under oath.
- (E) Unless the parties otherwise agree, the hearing officer shall issue a decision within five days of the date the hearing concludes. In all cases, a decision shall be issued not later than thirty days after the department receives a request pursuant to section 3721.161 of the Revised Code and paragraph (D) of rule 3701-61-03 of the Administrative Code.

(F) A resident, resident's sponsor or home may appeal the decision of the department to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code, except for all of the following:

(1) A resident, resident's sponsor or home shall file the appeal in the court of common pleas of the county in which the home is located.

(2) The resident or resident's sponsor may apply to the court for designation as an indigent and, if the court grants the application, the resident or resident's sponsor shall not be required to furnish the costs of the appeal.

(3) The appeal shall be filed with the department and the court within thirty days after the hearing officer's decision is served. The appealing party shall serve the opposing party a copy of the notice of appeal by hand delivery or certified mail, return receipt requested. If the home is the appealing party, it shall provide a copy of the notice of appeal to the resident and the resident's sponsor or attorney, if known.

(4) The department shall not file a transcript of the hearing with the court unless the court orders it to do so. The court shall issue such an order only if it finds that the parties are unable to stipulate to the facts of the case and that the transcript is essential to the determination of the appeal. If the court orders the department to file the transcript, the department shall do so not later than thirty days after the after the day the court issues the order.

(G) The court shall not require an appellant to pay a bond as a condition of issuing a stay pending its decision.

(H) The resident, resident's sponsor, home, or department may commence a civil action in the court of common pleas of the county in which the home is located to enforce the decision of the department or the court. If the court finds that the resident or home has not complied with the decision, it shall enjoin the violation and order other appropriate relief, including attorney's fees.

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CERTIFIED ELECTRONICALLY

Certification

03/10/2005

Date

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