

67:17:02:03. Hearing requests. To appeal a ~~department~~ Department of Social Services action or inaction ~~made under regarding the food stamp program supplemental nutrition assistance program or medical assistance program,~~ the an individual must clearly express to the department an intent to appeal. The, or the individual's representative, shall submit a written or oral request for an appeal may be made either orally or in writing to the department's Office of Administrative Hearings.

For all other department programs, to appeal a department action or inaction ~~the an individual, or an individual representing the entity affected must~~ the individual's representative, shall submit a written and signed request for a hearing to the ~~Department of Social Services,~~ Office of Administrative Hearings. A person assisting an individual ~~such as a relative, friend, or attorney~~ may request a hearing on the individual's behalf.

~~When~~ An individual making a request for a hearing, ~~the individual requesting the appeal must~~ shall indicate what department action or inaction is being appealed. If the ~~reason for the appeal~~ issue being appealed is unclear, any party involved in the action may request the Office of Administrative Hearings to ~~further~~ clarify the issue.

~~If the entity requesting a hearing is a~~ A corporation, the corporation that requests or is a party to a hearing must be represented throughout the hearing process by ~~its~~ an attorney.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:03, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-Reference: Definition of medical assistance program, subdivision
67:46:01:01(5).

67:17:02:04. Time limits for requesting hearing.~~A~~ An individual, the individual's representative, or an entity shall request for a fair hearing must be made within one of the following applicable time limits:

(1) Ten days after a nursing facility receives the department's final decision on ~~issues~~ an issue relating to ~~resident assessments~~ an assessment and ~~the~~ any resulting payment adjustment made under the provisions of chapter 67:45:03;

(2) Ten days after a decision is entered as a result of a review on a petition to stay service of a proposed withholding action for the child support enforcement program under the provisions of chapter 67:18:01;

(3) Ten days after a decision is entered as a result of a review ~~concerning the~~ furnishing of information reported to consumer reporting agencies under the provisions of chapter 67:18:01;

(4) Ten days after a decision is entered as a result of a review ~~concerning that~~ concerns restricting the issuance or renewal of ~~an absent~~ a noncustodial parent's ~~driver's~~ driver, professional, sporting, or recreational license, registration, certification, or permit under the provisions of chapter 67:18:01;

(5) Ten days after a decision is entered as a result of a review that concerns a lottery setoff for the child support enforcement program under the provisions of chapter 67:18:01;

(6) Thirty days after the department sends its the final audit report to a nursing facility pursuant to § 67:16:04:37, or up to 60 ~~sixty~~ days after the department sends its the final audit report to a nursing facility ~~and if~~ if the department has granted an extension of time to request a fair hearing ~~to the facility~~ pursuant to § 67:16:04:38;

~~(6)(7)~~ Thirty days after notice of the action complained of or of the conference decision, or ~~30~~ thirty days after action should have been taken by the department as provided by law or rule;

~~(7)(8)~~ Thirty days after notice is received that the department is placing an individual's name on the central registry under the provisions of chapter 67:14:39;

~~(9)~~ Thirty days after the department sends ~~its~~ a written ~~decision as a result of an informal review of a request to amend, expunge information, or remove a record~~ notice of the department's denial of an individual's request for a record to be removed from the central registry under the provisions of chapter 67:14:39;

~~(8)(10)~~ Thirty days after the department notifies a child care provider or a recipient of child care services of an intended action under the provisions of chapter 67:42:01 or 67:47:01;

~~(9)(11)~~ Sixty days after an action is taken by the department, or after any loss of benefits, relating to the person's participation in the energy crisis intervention program or the low income energy assistance program under the provisions of chapter 67:15:01 or 67:15:04; or

~~(10)(12)~~ Ninety days after an action is taken by the department related to the supplemental nutrition assistance program, or after any loss of benefits, relating to ~~food stamps; or~~

~~(11)~~ Ten days after a decision is entered as a result of a review concerning a lottery setoff for the child support enforcement the person's participation in the supplemental nutrition assistance program under the provisions of article 67:13.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:04, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 30, effective October 3, 1983; 14 SDR 97, effective January 17, 1988; 15 SDR 100, effective January 12, 1989; 16 SDR 26, effective August 13, 1989; 18 SDR 112, effective January 9, 1992; 18 SDR 134, effective February 25, 1992; 20 SDR 28, effective August 31, 1993; 21 SDR 8, effective July 25, 1994; 22 SDR 188, effective July 8, 1996; 26 SDR 21, effective August 24, 1999; 28 SDR 112, effective February 20, 2002; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

~~———— **Collateral Reference:** § 1703.1 — Time period for requesting a hearing, South Dakota Food Stamp Program Certification and Accountability Manual.~~

Cross-References:

Fair hearings, 7 C.F.R. § 273.15(g).

Conference with department staff, § 67:10:10:06.

Notice when name is to be placed on central registry, § 67:14:39:05.

Request to remove record from central registry after five years -- Limited to individuals having substantiated report or court finding, § 67:14:39:09.

Request for fair hearing — ~~Low income energy assistance program~~, § 67:15:01:49.

~~Request for fair hearing~~ ~~Energy crisis intervention program~~ Fair hearings,
§ 67:15:04:07.

Audits -- Appeal provisions, § 67:16:04:37.

Time limits for requesting hearing, § 67:16:04:38.

Furnishing information to consumer reporting agencies, § 67:18:01:49.03.

~~Request for~~ Right to fair hearing ~~Withholding action~~ ~~Child support~~
~~enforcement program~~ following review of petition to stay withholding, § 67:18:01:58.02.

~~Request for fair hearing~~ ~~Furnishing information to consumer reporting agencies~~
~~Child support enforcement program,~~ § 67:18:01:49.03.

~~Request for fair hearing~~ ~~Audit reports to nursing facilities,~~ § 67:16:04:37.

~~Time limits for requesting fair hearing,~~ § 67:16:04:38.

~~Request to amend, expunge information, or remove record~~ ~~Informal review~~
~~Fair hearing,~~ § 67:14:39:06.

Administrative review -- Lottery setoff, § 67:18:01:58.03.

Administrative review and fair hearing before restricting issuance of license,
registration, certification, or permit, § 67:18:01:62.

Notice to facility, § 67:42:01:05.03.

~~Fair hearing~~ ~~Resident assessments and payment adjustments,~~ § 67:45:03:12.

~~Administrative review~~ ~~Lottery set off,~~ § 67:18:01:58.03.

~~Administrative review and fair hearing before restricting issuance of license,~~
~~registration, certification, or permit, § 67:18:01:62.~~

Overpayments -- Hearings -- Payments made pending hearing, § 67:47:01:25.01.

67:17:02:11.01. Hearings conducted by electronic means. The hearing examiner may hold a hearing by telephone conference or by electronic or digital means.

For telephonic, electronic, or digital hearings, other than hearings for suspected intentional program violations, all parties must submit their proposed exhibits to the hearing examiner and to the other parties involved at least five calendar days before the hearing date.

For a suspected intentional program violation hearing, each party must submit the party's proposed exhibits to the hearing examiner at least five calendar days before the hearing date. If requested by the individual or the individual's representative, the Department of Social Services must provide an electronic or physical copy of the proposed exhibits to the individual within five calendar days.

Source: 17 SDR 50, effective October 7, 1990; 23 SDR 192, effective May 22, 1997; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-Reference: Fair hearings, 7 C.F.R. § 273.15(p)(1).

67:17:02:13. Dismissal. The hearing examiner may dismiss an appeal under any of the following circumstances:

~~(1) Except for appeals involving medical assistance, the~~ The appellant indicates in writing or verbally that the appellant wishes to withdraw the appeal. A verbal request to withdraw a medical assistance appeal must be recorded by the department;

~~(2) For appeals involving medical assistance, the appellant has submitted to the department a written request to withdraw the appeal;~~

~~——(3)~~ The appellant and the department resolve the case before the hearing examiner enters a final decision;

~~(4)~~(3) The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients; or

~~(5)~~(4) The appellant is in default according to § 67:17:02:14.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:13, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 23 SDR 122, effective February 6, 1997; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-Reference: Informal resolution, § 67:17:02:16.

67:17:02:27. Final decision by secretary. Based on the transcript or recording of testimony, the exhibits, and the proposed decision of the hearing examiner, the secretary or a designee shall enter a final decision accepting, rejecting, or modifying the proposed decision. If the hearing involves a ~~food stamp~~ supplemental nutrition assistance program issue, the decision must be mailed to the parties involved within ~~60~~ sixty days after the request for the hearing. For all other hearings, the decision must be mailed to the parties involved within ~~90~~ ninety days from the date of the request for the hearing.

If a ~~continuance of a hearing~~ continuance is requested and the parties to the action stipulate to the continuance, the time allowed for mailing the final decision is extended for the same number of days for which the continuance is granted.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:27, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 35 SDR 166, effective December 24, 2008.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-References:

Tentative or proposed decision served on parties---Contents---Waiver, SDCL 1-26-24.

~~Request for a hearing to release name of complainant in unsubstantiated investigation, SDCL 26-8A-11.~~

~~———— Collateral References: § 7120 — Fair hearing time frames; § 7133 — Household requests for postponements, South Dakota Food Stamp Program Certification and Accountability Manual.~~