

SUBCHAPTER 05E - DIVISION HEARINGS

SECTION .0100 - GENERAL

10A NCAC 05E .0101 DIVISION HEARINGS IN GENERAL

(a) The state Division of Aging has established a decision review process whereby certain persons aggrieved by an Area Agency on Aging final decision, who have exhausted local administrative remedies, who can demonstrate injury in fact, and whose petition contains the necessary facts to establish subject matter jurisdiction, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules and other recognized common law principles of judicial economy and restraint.

(b) Pursuant to federal statutes and regulations, the state Division of Aging has also established a decision review process whereby aggrieved Area Agencies on Aging, and eligible applicants denied designation as planning and service areas, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules.

(c) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the state Division of Aging unless another specific statute or rule provides otherwise. Division of Aging hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at all stages of the hearing process.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0102 DEFINITIONS

Unless otherwise redefined by this Section, the definitions contained in G.S. 150B-2 are incorporated herein by reference pursuant to G.S. 150B-14(c). The following definitions shall apply:

- (1) "Agency" means an Area Agency on Aging as defined in the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.
- (2) "Division" means the North Carolina Division of Aging of the North Carolina Department of Human Resources.
- (3) "File or Filing" means personal delivery, delivery by certified mail, or delivery by licensed overnight express mail of a document or paper to the current acting Assistant Secretary of the North Carolina Division of Aging at 693 Palmer Drive, 2101 Mail Service Center, Raleigh, NC 27699-2101. A document or paper is deemed filed as of the date it is delivered to the Assistant Secretary, or when properly addressed, officially postmarked and accepted for delivery by the United States Postal Service or other licensed express mail service, whichever is earlier. Filings addressed to a person other than the Assistant Secretary, or which fail to be filed within the time periods established by the respective Area Agency, by these Rules, or by the hearing officer, or which otherwise fail to be filed in conformity with these Rules (i.e., no certificate of service) may be considered as improper filings and denied, taken as an admission, or dismissed accordingly. Except for excusable clerical error, good cause and a showing of irreparable harm, an improper filing shall not extend the deadline for filing of documents. All filings shall be submitted on 8 1/2" by 11" paper.
- (4) "Hearing" means an administrative proceeding, requested by written petition, whereby a person aggrieved is given an opportunity to be heard regarding his or her rights, duties or privileges. All hearings shall be electronically recorded by the hearing officer. Costs of certified transcripts or electronic reproductions shall be borne by the parties requesting same, and shall be paid prior to delivery of same to the parties. Costs shall be determined by the Chief DoA Fiscal Officer at the time of the request.
- (5) "Hearing Officer" means a person designated to preside over a decision review hearing. In the absence of contrary designation, the Division attorney shall be the Hearing Officer for all such hearings.
- (6) "Respondent" means an agency, or in case of discrimination, an agency or service provider, whom a petition has been filed against and who has been served with a copy of same.

- (7) "Serve or Service" means personal delivery, delivery by first class or certified United States Postal Service mail or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service. For purposes of service on the Division, the Assistant Secretary of the Division shall be the designated agent.
- (8) "Service Provider" means a contractor or subgrantee receiving federal funds to provide service under the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.

History Note: Authority G.S. 132-6; 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0103 COMMENCEMENT OF A DIVISION HEARING: PETITIONS

(a) In order to commence an administrative decision review hearing with the Division, a petition must be filed in accordance with these Rules. The petition must be in writing, and must be signed by the aggrieved person submitting the petition or by the person's designated representative. A petition must contain the name, address and phone number of the petitioner, as well as his representative if one is designated. If a representative is designated, notice of meeting dates, requests for information, hearings decisions, etc. will be sent to the representative rather than the aggrieved person, unless the petition otherwise requests. The party who files a petition shall simultaneously serve a copy of the petition on all other parties and shall file a certificate of service together with the petition. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state specific facts which tend to establish that the respondent has substantially prejudiced the petitioner's rights and has failed to act as required by law, rule or procedure.

(b) In addition to any pertinent requirements stated elsewhere in these Rules, a petition filed with the state Division of Aging must contain specific factual allegations which tend to establish that the petitioner is:

- (1) a service provider whose contract or subgrant under an area plan has been terminated by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (2) an eligible applicant who seeks to provide service under an area plan and whose application has been denied or rejected by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (3) an applicant eligible for designation as a planning and service area in the state whose application has been denied by the state Division of Aging; or
- (4) an Area Agency on Aging whose area plan or plan amendment intends to be disapproved or whose designation intends to be withdrawn by the state Division of Aging; or
- (5) a service recipient who has been discriminated against in violation of federal or state law on the basis of age, race, color, national origin, sex, religion or handicap in regard to delivery of Older Americans Act services by a contractor or subgrantee, or in regard to administration of such services by an Area Agency on Aging.

(c) All petitions shall contain a statement of the relief sought by the petitioner. Petitioners who seek an administrative decision review hearing with the state Division of Aging must so state in their petition. However, the formal hearing process may be waived and informal disposition may be made at any time by the parties regarding any issues in the petition. Issues not addressed in the petition shall not be considered in the state hearing process and shall not be the subject of relief. Issues and facts may be dealt with by stipulation, agreement or consent order at any time by the parties. Petitions which are improperly filed, or which fail to contain proper subject matter, may be subject to denial of formal review.

(d) Only those persons listed in Paragraph (b) of this Rule may petition for an administrative decision review hearing with the state Division of Aging. Petitioners under Subparagraphs (b)(1), (2) and (5) of this Rule shall file their respective petitions within 60 days following the date on which a final adverse decision has been rendered against them by an Area Agency on Aging. If no petition is filed within the respective 60 day period, the Area Agency's action shall become final. Eligible applicants under Subparagraph (b)(3) and agencies under Subparagraphs (b)(4) of this Rule shall file their petitions within 60 days after notification of denial or intention, respectively. If no petition is filed within the

60 day period, then the Division's action shall become final. Petitioners shall exhaust all available administrative remedies before petitioning the Division of Aging for a decision review hearing.

(e) Decisions or actions taken by the Division which substantially prejudice a person's rights, duties or privileges, but which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and should be submitted in a separate petition to the Office of Administrative Hearings in accordance with 10A NCAC 01 and 26 NCAC 03 .0103. Decisions or actions taken by an Area Agency on Aging which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and, subject to the expression or implication of private rights of action by state or federal law, should be contested in a court of law. Subject to the discretion of the Division hearing officer, improper subject matter in a petition may either be deleted or form the basis for dismissal of the entire petition.

(f) After service of a final written decision upon the parties, if a party, other than an "applicant" in Rule .0103(b)(3), disagrees with the Division review hearing decision, the party may request a contested case hearing in accordance with 26 NCAC 03 .0103 and 10A NCAC 01 within 60 days of said service. For purposes of notice, 26 NCAC 3 .0103 and 10A NCAC 01 are incorporated herein by reference pursuant to G.S. 150B-14(c).

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14;
42 U.S.C., Sec. 3025 (b)(1) and 3027(a)(5); 45 C.F.R., Part 1321;
45 C.F.R., Parts 80, 84 and 91; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Amended Eff. August 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0104 NOTICE OF FILING: NOTICE OF HEARING

Upon receipt of a timely petition for an administrative decision review hearing, the Division Hearing Officer shall promptly notify all parties of receipt of such filing, and shall arrange with the parties a time, date and place of hearing. Notice of the time, date and place of hearing shall be served on all parties not less than 15 days prior to the date of hearing.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0105 ANSWERS TO THE PETITION

(a) A respondent who is served notice of filing of a petition shall file a written response to the petition and shall serve a copy of such response with certificate of service upon all other parties within 15 days after service of notice. The written answer may be submitted in lieu of a personal appearance at the hearing. If the respondent desires to file an answer in lieu of appearance, he must designate such on the face of the answer.

(b) Answers shall respond to each allegation of the petition, and may contain defenses, assertions of fact, and citations to applicable laws, rules and procedures. Failure to respond thoroughly to a timely and valid petition shall be grounds for admission of facts contained in the petition. The validity and timeliness of the petition may be contested in the answer.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0106 DOCUMENTS

All documents required to be filed pursuant to these Rules shall likewise be served on all other parties by the filing party. The original of every document filed shall be endorsed with a certificate of service signed by the party making the service or by his designated representative, stating that such service has been made, the date of service, and the manner of service.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0107	VENUE
10A NCAC 05E .0108	DISCOVERY
10A NCAC 05E .0109	EVIDENCE
10A NCAC 05E .0110	TESTIMONY: WITNESSES
10A NCAC 05E .0111	SUBPOENAS
10A NCAC 05E .0112	PREHEARING STATEMENTS
10A NCAC 05E .0113	PREHEARING: SETTLEMENT CONFERENCE
10A NCAC 05E .0114	FAILURE TO APPEAR AT HEARING
10A NCAC 05E .0115	MISCONDUCT AT HEARING
10A NCAC 05E .0116	SANCTIONS
10A NCAC 05E .0117	MOTIONS
10A NCAC 05E .0118	CONTINUANCES AND EXTENSIONS OF TIME
10A NCAC 05E .0119	TIME
10A NCAC 05E .0120	AUTHORITY OF PRESIDING OFFICER

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05E .0121 FINAL DECISION

If the Division conducts a hearing as requested by petition, and the matters in dispute are not dispensed with through agreement, dismissal or otherwise prior to the conclusion of the hearing, then the Hearing Officer shall prepare a final written decision within 30 days of the date of hearing and serve copies of the final decision upon the parties.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0122 APPEALS TO COMMISSIONER ON AGING

If an applicant under Rule .0103 (b)(3) makes a timely request for hearing with the state Division of Aging, and the Division hears the case and issues a written decision denying the applicant's designation as a planning and service area; then the applicant may appeal the denial to the Commissioner on Aging in Washington, D.C. The appeal must be in writing and must be made within 30 days following receipt of the state's hearing decision.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - BIDDING AND CONTRACTING

10A NCAC 05E .0201 BIDDING AND CONTRACTING PROCEDURES

Service bid, contract, and grant procedures shall be governed by G.S. Chapter 143, Art. 8, where applicable, as well as 42 U.S.C., Sec. 3001, et. seq., 45 C.F.R. Part 1321, and the procedures contained in 45 C.F.R., Part 74, as well as Appendix G of the same Part, more particularly described as OMB Circular A-102. The aforesaid regulations are incorporated herein by reference pursuant to G.S. 150B-14(c).

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1;
42 U.S.C., Sec. 3021, 3022(1), 3025(c) and 3027(a)(7);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

