

Introduced: 2/16/70
Referred: Health, Welfare
& Education and Judiciary

1 IN THE HOUSE

BY HENSLEY BY REQUEST

2 HOUSE BILL NO. 680

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hearing procedures for public
7 assistance programs."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 47.05.010(10) is amended to read:

10 (10) grant to a person claiming or receiving assistance and
11 who is aggrieved because of the department's action or failure to act,
12 reasonable notice and an opportunity for a fair hearing in accordance
13 with secs. 60 - 170 of this chapter [BY THE DEPARTMENT, AND THE DEPART-
14 MENT SHALL ESTABLISH REGULATIONS RELATIVE TO THIS];

15 * Sec. 2. AS 47.05 is amended by adding new sections to read:

16 Sec. 47.05.060. RIGHT TO FAIR HEARING. A recipient of or an
17 applicant for assistance under a program administered by the Department
18 of Health and Welfare who is aggrieved by departmental action or
19 failure to act has the right to a fair hearing in regard to the action
20 or inaction. At the time of an action or failure to act which denies,
21 discontinues, or reduces assistance benefits, the department shall
22 provide to the aggrieved person, in writing,

23 (1) notice that the person has a right to a hearing for
24 review of the adverse action; and

25 (2) a simple explanation of how to obtain a hearing.

26 Sec. 47.05.070. COMPLAINT FORMS. The Department of Health and
27 Welfare shall make available at its regional offices printed forms
28 entitled "Complaint Requesting Hearing". These forms shall be avail-
29 able upon request to any person. The form shall contain:

- 3 (1) a statement that the aggrieved party requests a hearing;
- 4 (2) notice to the complainant of his right to counsel at a
- 5 hearing;
- 6 (3) a statement of alternative grounds for requesting a
- 7 hearing, with an appropriate method of indicating the applicable
- 8 ground;
- 9 (4) a statement of all relevant procedural rules affecting
- 10 a hearing so as to insure a full understanding by the complainant; and
- 11 (5) provision for signature of the complainant, or his
- 12 representative.

13 Sec. 47.05.080. COMPLAINT REQUESTING HEARING. (a) A complaint

14 requesting a hearing shall be in writing, and signed by the complainant

15 or his representative.

16 (b) A complaint shall be filed with complainant's caseworker,

17 the district representative of the division of public welfare, the

18 regional supervisor of the Department of Health and Welfare, or the

19 Department of Health and Welfare.

20 (c) A complaint requesting a hearing shall be filed within 30

21 days from the date of notification of adverse department action, or,

22 when a fair hearing is sought for review of department inaction, within

23 a reasonable time.

24 (d) The complaint shall give fair notice of the grounds for com-

25 plaint and the action or review requested. A complainant in requesting

26 a hearing is not required to use forms provided by the Department of

27 Health and Welfare under sec. 70 of this chapter.

28 Sec. 47.05.090. TIME AND PLACE FOR CONVENING OF HEARING. Upon

29 receipt of a complaint requesting a hearing by a person to whom a

complaint may properly be served, the Department of Health and Welfare shall hold a hearing within 15 days at a place accessible to the

complainant.

2 Sec. 47.05.100. NOTICE OF HEARING. Upon scheduling of a hearing,
3 the hearing officer shall give the complainant and the Department of
4 Health and Welfare written notice of the date, time, and place to
5 appear for hearing, and the notice shall be mailed to them at least
6 seven days before the date of the hearing. Either party may waive the
7 seven-day notice requirement.

8 Sec. 47.05.110. WITHDRAWAL OF COMPLAINT REQUESTING HEARING. If,
9 before the scheduled date for a hearing, the complainant is satisfied
10 with the disposition of the complaint by the Department of Health and
11 Welfare, or the complainant wishes to withdraw the complaint for any
12 other reason, he may do so by filing a written notice with the Depart-
13 ment of Health and Welfare.

14 Sec. 47.05.120. SUBPOENAS AND WITNESSES. The hearing officer,
15 the Department of Health and Welfare, and the complainant have the
16 power to compel the presence of witnesses, and the production of records
17 or documents at a hearing. Witness, mileage, and per diem fees shall
18 be paid in accordance with AS 44.62.430, except that a complainant is
19 not required to pay witness, mileage, or per diem fees to secure the
20 presence of a witness who is employed by the Department of Health and
21 Welfare in the district where the hearing is held, and, upon a showing
22 of necessity, shall be permitted to compel the presence of any other
23 witnesses at the expense of the Department of Health and Welfare.

24 Sec. 47.05.130. HEARING OFFICERS. Hearing officers shall be
25 assigned subject to the provisions of AS 44.62.350(a) relating to the
26 appointment by the governor of hearing officers to conduct hearings
27 under the Administrative Procedure Act (AS 44.62). A hearing officer
28 is subject to the provisions of AS 44.62.350(c).

29 Sec. 47.05.140. CONDUCT OF HEARING. (a) The complainant and

1 any other party may be represented by counsel .

2 (b) Hearings shall be conducted in an adversary manner, so as to
3 ensure ascertainment of the truth, and in a manner which accords judi-
4 cial due process to the parties. If the complainant is not represented
5 by counsel, then the complainant shall be permitted to present his
6 evidence and arguments.

7 (c) The hearing officer shall preside in a manner similar to a
8 judge in a judicial proceeding.

9 (d) Any decisions or findings made by the hearing officer shall
10 be based solely upon the facts adduced at the hearing, whether by
11 sworn testimony or other evidence duly presented, and upon applicable
12 law.

13 (e) The rules of evidence for administrative adjudication in
14 AS 44.62.460 are applicable to hearings under secs. 60 - 170 of this
15 chapter.

16 (f) A continuance may be granted to a party as appears just in
17 the circumstances.

18 (g) A verbatim transcript of the hearing shall be kept by an
19 accredited court stenographer or other appropriate means to insure
20 accuracy and clarity of the record.

21 ~~(h) The hearing officer shall render a proposed decision upon~~
22 the merits of the case within 20 days of the convening of the hearing.
23 The proposed decision shall be written and shall contain a disposition
24 of the complaint and findings of fact and conclusions of law. The
25 proposed decision shall become final unless review is sought under
26 sec. 150 of this chapter.

27 Sec. 47.05.150. REVIEW BY COMMISSIONER. (a) The complainant
28 or an agent of the Department of Health and Welfare shall have 10 days
29 to request review of the proposed decision of the hearing officer.

1 A request for review shall be made to the commissioner of health and
2 welfare, and notice shall be given to all parties and to the hearing
3 officer. If the complainant is requesting review, the commissioner
4 shall render a final decision within 25 days of the submission of the
5 request for review. Failure to render a decision within this period
6 constitutes a final order affirming the hearing officer's proposed
7 decision. If an agent of the Department of Health and Welfare is
8 requesting review, the commissioner shall have 25 days from the date
9 of submission of the proposed decision to render a final decision.

10 (b) A complete transcript of the hearing, the proposed decision
11 and findings of the hearing officer, and all affidavits, exhibits,
12 and documents made a part of the record by reference, shall be for-
13 forwarded to the commissioner by the hearing officer upon notice of a
14 request for review.

15 (c) In any review of a hearing officer's proposed decision, the
16 commissioner shall provide the parties an opportunity to present oral
17 or written argument.

18 (d) Copies of all final decisions of the commissioner and of
19 the hearing officer shall be kept on file at the office of the commis-
20 sioner of health and welfare, Juneau, and a summary of each decision
21 shall be on file at each district office of the Department of Health
22 and Welfare, and these decisions and summaries shall be available
23 for inspection by the public.

24 Sec. 47.05.160. JUDICIAL REVIEW. (a) Judicial review by the
25 superior court of a final administrative order or decision of the
26 commissioner of health and welfare may be had by filing a notice of
27 appeal in accordance with the applicable rules of court governing
28 appeals in civil matters, but no bond or surety may be required as a
29 condition of the appeal. The notice of appeal shall be filed within

1 30 days of the commissioner's decision or final administrative order.

2 (b) The scope of review of an appeal to the superior court of a
3 final administrative order of the Department of Health and Welfare
4 shall be determined by the provisions of AS 44.62.570(a) - (h).

5 (c) A certified copy of the record maintained in the administra-
6 tive hearing shall constitute the record on appeal, and no charge
7 may be made to the appellant for preparation of the record.

8 Sec. 45.05.170. CONTINUATION OF BENEFITS PENDING HEARING DECISION.
9 The public assistance of a person who requests a hearing under secs.
10 60 - 160 of this chapter may not be decreased by more than 25 per cent
11 pending the decision of the hearing officer.
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