

641—75.8(255A) Appeals and fair hearings.

75.8(1) *Right of appeal.* An applicant shall have the right to appeal whenever a decision of the director or the state program results in the individual's denial of eligibility for the program or denial as a quota case. No appeal can be filed for denial as a quota case, if there are no quotas available. Quotas would not be available if already assigned or sequestered to cases under appeal. Quotas will only be held when applicant is appealing a change in status.

75.8(2) *Request for reconsideration.* The applicant seeking to appeal shall first request reconsideration by the director of the denial of eligibility for this program or denial as a quota case. The written request shall be made within 15 days from the date the individual received notice of the decision which is the subject of appeal. The written request shall state the adverse decision being appealed and the reasons the applicant believes state standards were not correctly applied. The director shall reconsider the application and make a written determination with notice of right to appeal to the state within 10 days of receipt of the request. If the denial stands, the applicant may appeal to the department of public health.

75.8(3) *Request for hearing.* An appeal is brought by filing an appeal with the Division Director, Division of Family and Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days of the director's final determination in subrule 75.8(2).

75.8(4) *Contested use.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

75.8(5) *Hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

75.8(6) *Decision.* A written decision of the hearing officer shall be issued, where possible, within 30 days from the date of the request for a hearing unless the parties agree to a longer period of time. The decision of the hearing shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings 10 days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 75.8(7).

75.8(7) *Appeal to director.* Any appeal to the director of public health for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered by personal service within 10 days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any appeal shall state the reason for appeal.

75.8(8) *Record of hearing.* Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director of public health. The record shall include the following:

- a. All pleadings, motions and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the hearing officer.

75.8(9) *Decision of director.* The decision and order of the director of public health becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

75.8(10) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

75.8(11) *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.