ISSUES SUBJECT TO ADMINISTRATIVE HEARINGS

The Department of Human Services has an administrative hearing process to provide for the right to contest a department decision or case action when a client believes the decision is contrary to law or DHS policy. The issues of eligibility denials, failure of the state to complete required paperwork prior to the court's appointment of the guardian, rates, case closure, and/or reduction of benefits are issues subject to administrative hearings. The guardian has the burden of proof in a hearing.

Guardianship assistance rates are negotiated, agreed to and signed by guardians by the act of signing the DHS-3313, Guardianship Assistance Agreement.

Notice Requirements

Application forms and each written notice of action taken on a case must provide applicants with information on their right to a hearing. This includes an explanation of how and where to file a hearing request and the right to be assisted by and represented by anyone chosen by the applicant.

The applicant must receive a written notice of all case actions affecting eligibility or the amount of benefits. When a case action is proposed or taken, the notice must specify:

- The action the department is taking.

- The reason(s) for the action.

- The specific manual item(s) that cites the legal basis for an action, or the regulation or law itself.

- The circumstances when assistance will continue until the hearing decision is received. If the DHS action is upheld, the payments made during the time must be repaid to the department.

  Note: When title IV-E assistance cases are continued until the hearing decision the funding source must be changed to state-funded. If the hearing decision is to continue assistance the funding source must be change back to title IV-E.

Exception: There will not be a notice of case action when a hearing decision is issued. The decision serves as notice of the action.

The subsidy office must give **timely** and **adequate** notice of actions that will result in discontinuance, termination, suspension or reduction of assistance.

Adequate notice means a notice containing the information above. **Timely notice** of these actions means that the notice must be mailed at least 10 calendar days before the effective date of action by the department.

In the following circumstances, the subsidy office must send **adequate notice** to the applicant/guardian no later than the date of the action taken (immediate negative action):

- When the subsidy office has factual information confirming the death of the payee or the eligible child.

- When the subsidy office receives a written statement signed by the payee that he/she no longer wishes to receive guardianship assistance or the statement provides information which requires termination or reduction of assistance, and the payee has indicated in writing that he/she understands that the discontinuance of assistance is the result of the information.

- The payee's whereabouts are unknown and the DHS mail directed to the payee has been returned by the post office indicating no known forwarding address. The payee's check must be made available to him/her if the whereabouts become known during the payment period covered by a returned check.

- A special allowance granted for a specific time period is terminated, and the recipient has been informed in writing at the time of the initiation that the allowance shall automatically terminate at the end of the specified period.

- When the subsidy office has factual information in the form of a court order reporting that the guardianship has been terminated.

Who May Request an Administrative Hearing

Administrative hearings may be requested by an applicant for guardianship assistance or a guardian or a child who has received assistance under a guardianship assistance agreement.

A hearing request with a client signature may name an authorized hearings representative who is authorized to stand in for or represent the client in the rest of the hearing process.

See AAM 700 for detailed administrative hearing policies.