

264 - NOTICE AND HEARINGS PROCESS**Change #01-2006****February 01, 2006****I. NOTICE REQUIREMENTS**

An applicant/recipient (A/R) has the right to a notice of proposed action and to a hearing when:

- A. His application is approved.
- B. His application is denied.
- C. His application is withdrawn.
- D. He decides not to apply for assistance.
- E. His assistance is modified or terminated. However, you do not have to conduct a hearing when either State or Federal law requires automatic payment adjustments for classes of recipients unless the reason for the hearing is incorrect payment computation or there is a factual issue regarding whether the change applies.
- F. He is denied a replacement check.
- G. You are required to appoint a protective payee or personal representative to handle the recipient's check.
- H. He is part of a two-parent case and will not get a payment because he has not met pay-after-performance requirements.
- I. Benefits are changed or terminated.

II. NOTICE OF BENEFITS**A. Definition**

The Notice of Benefits form (DSS-8108A and DSS-8108) serves as a written notice to:

- Inform an applicant that his application for assistance was approved. This includes approval of add-on applications and open/shut cases.
- Inform a recipient that his case has been reviewed, and there is no change.

B. Automated Notice of Benefits, DSS-8108A ([Figure 264-1](#))

EIS automatically produces the notice for approvals and for reviews when there is no change in assistance except as indicated in C. below. The notice produced by EIS is mailed directly to the A/R from Raleigh. For approvals, the notice is produced based on the approval reason code entered into EIS. Refer to the Work First User s Manual.

For reviews with no changes in benefits, the notice is produced based on the code entered in the CHANGE REASON field in EIS.

C. Manual Notice of Benefits, [DSS-8108](#)

When a manual notice is required, override the automated notice in EIS. Always complete and send a manual notice when:

- You approve an application and issue more than two months county-issued checks. This procedure also applies when you issue one county check that covers more than two months.
- You approve an application and authorize state-issued prior month checks on a DMA-5022. If prior month checks are issued via the DSS-8125, EIS can produce an automated notice.
- You approve an application but the assistance unit is not eligible for one or more month s benefits.
- You approve an application but deny one or more month s benefits for an individual.

D. Completing and mailing a manual DSS-8108, Notice of Benefits

1. For application approvals and open/shut cases, complete the following:
 - a. Application Approvals
 - (1) Enter the date of application and the appropriate aid program/category.
 - (2) Check the line beside the phrase Your application for _____ is approved for: Enter the payment amount(s) and the payment month(s).
 - (3) Check the line beside the phrase Medicaid is approved starting _____. Enter the beginning

months of Medicaid eligibility for open/shut cases. For approved applications with retroactive Medicaid eligibility, enter the beginning month of Medicaid eligibility for the approved application. Mark through the words and ending. Check the block Retroactive Medicaid coverage is approved for the month(s) of _____. Enter the months of retroactive Medicaid eligibility.

For open/shut cases with retroactive Medicaid eligibility, enter the beginning and ending months of Medicaid eligibility for the open/shut case. Check the block Retroactive Medicaid coverage is approved for the month(s) of _____. Enter the months of retroactive Medicaid eligibility.

- (4) Check the line beside the phrase Your Medicaid covers all necessary medical services. If you get Medicare from the Social Security Administration, Medicaid will pay your Medicare A and B premiums, deductible, and coinsurance beginning _____. Enter the first month of eligibility for Medicaid paid Medicare benefits, if appropriate.

Do not check the phrase You Medicaid pays only your Medicare A and B premiums, deductibles and coinsurance for Medicare approved services. This phrase is not applicable to Work First.

Do not check the phrase You Medicaid only pays for services related to pregnancy and for conditions that may complicate the pregnancy. This phrase is not applicable to Work First.

- (5) Enter the Work First Manual as the State rules to approve this application.
- (6) If appropriate, enter the month(s) for which assistance was denied and the specific reason for denial.

Enter the Work First Manual as the State rules used to make this decision. Enter the specific eligibility requirement used to deny eligibility.

EXAMPLE: Benefits from January 1 through January 31, 1999, were denied because you did not

meet the following rule(s): Your net income of \$700.00 exceeds the Work First Need Standard of \$544.00 for a family of 3. The State rule(s) used to make this decision is found in the Work First Manual.

- b. Continuing Eligibility DO NOT complete this section for application approvals and open/shut cases.
 - c. Signature Enter the worker s signature and county phone number.
 - d. When to Ask for a Hearing Enter the 60th calendar day in the space provided for Your Right To a Hearing. To determine this date, count sixty (60) calendar days beginning the day following the date the notice is mailed or given to the recipient. If the 60th calendar day falls on a non-workday, the recipient has until the end of the next workday to request a hearing.
 - e. Give or mail the original to the recipient on the same day it is completed. File a copy in the case record.
2. For reviews and changes in situation when the recipient remains eligible, complete the following.
- a. Application Approvals

DO NOT complete this section for Work First reviews and changes in situation.
 - b. Continuing Eligibility
 - (1) Enter the appropriate aid program/category and payment amount for which the recipient continues to be eligible.
 - (2) Enter "Work First Manual" as the State rules used to make this decision.
 - c. Signature

Enter the caseworker's signature and county phone number.
 - d. When To Ask For a Hearing

Enter the 60th calendar day in the space provided for "When To Ask For A Hearing." Day one is the day following the day the notice is mailed or given to the recipient. If the 60th calendar day falls on a

non-workday, the recipient has until the end of the next workday to request a hearing.

- e. Give or mail the original to the recipient on the same day it is completed. File a copy in the case record.

III. NOTICE OF DENIAL OR WITHDRAWAL

When you deny an application, or the applicant decides to withdraw his/her application, the applicant has a right to a notice explaining the action taken. If an application is denied or withdrawn, send the DSS-8109 on the same day you dispose of the case.

A. Automated Notice of Denial or Withdrawal, DSS-8109A ([Figure 3](#))

EIS automatically produces the notice except in the situations listed in B. below. The notice produced by EIS is mailed directly to the applicant.

B. Manual Notice of Denial or Withdrawal, **DSS-8109**

Always complete and send a manual notice when the application is being denied, and the reason code entered into EIS is other. (See Work First User s Manual.)

Always complete and send a manual notice when the application is being withdrawn.

C. Completing and Mailing A Manual DSS-8109

For application denials or withdrawals, complete the following.

1. Enter the county name and the date mailed.
2. "Your application for _____ is _____ because:"
 - a. Enter the appropriate aid program/category in the first space. If the withdrawal is for Work First and Medicaid, enter Work First and Medicaid in this space.
 - b. Enter denied or withdrawn in the second space, whichever is appropriate.
 - c. Enter the reason the application was denied or withdrawn.
3. If eligibility for Medicaid is being determined separately, check the block beside the statement: If this block is checked, you will get a separate letter about your Medicaid benefits.

4. The state regulations requiring this action are found in

Enter "Work First Manual" as the State regulations to make this decision, unless some other document is used to make this decision, (such as a DSS Letter). If so, enter the name of the document after the phrase.
5. Hearing Rights

Enter the 60th calendar day in the space provided under Hearing Rights . Day one is the day following the day the notice is mailed or given to the applicant. If the 60th calendar day falls on a non-workday, the applicant has until the end of the next workday to request a hearing.
6. Enter the caseworker name, the agency phone number, and the agency mailing address.
7. Use the For Office Use Only area to enter the applicant s county case number, EIS Case ID, and the aid program/category.
8. Give or mail the original to the applicant. File a copy in the case record.

IV. WORK FIRST/MEDICAID NOTICE OF INQUIRY, DSS –8191I ([FIGURE 10](#))

When the applicant decides not to apply, he has the right to a notice which explains the action taken. Give or mail the DSS-8191I.

V. NOTICE TO TERMINATE OR CHANGE BENEFITS

- A. **DSS-8110A** ([FIGURE 264-11](#)) This is an automated preprinted notice that is used for both timely and adequate notices. Either "TIMELY" or "ADEQUATE" is printed at the top of the notice beside the type action being taken based on the reason code entered.
- B. **DSS-8110** This is a manual notice similar to the DSS-8110A except that it must be completed manually by the worker.

VI. TIMELY NOTICE

When you reduce or terminate assistance, the recipient has a right to a written timely notice informing him of the intended action. Do not take action to reduce or terminate assistance until 10 workdays following the date of the notice. **For Child Support Non-Cooperation sanctions, the timely notice (DSS- 8110) must be**

sent within 10 workdays from the first time the individual appears on the Caseworker IV-D Work List. Refer to Work First Policy Section 120.

A. Automated Process

When you terminate or reduce assistance using timely reason codes, EIS automatically produces the timely notice except in those situations listed in B. below. In these situations, override the automated notice.

1. To produce an automated timely notice, complete the DSS-8125 as instructed in the Appendices for the specific action you are taking. When the DSS-8125 processes, the notice is produced, and the termination or reduction of assistance is put on hold in EIS until the 11th workday following the date of the notice. Unless you take one of the actions in 3. below, the termination or reduction of assistance takes place in EIS on the night of the 11th workday.

For a termination or reduction in assistance, enter on the DSS-8125 the appropriate timely reason code listed in the Work First User s Manual. This code determines the text to be printed on the notice.

2. Automated Timely Notice Dates

All counties schedules of workdays are maintained in EIS so that the date of the notice and the timely notice period will be accurate for each county.

- The date of the notice is the next county workday after the DSS-8125 processes.

EXAMPLE: The DSS-8125 is keyed on July 6 (Friday). The notice is dated July 9 (Monday).

- The timely notice period begins the day after the date of the notice.

EXAMPLE: The DSS-8125 is keyed July 6 (Friday). The notice is dated July 9 (Monday). The timely notice period begins on July 10. Therefore, the 10th county workday is July 23, and the action takes place on July 24.

3. Rescinding the Notice by Taking Another Action

If during the timely notice period you must change the proposed action for the same effective date, you must:

- a. Complete and key a second DSS-8125 as instructed in the EIS Manual.
- b. Use the appropriate change or termination code listed in the Appendices.
- c. If a timely change or termination reason code is entered into EIS, another timely notice is produced.
- d. If an adequate change or termination reason code is entered into EIS, an adequate notice is produced.
- e. Key the second DSS-8125 no later than the 11th workday from the date of the notice.

4. Making Changes During the Timely Notice Period

Certain case changes not affecting the amount of assistance can be entered into EIS during the time the timely action is pending. These include address changes and changes to individual data.

5. Late Keying of the DSS-8125

If a DSS-8125 is keyed too late in the month to make the termination or change effective the date entered on the form, EIS changes the effective date.

EXAMPLE: A DSS-8125 showing a termination date of July 31 with a timely reason code is keyed on July 13. Pull cutoff is July 26; the 11th workday is July 31. Since the 11th day is after pull-cutoff, EIS changes the effective date of the termination to August 31.

This change is indicated on the Notice Register by an asterisk (*) beside the ACTION EFF DATE. See VIII. below.

B. Manual Process

Always complete and mail a manual notice (DSS-8110) when you are:

- Deleting an individual but the payment increases.
- Using the termination or change reason code other. (See Appendices.)

- Terminating a case that has an incorrect address in EIS.

Complete the following information on the DSS-8110:

1. Enter the county name and the date mailed.
2. What The Change Is
 - Indicate all types of assistance modified or terminated.
 - When you are aware that a modification or termination takes place at the same time for Work First and Food Stamps, send the notice required by Food Stamp policy. See Food Stamp Certification Manual Section 400.
 - When Work First terminates, enter "Your Work First check will stop effective _____." Enter the effective date of the termination. (Terminations are always the last day of the month.)

When Work First terminates and the recipient is eligible for one, four, or twelve months continued Medicaid coverage, enter the phrase "You will continue to receive Medicaid coverage through the month of." Enter the appropriate month.

When Work First and Medicaid coverage terminate in the same month and the recipient is ineligible for continued Medicaid coverage, also enter "Your Medicaid coverage will stop effective _____." (Terminations are always effective the last day of the month.)

- When Work First is being modified, enter "Your Work First check will now be \$_____ effective _____." Enter "Your Medicaid coverage will continue."
- When you appoint a protective payee, enter the name of the person, the reason the protective payee was appointed, and the effective date the check will begin to go to the protective payee.
- If a replacement check is denied, enter "Your request for a replacement check is denied because handwriting analysis indicates that the original check was not forged."

3. Why The Change Will Be Made

Enter the reason why the recipient's benefits are being changed or terminated. Ensure that the reason is written in terms that the recipient can understand.

4. When The Change Will Happen

Enter the date the change in benefits takes place. The effective date for a change in the amount of the Work First benefits is the first day of the month. The effective date for termination of the Work First benefits is the last day of the month.

5. The state regulations requiring this action are found in

Enter "Work First Manual" as the State regulations to make this decision, unless some other document is used to make this decision, (such as a DSS Administrative Letter). If so, enter the name of the document after the phrase.

6. Hearing Rights

Enter the 60th calendar day in the space provided under Hearing Rights . Day one is the day following the day the notice is mailed or given to the applicant. If the 60th calendar day falls on a non-workday, the applicant has until the end of the next workday to request a hearing.

Check the block beside the statement: If this block is checked, and if you contact your caseworker by _____ to ask for a hearing, you will keep your benefits until the first hearing decision, unless you waive this right. Enter the 10th workday in the space in the above statement. Day one is the next workday following the day the notice is mailed is given to the recipient. (This date is the day that you will take the necessary action to terminate or modify assistance.)

If the recipient requests a hearing during the 10 workday period, reinstate the case unless the recipient waives his right to continued benefits at the current payment level. Complete and key the appropriate computer input document. Authorize assistance at the same level as the last Work First payment received. The recipient s signature is not required on the application. Document in the case record that assistance is being reinstated at the recipient s request pending a hearing decision.

7. Enter the caseworker name, the agency phone number, and the agency mailing address.
8. Use the For Office Use Only area to enter the applicant's county case number, EIS Case ID, and the aid program/category.
9. Give or mail the original to the recipient. File a copy in the case record.

VII. ADEQUATE NOTICE

- A. A recipient must receive a written notice (either DSS-8110A or DSS-8110) to inform him of action taken. The recipient must receive this notice no later than the effective date of the action, or in the case of a termination, the date he would have received a check.
- B. The recipient has the right to an adequate notice in the following situations:
 1. Assistance is reduced or terminated because of information reported on the quarterly report or the recipient fails to submit a complete or timely report.
 2. A modification is beneficial to the recipient. This includes when an individual is being deleted from the Work First assistance unit because he has been approved for SSI.
 3. A recipient dies.
 4. The Work First payee dies, leaving no relative to serve as new payee.
 5. A recipient signs and dates a written request to have his assistance termination or reduced.
 6. A recipient is admitted to an institution and no longer qualifies for assistance
 7. A recipient is placed in skilled nursing care, intermediate care, or long-term hospitalization.
 8. A recipient's whereabouts are unknown and agency mail sent to him has been returned by the post office indicating no known forwarding address.

9. A recipient begins to receive assistance in another state with no break in benefits.
10. A child is removed from his home by court order or by voluntary agreement with his legal guardian.

C. Automated Process

When you change or terminate assistance and use an adequate reason code, EIS automatically produces the adequate notice except for the situations listed in B. below.

1. To produce an automated timely notice, complete the DSS-8125 as instructed in the Appendices for the specific action you are taking. When the DSS-8125 processes, the notice is produced.
2. The date of the notice is the next county workday after the DSS-8125 processes.

Example: The DSS-8125 is keyed on July 6 (Friday). The notice is dated July 9 (Monday).

3. The action takes place in EIS the same night the DSS-8125 processes.

D. Manual Process

Always complete and mail a manual notice (DSS-8110) when you are:

- Deleting an individual but the payment increases.
- Using the termination or change reason code "other." (See Appendices.)
- Terminating a case that has an incorrect address in EIS.

Complete the following information on the DSS-8110:

1. Enter the county name and the date mailed.
2. What The Change Is
 - Indicate all types of assistance modified or terminated.
 - When you are aware that a modification or termination takes place at the same time for Work First and Food Stamps, send

the notice required by Food Stamp policy. See Food Stamp Certification Manual Section 400.

- When Work First terminates, enter "Your Work First check will stop effective _____." Enter the effective date of the termination. (Terminations are always the last day of the month.)

When Work First terminates and the recipient is eligible for one, four, or twelve months continued Medicaid coverage, enter the phrase "You will continue to receive Medicaid coverage through the month of." Enter the appropriate month.

When Work First and Medicaid coverage terminate in the same month and the recipient is ineligible for continued Medicaid coverage, also enter "Your Medicaid coverage will stop effective _____." (Terminations are always effective the last day of the month.)

- When Work First is being modified, enter "Your Work First check will now be \$_____ effective _____." Enter "Your Medicaid coverage will continue."
- When you appoint a protective payee, enter the name of the person, the reason the protective payee was appointed, and the effective date the check will begin to go to the protective payee.
- If a replacement check is denied, enter "Your request for a replacement check is denied because handwriting analysis indicates that the original check was not forged."

3. Why The Change Will Be Made

Enter the reason why the recipient's benefits are being changed or terminated. Ensure that the reason is written in terms that the recipient can understand.

4. When The Change Will Happen

Enter the date the change in benefits takes place. The effective date for a change in the amount of the Work First benefits is the first day of the month. The effective date for termination of the Work First benefits is the last day of the month.

5. The state regulations requiring this action are found in

Enter "Work First Manual" as the State regulations to make this decision, unless some other document is used to make this decision, (such as a DSS Administrative Letter). If so, enter the name of the document after the phrase.

6. Hearing Rights

Enter the 60th calendar day in the space provided under Hearing Rights . Day one is the day following the day the notice is mailed or given to the applicant. If the 60th calendar day falls on a non-workday, the applicant has until the end of the next workday to request a hearing.

Check the block beside the statement: If this block is checked, your benefits will be changed without further notice. The recipient does not have the right to continued benefits.

7. Enter the caseworker name, the agency phone number, and the agency mailing address.

8. Use the For Office Use Only area to enter the applicant s county case number, EIS Case ID, and the aid program/category.

9. Give or mail the original to the recipient. File a copy in the case record.

VIII. NOTICE REGISTER REPORT

You will not receive a copy of each individual automated notice that is produced. There is a notice register in XPTR that lists each adequate, timely and approval notice generated. Also listed are cases for which a DSS-8125 is keyed to override, delete or rescind a notice. **The Notice Register Report is available for inquiry and printing in X/PTR. The last six reports are retained in X/PTR. Destroy the report after three years or when released from all audits, whichever occurs later.**

Register Format

The register is sorted by county, worker number and listed alphabetically by the payee's last name.

The register contains the following information:

- PAYEE'S LAST NAME, FIRST AND MIDDLE INITIAL
- ACTION EFF DATE The date the action is effective. This is the date of the notice for actions requiring adequate notice. For actions requiring timely notice, it is the 10th county workday following the date of the notice.

- WKR NO Worker number
- DIST NO District Number
- CASE ID
- REASON CODE
- AID CAT AAF
- Payment Type
- 10th Appeal Date
- 69th Appeal Date
- CHG/TERM DATE This is the date the change is reflected in the benefits. For example, a termination may show 07-31-99; a payment revision may show 07-01-99.
- Notice Text
- COMMENTS This column will show one of four things depending on the action being taken.
 - A. If you enter a Y in the override field on the DSS-8125, OVERRIDE is displayed.
 - B. If you are deleting the action that is pending for a timely notice, but are making no change to the case, DELETE is displayed.
 - C. If you have an action pending for a timely notice and submit a second DSS-8125 that requires another notice, RESCINDED is displayed.
 - D. If you key a DSS-8125 that produces a notice, the form number on the DSS-8125 is displayed.

IX. HEARINGS PROCESS**Applicant's/Recipient's Rights****A. An a/r has the right to appeal:**

1. When the county department denies him the opportunity to make an application.

2. Approvals, denials, modifications, or terminations of assistance.
3. The appointment of protective payee.
4. Denial of a replacement check.
5. The failure of the county department to act promptly on a request for a review of the case situation.
6. When the a/r disagrees with the establishment of a claim for an overpayment.

B. The a/r or his representative may request the hearing verbally or in writing.

C. Right to Continued Benefits

1. Recipients Who Receive Timely Notice

If a recipient who receives a timely notice appeals a reduction or termination on or before the effective date of the change (10 workdays after the notice is mailed or given to the recipient), he has the right to continued assistance until the local hearing decision is rendered, except when the issue involves incapacity. In that case, the recipient has the right to continued assistance until the State hearing decision is rendered. If a recipient requests a hearing within the 10 workdays, continue assistance at the present level unless the recipient specifically requests that assistance not be continued at the current payment level pending the hearing decision. However, if assistance is continued because of a hearing request, you must recoup any overpayment. An overpayment occurs when the hearing officer affirms the reduction or termination. (See Work First Manual Section 263.)

2. Recipients Who Receive Adequate Notice

If a recipient who receives an adequate notice appeals a reduction or termination after the notice is mailed or given to the recipient, he does not have the right to continued assistance until the local hearing decision is rendered.

D. Continuance of Benefits

If a recipient who receives a timely notice requests a hearing during the 10 workday period and does not waive his right to continued benefits at the current payment level, you must:

1. Reinstatement the case, if already terminated, using the appropriate computer input document. Authorize assistance at the same payment level as the month of termination. The recipient's signature is not required on the application. Document in the case record that assistance is being reinstated at the recipient's request pending a hearing decision; or
2. Take no action to terminate the case and continue assistance at the current payment level if the case has not been terminated.

E. Requesting a Local Hearing

The county may administratively open or reopen an application when it determines through any supervisory review that the original decision was incorrect. In this instance, a local hearing is not required.

However, if you are unable to reopen an application administratively, follow the procedures discussed below.

1. The a/r must request an appeal within 60 calendar days from the date the DSS-8108, DSS-8109, DSS-8110A, or DSS-8110 is mailed or given to the a/r unless he shows good cause. (See G. below for good cause reasons.)
2. If the a/r does not request a local hearing within 60 calendar days, he must:
 - a. Request the hearing no later than 90 calendar days from the date the DSS-8108, 8109, 8110A, or 8110 is mailed or given to the a/r; and
 - b. Show good cause. (See G. below for good cause reasons.)
3. When the a/r requests a hearing after 60 calendar days, determine whether the request is within 90 calendar days from the date the DSS-8108, DSS-8109, DSS-8110A, or DSS-8110 is mailed.

If the request is within 90 calendar days, you must establish whether the a/r has good cause. (See G. below for good cause reasons.)

F. Requesting a State Hearing

1. The a/r has a right to request a State hearing only after a local appeal hearing has been held and a decision has been rendered. The a/r must request a State hearing within 15 calendar days from the date of the local hearing decision, unless he shows good cause. (See G. below for good cause reasons.)
2. If the a/r does not request a State hearing within 15 calendar days from the date of the local hearing decision; he must:
 - a. Request the hearing no later than 90 calendar days from the date the DSS-8108, DSS-8109, DSS-8110A, or DSS-8110 is mailed or given to the a/r; and
 - b. Show good cause. (See G. below for good cause reasons.)
3. When the a/r requests a State hearing after the 15 days from the date the local hearing decision is rendered, determine whether the request is within 90 calendar days from the date the DSS-8108, DSS-8109, DSS-8110A, or DSS-8110 is mailed or given to the a/r.

If the request is within the 90 calendar days, you must establish whether the a/r has good cause. (See G. below for good cause reasons.)

G. Good Cause Reasons for Not Requesting a Local or State Hearing Timely

1. Acceptable good cause reasons for the a/r not requesting the local hearing within 60 calendar days or the state hearing within 15 calendar days from the date of the local hearing decision are:
 - a. Failure of the a/r to receive the notification of action to be taken; or if a state hearing, failure of the a/r to receive notification of the local hearing decision, or
 - b. Extended hospitalization of the a/r or spouse, child, or parent of the a/r; or
 - c. Failure of a representative, acting in the a/s/r's behalf, to meet the timeframes; or

- d. Illness which results in the a/r being incompetent or unconscious and no representative has been appointed; or
 - e. Illness which results in the incapacity of the a/r; or
 - f. Death of the a/r or his representative; or
2. Acceptable good cause reasons for the a/r not requesting the local hearing within 60 calendar days or 15 calendar days from the date of the local hearing decision occur when the county caseworker:
 - a. Does not assist the a/r in filing a local or state appeal; or
 - b. Gives no information or incomplete or incorrect information on appeal rights. For example, the county caseworker did not inform the a/r of his appeal rights during the interview; or
 - c. Discourages the a/r in filing a request for an appeal.
 3. Acceptable verification to substantiate a good cause reason may include but is not limited to:
 - a. A doctor's statement; or
 - b. A hospital bill; or
 - c. A written statement from the a/s/r's representative; or
 - d. A written statement from the a/r or other individual(s) knowledgeable about the situation.
- H. If at any point, the a/r does not exercise his hearing rights or the right to continued assistance, he still has the right to reapply.
- I. The a/r has a right to be represented at the hearings by the person of his choice, including an attorney obtained at his expense or through free legal services. The a/r can call CARE-LINE at 1-800-662-7030 for the number for legal services information.

X. LOCAL HEARING

A. Purpose

The local hearing allows the county to explain the action in question and the a/r to explain why he feels that action should not take place.

B. Scheduling

1. Hold the local hearing within five calendar days after it is requested, unless the a/r has good cause for a delay.
2. The a/r has good cause to delay the local hearing when:
 - a. There is a death in the a's/r's family; or
 - b. The a/r or someone in his family is ill; or
 - c. The a/r is unable to obtain transportation; or
 - d. The a's/r's representative has a conflict with the scheduled date; or
 - e. The a/r is unable to obtain representation; or
 - f. The a/r receives a notice of action proposing a reduction or termination of assistance after the 10 workday notice period expires; or
 - g. The hearing officer determines that the hearing should be delayed for some other reason.
3. If the a/r has good cause, the hearing may be delayed up to 10 more calendar days. A local hearing may never be held more than 15 calendar days after a request for a hearing is received.

C. Place

Hold the hearing in the county social services office unless the a/r is bedfast or has great difficulty moving. In such cases, the hearing may be held where the a/r lives.

D. See the Record

Prior to and during the hearing, the a/r or his personal representative may examine the contents of his case file together with portions of other public assistance or social services case files that pertain to the appeal. He also may examine all other documents and records to be used at the hearing.

E. Summary

1. Prepare an original and two copies of a summary discussing the agency's action and the reasons for that action. Cite the regulation

substantiating that action. Attach to the summary copies of pertinent documents.

2. Give the original to the hearing officer. Give one copy to the a/r. Following the hearing, file the other copy in the case record.

F. Attendance

Attendance at the hearing is limited to the a/r, his representative, appropriate representatives of the county department, and any witnesses which the a/r or the county wish to call upon for testimony.

G. Conducting the Hearing See "Local Appeal Hearing Officer's Handbook:

1. The a/r and the county may be represented by attorneys or other representatives obtained at their expense.
2. Hold the hearing before the county director or his designee, provided that whoever hears the appeal was not involved directly in the initial decision which resulted in the appeal.

The designee can include another county employee, a board member, or an employee of a social services agency in another county.

3. It is not required that the hearing be recorded. However, a written summary of the hearing must be maintained. See [Figure 264-5](#) for a suggested summary form.
4. The county and the a/r must each name someone to present the testimony and to call witnesses. Any person testifying must be sworn in.
5. The county's representative must read the summary and explain the county's action, or call upon someone to do so. He may call witnesses one at a time. When the county's testimony has ended, the a/r or his representative may question the county's witnesses or representatives.
6. The a/r or his representative may then explain why he feels the county's action should not take place. He may call witnesses, one at a time. When the a/r's testimony has ended, the county or its representative may question the a/r, his witnesses or representatives.

7. Representatives for the county and the a/r may present closing statements summarizing their view of the situation in question.

H. Decision

1. The director or his designee will make a decision in the case, based on appropriate regulations and evidence presented at the hearing. Those factors must be cited in a written statement of the decision. See [Figure 264-6](#) for a suggested local hearing decision form.
2. The written statement of the decision must be sent to the a/r by certified mail within five calendar days of the local hearing.

I. Implementation of Decision

With the exception of a decision on an application which has been denied put a decision reversing the county decision into effect within two calendar weeks after the decision is signed by the county hearing officer.

Unless it is determined the a/r is ineligible for some other reason, the check must be mailed no later than the end of the two calendar weeks.

J. Recovery

If a reduction or termination of assistance is affirmed, you must recover any overpayment. See Work First Manual Section 263.

K. Further Appeal

Standard Counties:

If the a/r is not satisfied with the local hearing decision, he may, within 15 calendar days of the mailing of that decision, request a State hearing through the local Division of Social Services. The request can be within 90 days of the original notice of action if he can show good cause for a later request. The request can be either verbal or written.

Electing Counties:

If the a/r is not satisfied with the local hearing decision, he may ask for a second level hearing from the county DSS. The second level hearing about the Work First cash assistance will be held as defined in the electing county plan. A representative of the State DSS will hold a State level hearing about the Medicaid.

XI. STATE HEARING**A. Purpose**

The State hearing safeguards the interest of the individual client and assures fair and equitable administration of assistance programs.

B. Request for Hearing

1. Submit the DSS-1473 ([Figure 264-7](#)) to the Chief Hearing Officer, Hearing and Appeals Section, Division of Social Services.

Complete the request:

- a. On the day the a/r requests a State hearing that does not involve a question of incapacity; or
 - b. Within five calendar days of the date the a/r requests a State hearing that involves a question of incapacity.
2. Attach a copy of the local hearing decision.

C. Scheduling

1. The hearing officer designated to handle the hearing will give reasonable notice to the county and the a/r of the time and place of the hearing.
2. The a/r may request and is entitled to receive a postponement of the scheduled hearing with good cause. The a/r has good cause to postpone the hearing when:
 - a. There is a death in the a/s/r's family; or
 - b. The a/r or someone in his family is ill; or
 - c. The a/r is unable to obtain transportation; or
 - d. The a/s/r's representative has a conflict with the scheduled date; or
 - e. The a/r is unable to obtain representation; or
 - f. The a/r received a notice of action proposing a reduction or termination of assistance after the 10 workday notice period expires; or

g. The hearing officer determines that the hearing should be delayed for some other reason.

3. The postponement may not exceed 30 calendar days.

D. Place

Hold the hearing in the county social services office unless the a/r is bedfast or has great difficulty moving. In such cases, the hearing may be held where the a/r lives.

E. Seeing the Record

Prior to and during the hearing, the a/r or his representative may examine the contents of his case file together with portions of other public assistance or social services case files that pertain to the appeal. He may also examine all other documents and records to be used at the hearing.

F. Summary

1. Prepare an original and two copies of a summary discussing the agency's action and the reasons for that action. Cite the regulations substantiating that action. Attach to the summary copies of pertinent documents.
2. Give the original to the hearing officer. Give one copy to the a/r. Following the hearing, file the other copy in the case record.

G. Attendance

Attendance at the hearing is limited to the a/r, his representative, appropriate representatives of the county department, and any witnesses which the a/r or the county wish to call upon for testimony.

H. Conducting the Hearing

1. The a/r and the county may be represented by attorneys or other representatives obtained at their expense.
2. A hearing officer from the Division of Social Services presides at the hearing and administers the oath to all participants. He will also record the hearing. No transcript will be prepared unless a petition to Superior Court is filed. See K. below.

3. The county and the a/r must each name someone to present their testimony and to call witnesses.
4. The county's representative must read the summary and explain the county's action, or call upon someone to do so. He may call witnesses, one at a time. The hearing officer may question witnesses, one at a time. The hearing officer may question witnesses during their testimony. When the county's testimony has ended the a/r or his representative may question the county's witnesses or representative.
5. The a/r or his representative may then explain why he feels the county's action should not take place. He may call witnesses, one at a time. The hearing officer may question witnesses during their testimony. When the a/s/r's testimony has ended, the county or its representative may question the a/r, his witnesses, or representative.
6. Representatives for both the county and the a/r may present closing statement summarizing their view of the situation in question.

I. Decision

1. The hearing officer must render a decision not more than 90 calendar days from the date of the request for the local hearing.
2. The hearing officer prepares a tentative decision on the DSS-1894 ([Figure 264-8](#)) and sends it by certified mail to the county.
3. The county and the a/r may present verbal and/or written argument, for and against the Notice of Decision, no later than 10 calendar days from the date of the notice. Both must contact the chief hearing officer to present arguments. No new evidence will be accepted at this level of the hearing process.
4. If no written argument or request for verbal argument is made within ten calendar days of the date of the tentative decision, the tentative decision becomes final.
5. If the party that requested verbal argument fails to appear at the hearing for verbal argument, the tentative decision becomes final.
6. If presented, verbal and/or written arguments are taken into consideration and a final decision is made. DSS-1893 ([Figure 264-9](#)) is sent to the a/r and county by certified mail.

J. Implementation of Decision

- 1 With the exception of a decision on an application which has been denied, put a decision upholding the a/r into effect within two calendar weeks after the decision becomes final. Unless the a/r or county present argument against the decision to the Chief Hearing Officer, the decision becomes final ten calendar days from the date on the DSS-1894, Notice of Decision.

If a case was opened or reopened due to administrative review and pending for more than twelve months, send a cover letter to the Economic Independence Section. Include the name of the medical provider(s) and date(s) of service, if available.

If arguments are presented, the decision becomes final on the date on the DSS-1893, Notice of Final Decision.

Unless it is determined the a/r is ineligible for some other reason, the check must be mailed no later than the end of two calendar weeks.

2. When the decision reverses the denial of an application, you must:
 - a. Notify the a/r on the DSS-8146 within five workdays after the date an appeal decision becomes final of each specific piece of information needed to complete the reopened application.

Unless the a/r or county present arguments against the decision to the Chief Hearing Officer, it becomes final ten calendar days from the date on the DSS-1894, Notice of Decision.

- b. Request within five workdays of the date an appeal decision becomes final each specific piece of information necessary to determine eligibility.

Verification available at the county department of social services or information verified by agency staff must be completed within five workdays. Verifications requested from sources outside the agency must be requested within five workdays.

- c. Notify the applicant by use of the DSS-8146 of any additional information needed within five workdays after you discover the need for additional information.

- d. Complete the application and unless the applicant is ineligible for some other reason, mail the check within five workdays after all information is received.

K. Further Appeal

If the a/r is not satisfied with the final decision following the State hearing, he may, within 30 calendar days of the receipt of that decision, file a petition for judicial review in Superior Court.