

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an Area Agency on Aging whose area plan or plan amendment intends to be disapproved or whose designation intends to be withdrawn by the state Division of Aging; or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.