

NORTH CAROLINA GENERAL ASSEMBLY  
1979 SESSION

CHAPTER 691  
HOUSE BILL 357

AN ACT TO AMEND THE PROVISIONS FOR PUBLIC ASSISTANCE APPEALS TO  
ALLOW A DUE PROCESS HEARING PRIOR TO TERMINATION OR  
MODIFICATION OF BENEFITS.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 108-44 is hereby rewritten to read as follows:

"§ 108-44. **Appeals.** — (a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting, denying, terminating, or modifying assistance, or the failure of the county board of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department of Human Resources. Each applicant or recipient shall be notified in writing of his right to appeal upon denial of his application for assistance and at the time of any subsequent action on his case.

(b) In cases involving termination or modification of assistance, no action shall become effective until 10 work days after notice of this action and of the right to appeal is mailed to the recipient.

(c) The notice of action and the right to appeal shall comply with all applicable federal and State law and regulations; provided, such notice shall, at a minimum contain a clear statement of:

- (1) the action which was or is to be taken;
- (2) the reasons for which this action was or is to be taken;
- (3) the regulations supporting this action;
- (4) the applicant's or recipient's right to both a local and State level hearing on the decision to take this action and the method for obtaining these hearings;
- (5) the right to be represented at the hearings by a personal representative, including an attorney obtained at the applicant's or recipient's expense;
- (6) in cases involving termination or modification of assistance, the recipient's right upon timely request to continue receiving assistance at the present level pending a local appeal hearing and decision on that hearing.

An applicant or recipient may give notice of appeal by written or oral statement to the county department of social services, which shall record such notice by completing a form developed by the Department of Human Resources. Such notice of appeal must be given within 60 days from the effective date of the action. Failure to give timely notice of appeal constitutes a waiver of the right to a hearing. However, it shall not affect the right to reapply for benefits.

(d) If there is such timely appeal, in the first instance the hearing shall consist of a local appeal hearing before the county director or a designated representative of the county director, provided whoever hears the local appeal shall not have been involved directly in the initial decision giving rise to the appeal. In cases involving termination or modification of assistance, the recipient shall continue to receive assistance at the present level pending the local appeal hearing decision, provided the recipient requests a hearing on or before the effective date of the termination or modification of assistance.

(e) The local appeal hearing shall be held not more than five days after the request for it is received. The recipient may, for good cause shown as defined by rule or regulation of the Social Services Commission or the Department of Human Resources, petition the county department of social services, in writing, for a delay, but in no event shall the local appeal hearing be held more than 15 days after the receipt of the request for hearing. At the local appeal hearing:

- (1) The appellant and the county department may be represented by personal representatives, including attorneys, obtained at their expense.
- (2) The appellant or his personal representative and the county department shall present such sworn evidence and law or regulations as bear upon the case. The hearing need not be recorded or transcribed, but the director or his representative shall summarize in writing the substance of the hearing.
- (3) The appellant or his personal representative and the county department may cross-examine witnesses and present closing arguments summarizing their views of the case and the law.
- (4) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.

(f) The director or his designated representative shall make the decision based upon the evidence presented at the hearing and all applicable regulations, and shall prepare a written statement of his decision citing the regulations and evidence to support it. This written statement of the decision will be served by certified mail on the appellant within five days of the local appeal hearing. If the decision terminating or modifying the appellant's benefits is affirmed, the assistance shall be terminated or modified, not earlier than the date the decision is mailed, and any assistance received during the time of the appeal is subject to recovery.

(g) If the appellant is dissatisfied with the decision of the local appeal hearing, he may within 15 days of the mailing notification of the decision take a further appeal to the Department of Human Resources. However, assistance may not be received pending this further appeal. Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department of Human Resources, but shall not affect the right to reapply for benefits.

(h) If there is an appeal from the local appeal hearing decision, the county director shall notify the Department of Human Resources according to its rules and regulations. The Department of Human Resources shall designate a hearing officer who shall promptly hold a de novo administrative hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services. Such hearing shall be conducted according to applicable federal law and regulations and Article 3, Chapter 150A of the General Statutes of North Carolina; provided the Department shall adopt rules and regulations to ensure the following:

- (1) Prior to and during the hearing, the appellant shall have adequate opportunity to examine the contents of his case file and all documents and records which the county department of social services intends to use at the hearing.
- (2) At the appeal hearing, the appellant and personnel of the county department of social services may present such sworn evidence, law and regulations as bear upon the case.
- (3) The appellant and county department shall have the right to be represented by the person of his choice, including an attorney obtained at his own expense.

- (4) The appellant and county department shall have the right to cross-examine the other party as well as make a closing argument summarizing his view of the case and the law.
- (5) The appeal hearing shall be recorded; however, no transcript will be prepared unless a petition for judicial review is filed pursuant to subsection (j) herein, in which case, the transcript will be made a part of the official record. In the absence of the filing of a petition for a judicial review, the recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed.
- (6) Notwithstanding G.S. 150A-28 or any other provision of State law, discovery shall be no more extensive or formal than that required by federal law and regulations applicable to such hearings.

(i) After the administrative hearing, the hearing officer shall prepare a proposal for decision, citing pertinent law, regulations, and evidence, which shall be served upon the appellant and the county department of social services or their personal representatives. The appellant and the county department of social services shall have the opportunity to present oral and written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who is to make the final decision. The final decision shall be based on, conform to, and set forth in detail the relevant evidence, pertinent State and federal law and regulations, and matters officially noticed. The decision shall be rendered not more than 90 days from the date of request for the hearing, unless the hearing was delayed at the request of the appellant. If the hearing was delayed at the appellant's request, the decision may only be delayed for the length of time appellant requested a delay. The final decision shall be served upon the appellant and upon the county department of social services by certified mail, with a copy furnished to either party's attorney of record. In the absence of a petition for judicial review filed pursuant to subsection (j) herein, the final decision shall be binding upon the appellant, the county department of social services, the county board of social services, and the board of county commissioners.

(j) Any appellant or county board of social services who is dissatisfied with the final decision of the Department of Human Resources may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in Superior Court of the county from which the case arose. The hearing shall be conducted according to the provisions of Article 4, Chapter 150A, of the North Carolina General Statutes. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law and under the rules and regulations of the Social Services Commission. Furthermore, the court shall set the matter for hearing within 30 days after the receipt of a petition for review and after reasonable written notice to the Department of Human Resources, the county board of social services, the board of county commissioners, and the appellant.

(k) In the event of conflict between federal law or regulations and State law or regulations, the federal law or regulations shall control."

**Sec. 2.** This act shall become effective October 1, 1979, but shall not apply to cases in which notice of appeal was given prior to the effective date.

In the General Assembly read three times and ratified, this the 30th day of May, 1979.