

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 11 APPEAL/HEARING PROCEDURES

9.2.11.1 ISSUING AGENCY: New Mexico Aging and Long-Term Services Department (NMALTSB)
[9.2.11.1 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.2 SCOPE: These rules apply to members of the public and organizations that participate in the delivery of services to New Mexico's aging and disability population.
[9.2.11.2 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.3 STATUTORY AUTHORITY: Aging and Long-Term Services Department Act, Sections 9-23-1 to 9-23-12 NMSA 1978; Older Americans Act of 1965, 42 U.S.C. Sections 3001 to 3058, and implementing regulations. [9.2.11.3 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.4 DURATION: Permanent.
[9.2.11.4 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.5 EFFECTIVE DATE: June 30, 2015, unless a later date is cited at the end of a section.
[9.2.11.5 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.6 OBJECTIVE: The objective of this rule is to establish appeal procedures for decisions made by the aging and long term services department.
[9.2.11.6 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.7 DEFINITIONS: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

A. "Hearing" is an administrative review of documentation and evidence and an opportunity for oral testimony at the discretion of a hearing officer.

B. "Hearing officer" means an impartial person selected by the department secretary to conduct a hearing and render a proposed final decision.

C. "Party" means any petitioner and all interested persons affected by the outcome of a decision under this rule.

D. "Petitioner" means any person or organization who has a right to a hearing under these rules and has filed a written request for a hearing.

[9.2.11.7 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.8 LEGAL REFERENCES: [RESERVED]
[9.2.11.8 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.9 PERSONS OR ORGANIZATIONS ENTITLED TO APPEAL: The following persons or organizations ("petitioners") have a right to a hearing:

A. Any applicant for designation as a PSA, whose application is denied by the department, according to 9.2.4.15 NMAC;

B. Any affected party when the department initiates an action or a proceeding to designate an additional PSA, divide the state into different PSAs, or otherwise affect the boundaries of PSAs, according to 9.2.4.12(C) NMAC;

C. An area agency on aging when the department proposes to:

(1) Disapprove an area plan or plan amendment, according to Section F of 9.2.6.10 NMAC;

or

(2) Withdraw an area agency on aging designation, according to 9.2.7.13 NMAC.

D. Any applicant for area agency on aging designation denied designation, according to 9.2.5.17 NMAC.

[9.2.11.9 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

9.2.11.10 HEARING PROCEDURES FOR PETITIONERS:

A. Request for a hearing:

(1) A request for a hearing must be submitted in writing to the secretary of the department, within ten (10) working days of the receipt of the notice of action, and must state with specificity the grounds upon which the proposed action is appealed or contested, and the grounds upon which the petitioner refutes the basis of the proposed action. The request must include;

(a) A copy of the department's action letter;
(b) The dates of all relevant actions;
(c) The names of individuals or organizations involved in the proposed action being appealed;

(d) A specific statement of any section of the Older Americans Act or state or federal rules or regulations believed to have been violated by the department; and

(e) For organizations, a copy of the minutes or resolution in which the petitioner's governing body requests a hearing, and which authorizes a person(s) to act on behalf of the organization; the minutes or resolution shall indicate adoption by a majority of the quorum of the governing body of the organization.

(2) The petitioner may submit written amendments to the request for hearing which must be received by the secretary of the department or designee not less than ten (10) working days prior to the date set for hearing;

(3) The secretary of the department or designee may require additional information at any time prior to the hearing. The secretary or designee will provide a reasonable amount of time for the petitioner to respond to any such request;

(4) Failure to submit all the information required in the request within the required time period will result in the forfeiture of the petitioner's right to a hearing.

B. Notice of hearing:

(1) Within twenty (20) calendar days of receipt of a request for a hearing, the secretary of the department or designee shall acknowledge in writing the receipt of the request for a hearing, and shall determine if the petitioner is entitled to a hearing. If so, the hearing date and notice of the hearing shall be provided to the petitioner(s). The hearing date shall not be later than one hundred twenty (120) calendar days from the receipt of the request for a hearing;

(2) The secretary of the department or designee shall provide written notice of any hearing to the petitioner, which shall include:

(a) A statement of the time, date, location, and nature of the hearing;
(b) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(c) A reference to the particular section of statutes, regulations and rules involved.
(3) The secretary of the department or designee shall, after the initial notice, issue a written statement of the issues involved in the appeal. Thereafter a more definite and detailed statement may be furnished not less than ten (10) calendar days prior to the date set for the hearing.

C. The secretary shall appoint an impartial hearing officer to preside at the hearing. The hearing officer may be an employee of the department. The hearing officer shall have authority to administer oaths, rule on the parties' motions, determine the admissibility of evidence, recess any hearing, and rule on such other procedural motions as may be presented by any of the parties.

D. Conduct of the hearing:

(1) Documentary evidence may be received by the hearing officer in the form of a copy or excerpt if the original is not readily available. On request, either party shall be given an opportunity to compare the copy with the original;

(2) Parties may submit documents to the hearing officer and other parties in written form prior to the hearing. Parties may also stipulate as to facts or circumstances;

(3) Either party may cross-examine witnesses to obtain a full and true disclosure of the facts;
(4) The hearing officer may take official notice of generally recognized facts within the area of the department's specialized knowledge. The hearing officer shall inform the parties of the facts officially noticed either before or during the hearing, and shall afford the parties an opportunity to contest the facts officially noticed. The special skills or knowledge of the department and its staff may be used in evaluating the evidence;

(5) The parties need not make formal exceptions to the hearing officer's rulings during a hearing. It shall be sufficient that the party informs the hearing officer of any objection to any ruling at the time it is made.

E. During the hearing, the petitioner shall present evidence first. Other parties shall follow and present their evidence. The petitioner may thereafter present rebuttal evidence only. Rebuttal evidence must be confined to the issues raised in any other party's presentation of evidence. The petitioner shall be given the opportunity to offer a final argument without additional presentation of evidence. In addition, the other party may present a final argument without additional presentation of evidence;

F. The hearing shall be completed within one hundred twenty (120) days of the date the request for hearing was received by the department.

G. An oral hearing shall be electronically recorded. Upon request of any party to the hearing, a copy of this recording shall be made available to the requesting party at cost. In addition, any party may request that a court reporter record the hearing at the requestor's expense. Any transcript must be certified by the hearing officer.

H. Record: The record in a hearing under this section consists exclusively of:

- (1) A copy of the notice of proposed action that generated the appeal;
- (2) The request for hearing, including all amendments;
- (3) The notice of hearing;
- (4) Written information supporting the appeal, which was submitted to the department;
- (5) The department's written statement of the issues involved in the appeal;
- (6) All motions and rulings made before the hearing;
- (7) All evidence received or considered;
- (8) A statement of facts officially noticed;
- (9) Any decision, opinion or report by the hearing officer;
- (10) All staff memoranda or data submitted to and considered by the hearing officer;
- (11) The recording and transcription, if any, of the hearing;
- (12) The hearing officer's recommended decision; and
- (13) The final decision.

I. Final decision:

- (1) The hearing officer shall base his/her recommended decision solely on the record;
- (2) The hearing officer shall present to the secretary a recommended decision, including proposed findings of fact and conclusions of law, within ten (10) working days after the close of the hearing. The recommendation must be in writing and signed by the hearing officer;
- (3) The secretary shall issue a final decision, based on the hearing officer's recommendation, for the record, within five (5) working days of the receipt of the hearing officer's recommendation. The secretary shall affirm the action heard, unless it is unlawful, arbitrary or not reasonably supported by substantial evidence in the record;
- (4) The secretary shall send a copy of the final decision to all parties by registered or certified mail, return receipt requested, within five (5) working days after it is rendered.

J. Appeal to the assistant secretary of the U.S. administration on aging: Only an applicant for designation as a federally recognized planning and service area whose application is denied by the department and whose appeal to the department has been denied may appeal the denial to the assistant secretary of the U.S. Administration on Aging under the procedures specified in the Older Americans Act, 42 U.S.C. Section 3025(b)(5)(C) and 45 C.F.R. Section 1321.31. In all other cases, the secretary's decision, based on the hearing officer's recommendation, shall be final.

[9.2.11.10 NMAC - Rp, SAA Rule No. 95-11, 6/30/2015]

HISTORY OF 9.2.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: AOA 85-1, State Agency on Aging Hearing Procedures, filed 1/15/1985. SAA Rule No. 95-11, Appeal/Hearing Procedures, filed 4/13/1995.

History of Repealed Material:

SAA Rule No. 95-11, filed 4/13/1995 - Repealed 6/30/2015.