



General Assembly

February Session, 2014

Raised Bill No. 410

LCO No. 2045



Referred to Committee on HUMAN SERVICES

Introduced by:
(HS)

***AN ACT CONCERNING ADMINISTRATIVE HEARINGS CONDUCTED
BY THE DEPARTMENT OF SOCIAL SERVICES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-60 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) An aggrieved person or any other person authorized by law to
4 request [a fair hearing on] an administrative hearing concerning a
5 decision of the [Commissioner] Department of Social Services [or the
6 conservator of any such person on his behalf may make application
7 for] may request such hearing [in writing over his signature to the
8 commissioner and shall state in such application in simple language
9 the reasons why he claims to be aggrieved. Such application shall be
10 mailed to the commissioner within sixty days after the rendition of
11 such decision. The commissioner shall thereupon hold a fair hearing
12 within thirty days from receipt thereof and shall, at least ten days prior
13 to the date of such hearing, mail a notice, giving the time and place
14 thereof, to such aggrieved person, or if the application concerns a
15 denial of or failure to provide emergency housing, the commissioner

16 shall hold a fair hearing within four business days from receipt thereof,
17 and shall make all reasonable efforts to provide notice of the time and
18 place of the fair hearing to such aggrieved person at least one business
19 day prior to said hearing. A reasonable period of continuance may be
20 granted for good cause. The aggrieved person shall appear personally
21 at the hearing, unless his physical or mental condition precludes
22 appearing in person, and may be represented by an attorney or other
23 authorized representative. A stenographic or mechanical record shall
24 be made of each hearing, but need not be transcribed except (1) in the
25 event of an appeal from the decision of the hearing officer or (2) if a
26 copy is requested by the aggrieved person, in either of which cases it
27 shall be furnished by the Commissioner of Social Services without
28 charge. The Commissioner of Social Services and any person
29 authorized by him to conduct any hearing under the provisions of this
30 section shall have power to administer oaths and take testimony under
31 oath relative to the matter of the hearing and may subpoena witnesses
32 and require the production of records, papers and documents
33 pertinent to such hearing. No witness under subpoena authorized to
34 be issued by the provisions of this section shall be excused from
35 testifying or from producing records, papers or documents on the
36 ground that such testimony or the production of such records or other
37 documentary evidence would tend to incriminate him, but such
38 evidence or the records or papers so produced shall not be used in any
39 criminal proceeding against him. If any person disobeys such process
40 or, having appeared in obedience thereto, refuses to answer any
41 pertinent question put to him by the commissioner or his authorized
42 agent or to produce any records and papers pursuant thereto, the
43 commissioner or his agent may apply to the superior court for the
44 judicial district of Hartford or for the judicial district wherein the
45 person resides, or to any judge of said court if the same is not in
46 session, setting forth such disobedience to process or refusal to answer,
47 and said court or such judge shall cite such person to appear before
48 said court or such judge to answer such question or to produce such
49 records and papers and, upon his refusal to do so, shall commit such

50 person to a community correctional center until he testifies, but not for
51 a longer period than sixty days. Notwithstanding the serving of the
52 term of such commitment by any person, the commissioner or his
53 agent may proceed with such inquiry and examination as if the
54 witness had not previously been called upon to testify. Officers who
55 serve subpoenas issued by the commissioner or under his authority
56 and witnesses attending hearings conducted by him hereunder shall
57 receive like fees and compensation as officers and witnesses in the
58 courts of this state to be paid on vouchers of the commissioner on
59 order of the Comptroller.] by mail, telephone or electronic means
60 determined acceptable to the department. For purposes of this section,
61 "person authorized by law to request an administrative hearing"
62 includes (1) any person with legal authority to act on behalf of the
63 aggrieved person, including a conservator of estate, a legal guardian, a
64 person with power of attorney, if permitted under the terms of the
65 designation of power of attorney, or, for a deceased person, an
66 executor or administrator of estate; and (2) an authorized
67 representative who meets the requirements set forth in state and
68 federal law.

69 (b) The request for an administrative hearing shall include the
70 reasons why the person claims to be aggrieved and shall be made to
71 the Department of Social Services. No hearing shall be held by the
72 department unless the department receives the request not later than
73 sixty-five days after the date of a decision issued by the department,
74 unless otherwise prescribed by federal law. The department shall hold
75 an administrative hearing not later than forty-five days after the date
76 of receipt of the request for a hearing and shall, at least ten days prior
77 to the date of such hearing, provide notice, giving the time and place
78 thereof, to the aggrieved person and, if applicable, the person who
79 requested the hearing on such person's behalf, or, if the request
80 concerns a denial of or failure to provide a special need benefit for
81 emergency housing pursuant to section 17b-808, the department shall
82 hold a hearing not later than four business days from the date of

83 receipt of the request for a hearing, and shall make all reasonable
84 efforts to provide notice of the time and place of the hearing to the
85 aggrieved person and, if applicable, the person who requested the
86 hearing on such person's behalf, at least one business day prior to said
87 hearing. A reasonable period of continuance of a hearing scheduled
88 pursuant to this section may be granted for good cause, provided not
89 more than three continuances shall be granted.

90 (c) The aggrieved person, the person's legal representative or
91 authorized representative shall appear at the administrative hearing,
92 except that, if the aggrieved person is represented by legal counsel
93 who is present at the hearing, and the hearing officer determines that
94 testimony of the aggrieved person or the legal representative or
95 authorized representative is not required in order to properly
96 adjudicate the hearing, no such appearance shall be required. At the
97 hearing officer's discretion, testimony by the aggrieved person, such
98 person's legal representative or authorized representative or by other
99 witness by telephone may be accepted in lieu of personal appearance.

100 (d) A stenographic or mechanical recording shall be made of each
101 administrative hearing, but need not be transcribed, except (1) in the
102 event of an appeal from the decision of the hearing officer, or (2) if a
103 copy is requested by the aggrieved person, in which case it shall be
104 furnished by the Department of Social Services without charge.

105 (e) The Commissioner of Social Services and any person authorized
106 by the commissioner to conduct any administrative hearing under the
107 provisions of this section shall have the power to administer oaths and
108 take testimony under oath relative to the matter of the hearing and
109 may subpoena witnesses and require the production of records, papers
110 and documents pertinent to such hearing. No witness under subpoena
111 authorized to be issued by the provisions of this section shall be
112 excused from testifying or from producing records, papers or
113 documents on the ground that such testimony or the production of
114 such records or other documentary evidence would tend to

115 incriminate such person, but such evidence or the records or papers so
116 produced shall not be used in any criminal proceeding against such
117 person. If any person disobeys such process or, having appeared in
118 obedience thereto, refuses to answer any pertinent question put to
119 such person by the commissioner or the commissioner's authorized
120 agent or to produce any records and papers pursuant thereto, the
121 commissioner or the commissioner's agent may apply to the superior
122 court for the judicial district of Hartford or for the judicial district
123 wherein the person resides, or to any judge of said court if the same is
124 not in session, setting forth such disobedience to process or refusal to
125 answer, and said court or such judge shall cite such person to appear
126 before said court or such judge to answer such question or to produce
127 such records and papers and, upon his or her refusal to do so, shall
128 commit such person to a community correctional center until such
129 person testifies, but not for a longer period than sixty days.
130 Notwithstanding the serving of the term of such commitment by any
131 person, the commissioner or the commissioner's agent may proceed
132 with such inquiry and examination as if the witness had not previously
133 been called upon to testify. Officers who serve subpoenas issued by the
134 commissioner or under the commissioner's authority and witnesses
135 attending hearings conducted by the commissioner or the
136 commissioner's agent shall receive like fees and compensation as
137 officers and witnesses in the courts of this state to be paid on vouchers
138 of the commissioner on order of the Comptroller.

139 Sec. 2. Section 17b-61 of the general statutes is repealed and the
140 following is substituted in lieu thereof (*Effective October 1, 2014*):

141 (a) Not later than sixty days after [such] the date on which the
142 record closes in an administrative hearing, or three business days after
143 the date on which the record closes if the hearing concerns a denial of
144 or failure to provide a special need benefit for emergency housing [,
145 the commissioner or his] pursuant to section 17b-808, the
146 Commissioner of Social Services or the commissioner's designated
147 hearing officer shall [render] issue a final decision based upon all the

148 evidence introduced before him or her and [applying] all pertinent
149 provisions of law, regulations and departmental policy. [, and such]
150 The final decision shall be issued not later than ninety days after the
151 date on which the hearing request was made, pursuant to section 17b-
152 60, as amended by this act, and shall supersede the decision made
153 without a hearing. [, provided final definitive administrative action
154 shall be taken by the commissioner or his designee within ninety days
155 after the request of such hearing pursuant to section 17b-60. Notice]
156 The commissioner or the commissioner's designee shall mail a copy of
157 such final decision [shall be given] to the aggrieved person [by mailing
158 him a copy thereof within] and, if applicable, the person who
159 requested the hearing on such person's behalf not later than one
160 business day [of its rendition] after the date it is issued. Such decision
161 [after hearing] shall be final except as provided in subsections (b) and
162 (c) of this section.

163 (b) The [applicant for such hearing, if] aggrieved [,] person may
164 appeal therefrom in accordance with section 4-183. Appeals from
165 decisions of [said commissioner] the Department of Social Services
166 shall be privileged cases to be heard by the court as soon after the
167 return day as shall be practicable.

168 (c) The commissioner may, for good cause shown by an aggrieved
169 person, extend the time for filing an appeal to Superior Court beyond
170 the time limitations of section 4-183, as set forth below:

171 (1) Any aggrieved person who is authorized to appeal a decision of
172 the [commissioner] department, pursuant to subsection (b) of this
173 section, but who fails to serve or file a timely appeal to the Superior
174 Court pursuant to section 4-183, may, as provided in this subsection,
175 petition that the commissioner, for good cause shown, extend the time
176 for filing any such appeal. Such a petition [must] shall be filed with the
177 commissioner in writing and contain a complete and detailed
178 explanation of the reasons that precluded the petitioner from serving
179 or filing an appeal within the statutory time period. Such petition

180 [must] shall also be accompanied by all available documentary
181 evidence that supports or corroborates the reasons advanced for the
182 extension request. In no event shall a petition for extension be
183 considered or approved if filed later than ninety days after the date of
184 rendition of the final decision. The decision as to whether to grant an
185 extension shall be made consistent with the provisions of subdivision
186 (2) of this subsection and shall be final and not subject to judicial
187 review.

188 (2) In determining whether to grant a good cause extension, as
189 provided for in this subsection, the commissioner, or [his] the
190 commissioner's authorized designee, shall, without the necessity of
191 further hearing, review and, as necessary, verify the reasons advanced
192 by the petition in justification of the extension request. A
193 determination that good cause prevented the filing of a timely appeal
194 shall be issued in writing and shall enable the petitioner to serve and
195 file an appeal within the time provisions of section 4-183, from the date
196 of the decision granting an extension. The circumstances that
197 precluded the petitioner from filing a timely appeal, and which may be
198 deemed good cause for purposes of granting an extension petition,
199 include, but are not limited to: (A) Serious illness or incapacity of the
200 petitioner which has been documented as materially affecting the
201 conduct of personal affairs; (B) a death or serious illness in the
202 petitioner's immediate family that has been documented as precluding
203 the petitioner from perfecting a timely appeal; (C) incorrect or
204 misleading information given to the petitioner by the agency, relating
205 to the appeal time period, and shown to have been materially relied on
206 by the petitioner as the basis for failure to file a timely appeal; (D)
207 evidence that the petitioner did not receive notice of the agency
208 decision; and (E) other unforeseen and unavoidable circumstances of
209 an exceptional nature which prevented the filing of a timely appeal.

210 Sec. 3. Subsection (b) of section 17b-238 of the general statutes is
211 repealed and the following is substituted in lieu thereof (*Effective*
212 *October 1, 2014*):

213 (b) Any institution or agency to which payments are to be made
214 under sections 17b-239 to 17b-246, inclusive, and sections 17b-340 and
215 17b-343 which is aggrieved by [any decision of said] a payment rate
216 issued by the commissioner may, [within ten days after] not later than
217 ten days after the date of written notice thereof from the commissioner,
218 obtain, by written request to the commissioner, [a rehearing] an
219 administrative hearing on all items of aggrievement. [On and after July
220 1, 1996, a rehearing] A hearing shall be held by the commissioner or
221 [his] the commissioner's designee, provided a detailed written
222 description of all such items is filed [within] not later than ninety days
223 [of] after the date of written notice of the commissioner's decision. The
224 [rehearing] hearing shall be held [within] not later than thirty days [of]
225 after the date of the filing of the detailed written description of each
226 specific item of aggrievement. The commissioner shall issue a final
227 decision [within] not later than sixty days [of the close of evidence]
228 after the date on which the evidence closes or the date on which final
229 briefs are filed, whichever occurs later. Any designee of the
230 commissioner who presides over such [rehearing] hearing shall be
231 impartial and shall not be employed within the Department of Social
232 Services office of certificate of need and rate setting. Any such items
233 not resolved at such [rehearing] hearing to the satisfaction of either
234 such institution or agency or [said] the commissioner shall be
235 submitted to binding arbitration to an arbitration board consisting of
236 one member appointed by the institution or agency, one member
237 appointed by the commissioner and one member appointed by the
238 Chief Court Administrator from among the retired judges of the
239 Superior Court, which retired judge shall be compensated for his or
240 her services on such board in the same manner as a state referee is
241 compensated for his services under section 52-434. The proceedings of
242 the arbitration board and any decisions rendered by such board shall
243 be conducted in accordance with the provisions of the Social Security
244 Act, 49 Stat. 620 (1935), 42 USC 1396, as amended from time to time,
245 and chapter 54.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	17b-60
Sec. 2	<i>October 1, 2014</i>	17b-61
Sec. 3	<i>October 1, 2014</i>	17b-238(b)

Statement of Purpose:

To update the Department of Social Services' administrative hearing procedure to comply with provisions of federal law and to eliminate obsolete language.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]