

§ 213.25

§ 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

45 CFR Ch. II (10-1-06 Edition)

§ 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b)(1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. The Administrator shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

Office of Family Assistance, ACF, HHS

§ 225.2

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also, in the case of a hearing pursuant to §201.6(a) of this chapter, specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such non-compliance. The Administrator may ask the parties for recommendations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and a "final determination" within the meaning of section 1116(a)(3) of the Act and §201.7 of this chapter. The Administrator's decision shall be promptly served on all parties, and amici, if any.

[36 FR 1454, Jan. 29, 1971, as amended at 36 FR 21520, Nov. 10, 1971]

§ 213.33 Effective date of Administrator's decision.

If, in the case of a hearing pursuant to §201.6(a) of this chapter, the Administrator concludes that a State plan does not comply with Federal requirements, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds. The effective date shall not be earlier than the date of the Administrator's decision and shall not be later than the first day of the next calendar quarter. The provisions of this section may not be waived pursuant to §213.4.

PART 225—TRAINING AND USE OF SUBPROFESSIONALS AND VOLUNTEERS

- Sec.
- 225.1 Definitions.
- 225.2 State plan requirements.
- 225.3 Federal financial participation.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 225.1 Definitions.

(a) The classification of subprofessional staff as community service aides refers to persons in a variety of positions in the planning, administration, and delivery of health, social, and rehabilitation services in which the duties of the position are composed of tasks that are an integral part of the agency's service responsibilities to people and that can be performed by persons with less than a college education, by high school graduates, or by persons with little or no formal education.

(b) *Full-time or part-time employment* means that the person is employed by the agency and his position is incorporated into the regular staffing pattern of the agency. He is paid a regular wage or salary in relation to the value of services rendered and time spent on the job.

(c) The term *Volunteer* describes a person who contributes his personal service to the community through the agency's human services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.

(d) *Partially paid volunteers* means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.

[34 FR 1319, Jan. 28, 1969]

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV-B of the Act must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of