

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1289

(SENATE AUTHORS: NEWMAN and Hann)

DATE	D-PG	OFFICIAL STATUS
04/26/2011	1407	Introduction and first reading Referred to Health and Human Services
04/27/2011	1435	Chief author stricken, shown as co-author Hann Chief author added Newman
04/28/2011	1482a 1539	Comm report: To pass as amended Second reading
05/04/2011		General Orders: Stricken and re-referred to Judiciary and Public Safety See SF1072, Sec.25

A bill for an act
relating to human services; modifying human services agency provisions;
modifying agency hearing and appeals provisions; amending Minnesota Statutes
2010, sections 256.045, subdivisions 3, 4; 256.0451, subdivision 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 256.045, subdivision 3, is amended to read:

Subd. 3. **State agency hearings.** (a) State agency hearings are available for the
following:

(1) any person applying for, receiving or having received public assistance, medical
care, or a program of social services granted by the state agency or a county agency or
the federal Food Stamp Act whose application for assistance is denied, not acted upon
with reasonable promptness, or whose assistance is suspended, reduced, terminated, or
claimed to have been incorrectly paid;

(2) any patient or relative aggrieved by an order of the commissioner under section
252.27;

(3) a party aggrieved by a ruling of a prepaid health plan;

(4) except as provided under chapter 245C, any individual or facility determined by
a lead agency to have maltreated a vulnerable adult under section 626.557 after they have
exercised their right to administrative reconsideration under section 626.557;

(5) any person whose claim for foster care payment according to a placement of the
child resulting from a child protection assessment under section 626.556 is denied or not
acted upon with reasonable promptness, regardless of funding source;

(6) any person to whom a right of appeal according to this section is given by other
provision of law;

(7) an applicant aggrieved by an adverse decision to an application for a hardship waiver under section 256B.15;

(8) an applicant aggrieved by an adverse decision to an application or redetermination for a Medicare Part D prescription drug subsidy under section 256B.04, subdivision 4a;

(9) except as provided under chapter 245A, an individual or facility determined to have maltreated a minor under section 626.556, after the individual or facility has exercised the right to administrative reconsideration under section 626.556;

(10) except as provided under chapter 245C, an individual disqualified under sections 245C.14 and 245C.15, following a reconsideration decision issued under section 245C.23, on the basis of serious or recurring maltreatment; a preponderance of the evidence that the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, subdivisions 1 to 4; or for failing to make reports required under section 626.556, subdivision 3, or 626.557, subdivision 3. Hearings regarding a maltreatment determination under clause (4) or (9) and a disqualification under this clause in which the basis for a disqualification is serious or recurring maltreatment, shall be consolidated into a single fair hearing. In such cases, the scope of review by the human services referee shall include both the maltreatment determination and the disqualification. The failure to exercise the right to an administrative reconsideration shall not be a bar to a hearing under this section if federal law provides an individual the right to a hearing to dispute a finding of maltreatment. ~~Individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of such written notice if the applicant, recipient, patient, or relative shows good cause why the request was not submitted within the 30-day time limit; or~~

(11) any person with an outstanding debt resulting from receipt of public assistance, medical care, or the federal Food Stamp Act who is contesting a setoff claim by the Department of Human Services or a county agency. The scope of the appeal is the validity of the claimant agency's intention to request a setoff of a refund under chapter 270A against the debt.

(b) The hearing for an individual or facility under paragraph (a), clause (4), (9), or (10), is the only administrative appeal to the final agency determination specifically, including a challenge to the accuracy and completeness of data under section 13.04. Hearings requested under paragraph (a), clause (4), apply only to incidents of maltreatment that occur on or after October 1, 1995. Hearings requested by nursing assistants in nursing homes alleged to have maltreated a resident prior to October 1, 1995, shall be held as a

contested case proceeding under the provisions of chapter 14. Hearings requested under paragraph (a), clause (9), apply only to incidents of maltreatment that occur on or after July 1, 1997. A hearing for an individual or facility under paragraph (a), ~~clause~~ clauses (4), (9), and (10), is only available when there is no ~~juvenile court or adult criminal district court~~ action pending. If such action is filed in ~~either~~ district court while an administrative review is pending, the administrative review must be suspended until the judicial actions are completed. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

(c) For an individual under paragraph (a), clauses (4), (9), and (10), who is determined to have committed maltreatment of a vulnerable adult or a minor child based on a conviction of, an admission to, or an Alford plea to:

(1) any of the crimes listed in sections 245C.15, subdivisions 1 to 4; and 626.556, subdivision 2;

(2) any of the crimes listed under section 626.5572, subdivision 2, paragraph (a);

(3) financial exploitation of a vulnerable adult under section 609.2335; or

(4) any acts constituting financial exploitation as defined in section 626.5572, subdivision 9,

or for any individual under paragraph (a), clause (10), who is disqualified based on a judicial determination, the reconsideration decision is the final agency action for purposes of appeal by the individual and is not subject to a hearing under this section.

~~(c)~~ (d) For purposes of this section, bargaining unit grievance procedures are not an administrative appeal.

~~(d)~~ (e) The scope of hearings involving claims to foster care payments under paragraph (a), clause (5), shall be limited to the issue of whether the county is legally responsible for a child's placement under court order or voluntary placement agreement and, if so, the correct amount of foster care payment to be made on the child's behalf and shall not include review of the propriety of the county's child protection determination or child placement decision.

~~(e)~~ (f) A vendor of medical care as defined in section 256B.02, subdivision 7, or a vendor under contract with a county agency to provide social services is not a party and may not request a hearing under this section, except if assisting a recipient as provided in subdivision 4.

~~(f)~~ (g) An applicant or recipient is not entitled to receive social services beyond the services prescribed under chapter 256M or other social services the person is eligible for under state law.

~~(g)~~ (h) The commissioner may summarily affirm the county or state agency's proposed action without a hearing when the sole issue is an automatic change due to a change in state or federal law.

(i) Unless federal or Minnesota law specifies a different time frame in which to file an appeal, individuals and organizations specified in this section may contest the specified action, decision, or final disposition before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action, decision, or final disposition, or within 90 days of the written notice if the applicant, recipient, patient, or a responsible party shows good cause why the request was not submitted within the 30-day time limit.

Sec. 2. Minnesota Statutes 2010, section 256.045, subdivision 4, is amended to read:

Subd. 4. **Conduct of hearings.** (a) All hearings held pursuant to subdivision 3, 3a, 3b, or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants-in-aid, and according to the rules and written policies of the commissioner of human services. County agencies shall install equipment necessary to conduct telephone hearings. A state human services referee may schedule a telephone conference hearing when the distance or time required to travel to the county agency offices will cause a delay in the issuance of an order, or to promote efficiency, or at the mutual request of the parties. Hearings may be conducted by telephone conferences unless the applicant, recipient, former recipient, person, or facility contesting maltreatment objects. Human services judges may grant a request for a hearing in person by holding the hearing by interactive video technology or in person. The human services judge must hear the case in person if the person asserts that either the person or a witness has a physical or mental disability that would impair their ability to fully participate in a hearing held by interactive video technology. The hearing shall not be held earlier than five days after filing of the required notice with the county or state agency. The state human services referee shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice, including a provider of therapy services, at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, former recipient, person, or facility contesting maltreatment shall have the opportunity to examine the contents of the case file and all documents and records to be used by the county or state agency at the hearing at a reasonable time before the date of the hearing and during the hearing. In hearings

under subdivision 3, paragraph (a), clauses (4), (8), and (9), either party may subpoena the private data relating to the investigation prepared by the agency under section 626.556 or 626.557 that is not otherwise accessible under section 13.04, provided the identity of the reporter may not be disclosed.

(b) The private data obtained by subpoena in a hearing under subdivision 3, paragraph (a), clause (4), (8), or (9), must be subject to a protective order which prohibits its disclosure for any other purpose outside the hearing provided for in this section without prior order of the district court. Disclosure without court order is punishable by a sentence of not more than 90 days imprisonment or a fine of not more than \$1,000, or both. These restrictions on the use of private data do not prohibit access to the data under section 13.03, subdivision 6. Except for appeals under subdivision 3, paragraph (a), clauses (4), (5), (8), and (9), upon request, the county agency shall provide reimbursement for transportation, child care, photocopying, medical assessment, witness fee, and other necessary and reasonable costs incurred by the applicant, recipient, or former recipient in connection with the appeal. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3. The agency must present its evidence prior to or at the hearing, and may not submit evidence after the hearing except by agreement of the parties at the hearing, provided the petitioner has the opportunity to respond.

(c) In hearings under subdivision 3, paragraph (a), clauses (4), (8), and (9), involving determinations of maltreatment or disqualification made by more than one county agency, by a county agency and a state agency, or by more than one state agency, the hearings may be consolidated into a single fair hearing upon the consent of all parties and the state human services referee.

Sec. 3. Minnesota Statutes 2010, section 256.0451, subdivision 5, is amended to read:

Subd. 5. **Prehearing conferences.** (a) The ~~appeals referee~~ human services judge prior to a fair hearing appeal may hold a prehearing conference to further the interests of justice or efficiency and must include the person involved in the appeal. A person involved in a fair hearing appeal or the agency may request a prehearing conference. The prehearing conference may be conducted by telephone, in person, or in writing. The prehearing conference may address the following:

- (1) disputes regarding access to files, evidence, subpoenas, or testimony;
- (2) the time required for the hearing or any need for expedited procedures or decision;
- (3) identification or clarification of legal or other issues that may arise at the hearing;

(4) identification of and possible agreement to factual issues; and
(5) scheduling and any other matter which will aid in the proper and fair functioning of the hearing.

(b) The ~~appeals referee~~ human services judge shall make a record or otherwise contemporaneously summarize the prehearing conference in writing, which shall be sent to both the person involved in the hearing, the person's attorney or authorized representative, and the agency.

(c) A human services judge may issue interim orders as necessary to further the appeal process.

Sec. 4. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall substitute the term "human services judge" for the term "appeals examiner," "human services referee," "referee," or any similar terms referring to the human services referees appointed by the commissioner of human services under Minnesota Statutes, section 256.045, subdivision 1, wherever they appear in Minnesota Statutes.