EMERGENCY STATEMENT: The Department of Social Services, Family Support Division (FSD) finds that there is an immediate danger to the public health, safety or welfare requiring emergency action and that this emergency rule is necessary to preserve a compelling governmental interest as it allows the FSD to conduct hearings telephonically or through electronic means during the state of emergency and updates changes in technology and how the FSD can communicate with participants. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The FSD believes this emergency amendment to be fair to all interested parties under the circumstances. The emergency amendment was filed April 16, 2020, becomes effective April 30, 2020, and expires February 9, 2021.

PURPOSE: This emergency amendment accounts for changes in technology, and addresses issues that commonly occur in the appeals process and that the rule, in its current form, does not address.

13 CSR 40-2.160 State Hearing Procedures

EMERGENCY AMENDMENT

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1. The name and Departmental Client Number (DCN), Social Security number, or date of birth of the participant for which the hearing has been requested, or the name and Departmental Vendor Number (DVN) of the vendor for which the hearing has been requested;

2. The name of the person requesting the hearing, if requested by someone other than the participant;

3. The amount of grant, following the completion of a reinvestigation of their case. (Original rule filed Sept. 26, 1951, effective Oct. 6, 1951.)

4. Upon the determination of the community spouse monthly income allowance described in 13 CSR 40-2.015. Participants shall designate an authorized representative in ways that are approved by the division and are authorized by state or federal law or regulation.

5. The applicant or recipient shall be notified in writing by the county family services office or the division of their rights to appeal to the director of the division [Division of Family Services]. This notice shall inform the institutionalized spouse and community spouse that appeal rights are effective upon application for Medicaid vendor applicable MO HealthNet benefits for the institutionalized spouse. Hearings regarding assessment issues shall be held within thirty (30) days of the date of the request for the hearing.

6. Proper blank forms for requesting an appeal shall be available at local division offices and online through the division website.

7. A request for an appeal shall include, at a minimum:

   1. The name and Departmental Client Number (DCN), Social Security number, or date of birth of the participant for which the hearing has been requested, or the name and Departmental Vendor Number (DVN) of the vendor for which the hearing has been requested;

   2. The name of the person requesting the hearing, if requested by someone other than the participant;

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   7. A request for an appeal shall include, at a minimum:

       1. The name and Departmental Client Number (DCN), Social Security number, or date of birth of the participant for which the hearing has been requested, or the name and Departmental Vendor Number (DVN) of the vendor for which the hearing has been requested;

       2. The name of the person requesting the hearing, if requested by someone other than the participant;
3. The current address and phone number of the participant, and the current address and phone number of the person requesting the hearing if requested by someone other than the participant; and

4. A brief description of the reason the appeal is being requested.

(D) An electronic signature shall serve as a valid signature for the purposes of requesting an appeal under this regulation.

(6) A participant may request an expedited hearing if the participant’s life, health, or ability to attain, maintain, or regain maximum function would be jeopardized by the time ordinarily permitted for a standard hearing, or as otherwise required by law.

(A) A health care provider may request an expedited hearing on behalf of the participant and in regards to the participant’s eligibility for benefits and services governed by section 208.080, RSMo., or alternatively, may submit documentation supporting the individual’s request for an expedited hearing.

(B) A request for an expedited hearing may be made in the same manner as any other request for a hearing, as set forth in subsection 2, above.

(C) If the hearing officer denies the request for an expedited hearing, the hearing officer shall notify the participant through electronic means or orally, and if orally, with written notice sent within two (2) calendar days of the denial.

(D) If the hearing officer denies the request for an expedited hearing, the denied request shall still serve as a valid request for an appeal under this regulation.

(E) A copy of the notice also will be sent to any attorney, legal guardian, and/or authorized representative who has notified the division that they are representing the participant.
render a decision which shall include a statement of the Findings of Fact and Conclusions of Law. A copy of the decision will be sent to the appellant by registered United States mail. A copy also will be mailed to the county family services office and to any duly authorized representative of the appellant. (Original rule filed Feb. 20, 1947, effective March 2, 1947.)

(66) [9] [There are established the positions of state hearing officer within the Division of Legal Services] The department’s Division of Legal Services (DLS) has established hearing officer positions in order to comply with all pertinent federal and state law and regulations.

(A) Hearing officers shall be licensed to practice law in the State of Missouri at all times relevant herein.

(B) The [state] hearing officers shall have authority to conduct state-level hearings of a pre-termination or appeal nature. They shall serve as [direct representatives] designees of the division director, [of the Division of Family Services] as required by federal or state law.

(C) All decisions issued [as a result of the hearing so] after state-level hearings conducted by the hearing officers shall be in the name of the division director [of the Division of Family Services] or the director’s designee, as required by federal or state law.

(D) [Although the hearing officers may be assigned to a certain area, this] The hearing officers’ authority to conduct hearings shall be statewide.

(E) The authority of the hearing officers to conduct hearings arises under section 208.080, RSMo., and shall apply to all programs administered by the director of the [Division of Family Services. [Original rule filed April 1, 1975, effective April 10, 1975.]] Department as set forth in section 208.080, RSMo.

(10) Any party shall be entitled to conduct depositions pursuant to section 536.073 RSMo., as amended, and the Missouri Rules of Civil Procedure. The costs of the depositions shall be borne by the party conducting the deposition unless otherwise agreed to by the parties or ordered by a court of competent jurisdiction.

(A) Pursuant to section 536.073, RSMo., no discovery shall be allowed for hearings conducted pursuant to this rule unless it is expressly identified herein.

(11) Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of records may be issued by the hearing officer upon a statement of necessity filed by the party requesting the issuance of the subpoena pursuant to section 536.077, RSMo.

(A) The witness shall be entitled to the same fees and, if compelled to travel more than forty (40) miles from his or her place of residence, shall be entitled to the same tender of fees for travel and attendance, and at the same time, as is now or may hereafter be provided for witnesses in civil actions in the circuit court, such fees to be paid by the party requesting the subpoena, except where the payment of such fees is otherwise provided for by law.

(B) Under no circumstances shall the department grant witness fees to parties to the case or their relatives.

(12) The hearing officer may, as allowed by state and federal law, keep the record of the administrative hearing open to a fixed day so as to order, and receive the results of, a physical or mental health examination, to allow the parties to submit additional evidence, or for other good cause.

(A) In cases in which the hearings unit keeps the record open to a fixed day in order to allow the parties to submit additional evidence; if the additional evidence is not received by the department by the fixed day and no requests have been made to extend the record (in which case the hearing officer may extend the record further), the hearing officer shall close the record and the Director will issue a decision based on the record.

(B) A request for a continuance of the hearing date must be communicated to the hearing officer and any other parties to the hearing, if possible, at least five (5) days prior to the date of the scheduled hearing. Continuances will be granted only when the hearing officer determines from the request that extraordinary circumstances exist.

(13) For any time limit imposed by state or federal law under which the division must take final administrative action, starting with the date of the request for a hearing and ending on the date of the division’s action, and as allowed by federal and state law, the time limit is tolled for the length of any delay in the hearing process caused either by one of the reasons identified in Section (12) of this rule, the claimant’s actions, or by the actions of, or at the request of, the claimant’s authorized representative, guardian, conservator, or attorney.

(A) If the record at an administrative hearing is held open at the request of a claimant under section (12) of this rule, the deadline for administrative action is extended by the number of calendar days between the date of the request for a hearing and the fixed day identified in section (12).

(B) Example: The division receives a request for a hearing regarding a person’s eligibility for MO HealthNet on the basis of disability on May 1, 2020. Under federal law, the division has ninety (90) days to take a final action on the outcome of the hearing. The division must therefore take final administrative action on or before July 30, 2020. The hearings unit sets a hearing date for May 15, 2020 (fourteen (14) days into the ninety- (90)-day timeline). The claimant then requests a continuance of the hearing date, and the hearing is rescheduled for May 31, 2020. The ninety- (90)-day count stops on May 15, 2020 at fourteen (14) days. It resumes on May 31, 2020. This results in an extension of the deadline for administrative action by sixteen (16) days to cover the continuance period of May 15 through May 31, 2020. The new deadline for administrative action becomes August 15, 2020.

(14) Any party may represent themselves, be represented by an authorized representative, by a licensed Missouri attorney, by a nonresident attorney appearing in compliance with Supreme Court Rule 9, or by an eligible law student complying with Missouri Supreme Court Rule 13.

(15) All persons who will be acting in a representative capacity on behalf of a party before the hearing officer shall file notice of their intent to represent the party as soon as possible after being retained or chosen. Non-attorneys shall file proof that they are authorized representatives of the participant pursuant to 13 CSR 40-2.015. Attorneys shall file an entry of appearance.

(16) The Hearings Unit shall dismiss an appeal under the following circumstances:

(A) The appeal was not timely requested;

(B) The division has not taken an action affording (or has not been inactive to such an extent as to afford) the participant a right to appeal; or

(C) The participant, having been notified of the time, date, and place of the hearing, fails to appear at the hearing without good cause.

(17) If the participant dies prior to or at any time during the appeal, the participant’s attorney’s or authorized representative’s authority shall terminate.
(A) Upon being advised of the death of the participant, the hearing officer shall continue the hearing.
(B) Following the participant’s death, only the duly authorized personal representative of or legal counsel for the participant’s estate shall be allowed to represent the participant at the hearing.
(C) If the duly authorized personal representative of the participant’s estate does not enter an appearance with the hearing officer within thirty (30) days after the hearing date, the hearing officer dismiss the appeal.
(D) This section shall not terminate an authorized representative’s authority to assist with an application for MO HealthNet benefits prior to the participant’s death, as allowed under 13 CSR 20-2.015(16).

(18) Within a reasonable time after the conclusion of a hearing, the Division director or the Director’s designee, as required by federal and state law, will render a decision in compliance with section 208.080.7, RSMo.
(A) A copy of the decision will be sent to the participant and to the participant’s legal guardian, attorney, and/or authorized representative by regular United States mail, or electronically if the participant so chooses and the department has the capability to send an electronic notice.
(B) A copy will also be sent to the division.


PUBLIC COST: This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars ($500) in the time the emergency is effective.