

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM

CERTIFICATE OF NEED HEARING PROCEDURES

(By the authority conferred on the Michigan Administrative Hearing System by Executive Order 2011-1, MCL 445.2021).

R 325.9571 Hearing procedure.

Rule 571. (1) An applicant requesting a hearing shall file the request for hearing with the department's Michigan Administrative Hearing System appeals section.

(2) A request for a hearing must be filed within 15 days after receipt of the bureau's proposed decision or the date of the reversal by the director of a proposed decision that is an approval.

(3) A request for a hearing shall be in writing and include all of the following:

- (a) A statement of the grounds for a hearing.
- (b) A clear and concise statement of the facts and law relied on.
- (c) The relief sought.

(4) The applicant must serve a copy of the request for a hearing on the appropriate regional certificate of need review agency. In addition, if the request for a hearing is filed by an applicant in a comparative review, the applicant must serve a copy of the request for a hearing on all other applicants in the comparative group when the request for hearing is filed.

(5) If more than 1 request for a hearing is filed with respect to the same bureau decision, the hearings so commenced must be consolidated and shall be heard and decided as a single hearing. A party shall not be severed from a hearing on a comparative review unless severance is ordered by the administrative law judge in response to a procedural motion filed pursuant to R 325.9578.

(6) In all hearings by aggrieved applicants, the necessary parties are the department and any aggrieved applicant that filed its request for a hearing in a timely manner. The bureau is not required to file a response to a request for a hearing. In comparative reviews, approved applicants are necessary parties to any hearing and shall receive notice of all hearings.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9572 Hearings.

Rule 572. (1) The hearing shall commence within 90 days from the date that the department received the request for a hearing, unless waived in writing by the parties. Not less than 10 days before the date set in the notice, the Michigan Administrative Hearing System shall serve notice of the hearing upon the person who filed the request for a hearing, the assistant attorney general assigned to represent the department, and all

other persons on whom the request for a hearing is required to be served. The first hearing day shall be used as a prehearing conference and may be used for hearing preliminary motions.

(2) If more than 1 request for a hearing is filed with respect to the same bureau decision, the hearings shall be consolidated and shall be heard and decided as a single hearing. A party shall not be severed from a hearing on a comparative review.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9573 Papers filed in proceeding; formal requirements.

Rule 573. (1) A request for a hearing shall be titled "In the matter of (name of appellant or appellants)." This caption shall appear at the upper left side of the first page of each filed pleading or document other than an exhibit. (2) The first page of a pleading or document, other than an exhibit, shall show the case number, if assigned, at its upper right side opposite the caption.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9574 Service of documents.

Rule 574. Unless otherwise specified, service of a document upon any party shall be made by personal delivery or by mailing, by registered, certified, or first-class mail, to the last known address of the party or the authorized representative of a party as indicated on the records of the department. Proof of service shall be filed with the department.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9575 Pleadings.

Rule 575. All pleadings, including a request for a hearing, shall contain the certificate of need application number as part of the caption and the case number, if assigned. All pleadings may also be filed electronically in a mutually agreed upon media.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9576 Adjournment.

Rule 576. A party may request an adjournment of a scheduled hearing by motion to the administrative law judge assigned to conduct the hearing. The administrative law judge shall not rule on the request until all other parties have had an opportunity to be heard on the request. However, if all parties agree to the adjournment, then the administrative law judge may be advised of the agreement by telephone and may rule on the request immediately.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9577 Administrative law judge; conduct of hearing.

Rule 577. (1) The administrative law judge shall govern the conduct of a hearing and the order of presentation of arguments and evidence.

(2) Upon his or her own motion or that of a party, the administrative law judge, for good cause, may order that issues be severed and briefed or argued separately.

(3) Sections 71 to 87 of 1969 PA 306, MCL 24.271 to MCL 24.287 apply to the hearings.

(4) Upon written request by a party, the administrative law judge may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(5) Unless the bureau determined that the applicant demonstrated a need for the proposed project under MCL 333.22225(1), the scope of the hearing shall be limited to demonstrating compliance with MCL 333.22225(1). If the applicant has demonstrated compliance with MCL 333.22225(1), then the scope of the hearing may involve demonstrating compliance with section MCL 333.22225(2).

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9578 Preliminary motions; prehearing conference.

Rule 578. (1) Not less than 5 days before the date set for the first hearing in the notice, all preliminary motions shall be filed, unless the administrative law judge, for good cause shown, permits the filing of such motions at a later date.

(2) On the date set for the hearing in the notice, the administrative law judge shall first hear all pending preliminary motions. Thereafter, all motions are to be made and heard at the discretion of the administrative law judge. Motions of a procedural nature shall be decided by the administrative law judge as they are made. Motions of a substantive nature shall be taken under advisement and decided as part of the administrative law judge's proposal for decision.

(3) On the date set for the hearing in the notice, after hearing all pending preliminary motions, if any, the administrative law judge shall hold a prehearing conference.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9579 Interrogatories; depositions.

Rule 579. (1) Upon stipulation of all of the parties to a case, written interrogatories or requests for admissions may be served on a party in the same manner as in a nonjury civil case in circuit court.

(2) The taking of any deposition shall have approval of the administrative law judge and can only be taken for purposes of obtaining testimony to use at a hearing. Before taking a deposition, the administrative law judge shall find that it is impractical or impossible to have a witness testify at the hearing. When depositions are permitted, they shall be taken in the same manner as in a nonjury civil case in circuit court.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9580 Testimony.

Rule 580. Upon the request of a party and for good cause shown, the administrative law judge may allow the direct testimony of a witness being presented on behalf of the requesting party to be submitted in written form, together with any exhibits to be sponsored by the witness, before hearing. Such direct testimony shall be sworn and notarized and be in question and answer form. The direct testimony of each witness so submitted shall be made a separate exhibit, and the name and address of the witness, together with the caption of the case, shall appear on the cover sheet. The exhibit shall be served on all parties on a date set by the administrative law judge, but not less than 5 days before its introduction at the hearing. Each witness shall be present at the hearing to introduce his or her written testimony as an exhibit and for cross-examination at the date, time, and place directed by the administrative law judge. In any case, and upon request, a party has the right, notwithstanding any provision of this rule, to have any witness on the party's behalf present the party's direct testimony orally before the administrative law judge.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9581 Withdrawal of request for hearing; agreement.

Rule 581. (1) At any time before a final decision is issued by the director, a party may withdraw its request for a hearing.

(2) The party or parties to a hearing may negotiate an agreement disposing of the whole case or a part of the case in compliance with Part 222 of the code, but that agreement is not effective unless it is approved by the department.

History: 2014 MR 3, Eff. Feb. 4, 2014.

R 325.9582 Proposed decision; distribution; filing of exceptions.

Rule 582. After the conclusion of a hearing, the Michigan Administrative Hearing System shall deliver, to the director, the official case file and the administrative law judge's proposal for decision. The administrative law judge shall serve the proposal for decision upon the parties by first-class or certified mail or by personal service. Each party has 20 days from the date of service of the proposal for decision to file exceptions or present written arguments to the director. Exceptions and written arguments shall be served on all parties, who will have 10 days to file their replies to the exceptions with the director and serve the replies on the parties.

History: 2014 MR 3, Eff. Feb. 4, 2014.