

HEARINGS, MEETINGS, LICENSES
1-24-11

NOTICE OF HEARING

Please take notice that the Town of Middleborough Rent Board, ("Rent Board") will hold a hearing on Monday, January 24, 2011 at 7:30 p.m. in the Selectmen's Meeting Room at the Middleborough Town Hall in Middleborough, MA. The hearing will be conducted pursuant to the authority under the Rent Board's "Rules and Regulations For Mobile Home Park Accommodations, Rents And Evictions" and Chapter 703 of the Acts of 1985 to consider the amount of rents paid by tenants of Edgeway Mobile Home Park (the "Park"). Hearing procedures will be governed by the Informal/Fair Hearing Rules pursuant to 801 CMR 1.02. The Park Owner and the tenants shall each have the right to participate in the hearing and have the right to be represented at the hearing by an authorized representative or attorney. They or their representatives/attorneys shall have the right to prepare and present relevant evidence and argument at the hearing.

The issues involved in the hearing include:

- Whether the Park Owner increased rents to a rate higher than \$280/month for tenants who were already subject to a rent agreement at the rate of \$280/month.
- Whether rent may exceed \$280/month for any tenant in the Park.
- Whether the Rent Board in January 2006 made an order to the Park Owner not to increase rents until new rent was approved by the Rent Board.
- Whether the Park Owner increased rents for tenants after January 2006 in violation of the Rent Board's order of January, 2006.
- Whether the Park Owner set initial rents for any tenant(s) at a rate greater than \$280/month.
- Whether rents for all tenants in the Park must be the same amount.
- Whether the rents paid by tenants in the Park will be reduced and/or adjusted, prospectively or retroactively.

TOWN OF MIDDLEBOROUGH RENT BOARD
Marsha L. Brunelle
Alfred P. Rullo, Jr.
Muriel C. Duphily
Stephen J. McKinnon
Steven P. Spataro

Publish: December 23, 2010

Please bill the Town of Middleborough Board of Selectmen's office.

EXHIBITS LIST

(for Rent Board hearing)

1. 01/12/06 letter from Board of Selectmen
2. 01/24/06 letter from Board of Selectmen
3. 07/10/06 letter from Daniel F. Murray, Town Counsel
4. 10/12/10 letter from Adam M. Bond
5. Edgeway Park – Promotional Advertisement
6. Edgeway Park – Tenant Registration Statement (most recent on file)

1

January 12, 2006

COPY

Wayne Williams
Edgeway Park Realty Trust
228 Wareham Street
Middleboro, MA 02346

Sent Certified Mail - 7003 3110 0001 4367 3102

Dear Mr. Williams,

The Board of Selectmen has learned that you plan a rent increase on the units at Edgeway Mobile Home Park in Middleborough.

As you know, and as you have acknowledged in your rental agreements and literature, no rent increase can be implemented without the approval of the Selectmen sitting as the Rent Control Board.

In order to expedite a review of your planned increase, the Board Chairman has set an initial Hearing date of January 23, 2006 at 8:15 PM in the Selectmen's Meeting Room in the Town Hall, 10 Nickerson Avenue. The Selectmen will be looking for financial information on the revenue and expenditures related to the Park, any capital projects you have done in the past year or planned improvements you plan to do in the future to respond to any problems that tenants have brought to your attention.

You may not impose a change in your rent structure until the Selectmen approve an increase.

We hope you will take the opportunity to present the Board with all the information you have to support the requested rent increase by the Thursday before the meeting (January 19th). This will help the Board to expedite the discussion on the 23rd.

Sincerely,

Diane Henault, Secretary
For the BOARD OF SELECTMEN

cc: John Dwyer, President
Tenants Association

Served In-Hand

Date

2

COPY

January 24, 2006

Wayne Williams
Edgeway Park Realty Trust
228 Wareham Street
Middleboro, MA 02346

Sent Certified Mail - 7003 3110 0001 4367 3546

RE: Proposed Rent Increase

Dear Mr. Williams,

On Monday, January 23, 2006 the Middleborough Board of Selectmen held a meeting to discuss your proposed rent increase at Edgeway Mobile Home Park.

At that meeting, you agreed and acknowledged that Edgeway Park is under Rent Control, and therefore you must make application to the Board of Selectmen for any proposed rent increases. You further agreed and acknowledged that, until the Board of Selectmen has given approval, there can be no rent increase.

Please contact this office if you need any further information.

Sincerely,

Wayne C. Perkins, Chairman
BOARD OF SELECTMEN

cc: Board of Selectmen
John Dwyer, President
Tenants Association

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DECAS, MURRAY & DECAS ATTORNEYS AT LAW
132 NORTH MAIN STREET - MIDDLEBORD - MASSACHUSETTS 02346 - (508) 947-4433

GEORGE D. DECAS
DANIEL F. MURRAY
WILLIAM J. DECAS

REPLY TO POST OFFICE BOX 201
MIDDLEBORD, MA 02346-0201
FAX (508) 947-4433

400-200 OFFICE
132 NORTH STREET
MIDDLEBORD, MA 02346-0201

SENT VIA FAX #: 508-946-0058

July 10, 2006

Diane Henault, Secretary to
Board of Selectmen

RE: Edgeway Mobile Home Park - rent

Dear Diane:

You advised that the owner of the referenced park reused a rent check from the purchasers of a unit in the park. The purchasers bought the unit from a person who lived in the unit and was a tenant in the park at a specific rent. The park owner told the purchasers that the rent which they must pay is a higher amount than the specific rent paid by the person who sold the unit.

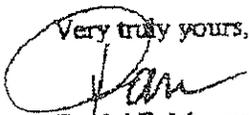
The rent levels at Edgeway have never been approved by the Board of Selectmen, the Rent Board under Middleborough's rent control statute.

It appears that earlier this year the park owner requested the Rent Board to approve an increase in the rent in the park. The Board of Selectmen advised the park owner in writing that he was not to increase rents in the park until the Rent Board considered and approved the rent amount pursuant to the owner's request.

I view the Board of Selectmen's instruction to the park owner not to increase rent in the park as an order which is binding on the park owner. In my opinion the park owner's unilateral decision to raise the rent for an existing unit violates the order.

It seems to me that the rent for the unit which was recently sold should be the same as the rent paid by the seller of the unit before the sale until a new rent is approved by the Board of Selectmen. This approach would be consistent with the order of the Board of Selectmen.

Very truly yours,



Daniel F. Murray
Town Counsel

DFM: f
92-137

Twp Rent Control

12
A

LAW OFFICE OF ADAM M. BOND

11 NORTH MAIN C
MIDDLEBOROUGH MA 02346
PHONE: 508-946-1165
FACSIMILE: 508-946-1057

October 12, 2010

RECEIVED

OCT 18 2010

BOARD OF SELECTMEN
MIDDLEBOROUGH, MA

VIA REGULAR MAIL

Middleborough Board of Selectmen
10 Nickerson Ave.
Middleborough, MA 02346

Dear Board of Selectmen:

I represent the Edgeway Park Homeowners' Association, and am writing to request that this Honorable Board, on its own initiative, revisit and finally resolve the various rent control issues that continue to persist in the park.

As you are aware, my clients are homeowners domiciled in Edgeway Park, who are currently being overcharged for their rent. The original baseline rents were set at \$280.00 per month in 1999.

Commencing in 2001, the then current operator of the park-unilaterally, and without the consent of the Middleborough Rent Control Board, raised the rent of the homeowners. Such rental increase was illegal, and in violation of the rules promulgated by the Massachusetts Attorney General. (See C.M.R. 10.02(7)).

Such rental increase constitutes a fraud on the part of the operator, inasmuch as he advertised that the "Park Fee" was "\$280.00/month" and "under rent control by the Town of Middleboro." (See attached flyer produced and distributed by the Park Operator to prospective purchasers/renters). The advertisement further admitted and represented to the homeowners and prospective homeowners that "Any increases need to be approved by the Middleboro Board of Selectmen."

The homeowners of Edgeway Park have long insisted that the rents being charged at the park are not only in violation of law, but also in violation of the agreement made by the operators of the Park. Middleborough Town Counsel opined, on July 10, 2006, that "the rent for the unit which was recently sold should have been the same as the rent paid by the seller of the unit before the sale until a new rent is approved by the Board of Selectmen."

Reading the applicable law, considering the representations made by the Park Operators to induce the purchase of units in the Park, and considering the opinion of the

Town Counsel, we submit that any rents being charged that exceed the \$280.00 per month are illegal and must be rolled back to that rate.

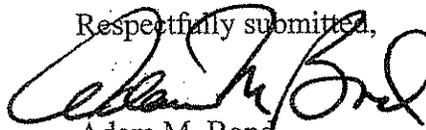
Currently, there are 37 homeowners being charged more than the \$280.00 rent that was the fixed amount as represented by the operators. In 2006, was the only time when the operators ever sought a rent increase, which was denied as a result of the refusal of the operators to disclose their financials to the Board of Selectmen. In total, the operators have overcharged the homeowners close to \$50,000 since 1999.

Pursuant to the Board's Rent Control Regulations, the Petitioners respectfully request that, on its own initiative, the Board schedule a hearing to finally resolve this matter that has been pending since 2006, and has not yet been resolved. If the Board would prefer that 37 separate petitions be made and heard pursuant to the regulations, rather than the Board proceeding on its own initiative to resolve this issue, Petitioners would comply. However, in an attempt to streamline these matters, Petitioners would request that the Board act on its own initiative pursuant to the Rent Control Regulations.

CONCLUSION

ACCORDINGLY, we respectfully request that the Board of Selectmen, acting as the Middleborough Rent Control Board, resolve to act on its own initiative to determine if a downward adjustment of rent is appropriate in the circumstances, and whether the homeowners have been overcharged as a result of the conduct of the operator.

Respectfully submitted,



Adam M. Bond

EDGEWAY PARK

➔ PARK FEE \$280.00/month

- UNDER RENT CONTROL BY THE TOWN OF MIDDLEBORO
- FIXED FOR THE 1ST FIVE YEARS - APPROX 4+ yrs left
- ANY INCREASES NEED TO BE APPROVED BY MIDDLEBORO BOARD OF SELECTMEN
- FEE INCLUDES
 - HOUSEHOLD WATER
 - TRASH PICKUP
 - ROAD AND PARK MAINTENANCE
 - SEPTIC PUMPING AND MAINTENANCE

Homes to be equipped underground sprinkler systems and sod lawns. There will be a \$60.00/yr water assessment to cover sprinklers. (Cheap insurance to keep park green and lush)
 Sprinklers are controlled by the park.

□ To order a unit requires a 5% deposit and takes approx 6-8 wks. To have custom built in Pennsylvania add another 6-8 weeks for us to set up (12-16 wks)

- OPT. □ All decks will be off the back of the units. No decks on sides.
- Homes include central air
- Appliances include
 - Refrigerator
 - Stove
 - Dishwasher
 - Trash Compactor

Edgeway Realty Trust
17 Wesley Circle

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Lot #	Street Address	Name(s) of Tenant(s)/ Lessee(s)/ Occupants(s)	Name(s) of Tenant(s)/ Lessee(s)/ Occupants(s)	Type of Rental Housing Agreement Lease = L Tenant = T	Date Rental Housing Agreement Commenced	Date Rental Housing Agreement Expires	Monthly Rent
28	162 Wesley	Louisia	Glenn	L	8/2009	8/2014	\$ 290.00
27	75 Lyn	Roland	n/a	T	11/2004	11/2009	\$ 320.00
68	135 Wesley	Dorothy	n/a	T	1/2002	1/2007	\$ 290.00
5	58 Lyn	Peter	Eileen	T	9/2003	9/2008	\$ 320.00
15	24 Wesley	Victor	Elizabeth	L	10/2001	10/2006	\$ 290.00
9	38 Lyn	Irene	n/a	T	8/2009	8/2014	\$ 280.00
24	57 Lyn	Mario	Janice	T	9/2001	9/2006	\$ 290.00
61	95 Wesley	Mary	n/a	T	n/a	n/a	\$ 320.00
31	126 Wesley	Joaquin	George	T	12/2002	12/2007	\$ 280.00
70	143 Wesley	Martha	n/a	T	6/2001	6/2006	\$ 312.00
39	72 Wesley	John	Lynne	T	5/2003	5/2008	\$ 312.00
22	47 Lyn	Hugh	Anne	T	1/2001	1/2006	\$ 290.00
12	18 Lyn	Jeanette	n/a	T	8/2000	8/2005	\$ 280.00
38	80 Wesley	Jerry	Natalie	L	3/2010	3/2015	\$ 350.00
37	88 Wesley	Paula	n/a	T	10/2003	10/2008	\$ 320.00
57	87 Wesley	John	n/a	T	12/2002	12/2007	\$ 290.00
66	123 Wesley	Arthur	Beatrice	T	11/2002	11/2007	\$ 312.00
36	92 Wesley	John	Judith	L	7/2009	7/2014	\$ 312.00
35	100 Wesley	Thomas	Georgette	T	12/2002	12/2007	\$ 312.00
32	118 Wesley	Ellen	n/a	T	n/a	n/a	\$ 312.00
30	132 Wesley	Harriet	Chris	L	2/2006	2/2011	\$ 280.00
11	24 Lyn	Benjamin	Geri	T	n/a	n/a	\$ 290.00
72	151 Wesley	Louis	Mary	T	10/2005	10/2010	\$ 290.00
7	46 Lyn	Charles	Margo	T	5/2001	5/2006	\$ 280.00
4	64 Lyn	John	n/a	T	6/2002	6/2007	\$ 290.00
42	36 Wesley	Jeanette	n/a	T	10/2002	10/2007	\$ 290.00
65	127 Wesley	Barbara	n/a	T	2/2002	2/2007	\$ 350.00
67	133 Wesley	Donald	Helene	T	9/2002	9/2007	\$ 290.00
19	29 Lyn	Dian	n/a	T	9/2001	10/2005	\$ 290.00
6	52 Lyn	Robert	n/a	T	9/2007	9/2007	\$ 312.00
26	69 Lyn	Dorothy	n/a	T			

Edgeway Realty Trust
17 Wesley Circle

Lot #	Street Address	Name(s) of Tenant(s) / Lessee(s) / Occupants(s)	Name(s) of Tenant(s) / Lessee(s) / Occupants(s)	Type of Rental Housing Agreement	Date Rental Housing Agreement Commenced	Date Rental Housing Agreement Expires	Monthly Rent
1	174 Wesley	Paul	Carol	L	2/2006	2/2011	\$ 280.00
71	145 Wesley	Robert	Grace	T	n/a	n/a	\$ 280.00
17	17 Lyn	Anne	n/a	L	10/2005	10/2010	\$ 320.00
25	63 Lyn	Robert	Nancie	T	4/2003	4/2008	\$ 312.00
20	35 Lyn	Robert	Margaret	T	9/2002	9/2007	\$ 290.00
41	60 Wesley	John	Louise	T	5/2002	5/2007	\$ 290.00
16	11 Lyn	Anna	Gail	T	7/2001	7/2006	\$ 280.00
13	12 Lyn	Louis	Jean	T	11/1999	11/2004	\$ 280.00
73	147 Wesley	Linda	Richard	L	1/2010	1/2015	\$ 275.00
33	112 Wesley	Joseph	Robertta	T	12/2002	12/2007	\$ 312.00
8	40 Lyn	Grace	n/a	T	n/a	n/a	\$ 312.00
14	10 Wesley	Donald	Norma	T	12/1999	12/2007	\$ 280.00
18	23 Lyn	Paul	Carol	T	11/2001	11/2006	\$ 290.00
69	139 Wesley	Claire	Michael	L	7/2009	8/2014	\$ 280.00
21	41 Lyn	Jerry	Beverly	T	2/2002	2/2007	\$ 290.00
2	74 Lyn	John	Barbara	T	n/a	n/a	\$ 320.00
23	51 Lyn	Henry	Barbara	T	6/2002	6/2007	\$ 290.00
34	108 Wesley	Frands	Rosemarie	T	9/2002	9/2007	\$ 312.00
3	68 Lyn	John	Carolyn	T	n/a	n/a	\$ 280.00
10	30 Lyn	Ralph	Phyllis	T	n/a	n/a	\$ 280.00
25	63 Lyn	Paul	Charlene	T	12/2008	12/2013	\$ 312.00
40	68 Wesley	vacant	vacant	T	8/2006	n/a	\$ 350.00
							\$ 15,581.00

**TOWN OF MIDDLEBOROUGH RULES AND REGULATIONS FOR MOBILE HOME
PARK
ACCOMMODATIONS, RENTS, AND EVICTIONS**

In accordance with Chapter 703 of the Acts of 1985, after hearing in accordance with Mass. Gen. Laws, Chapter 30A, Sec. 2, the Rent Board hereby adopts the following rules and regulations for the purpose of regulating rents, minimum standards for the use or occupancy of mobile home park accommodations, and evictions with respect to mobile home park accommodations in mobile home parks within the Town of Middleborough.

Section 1 – Definitions:

- A. Board:** The Rent Board is the Town of Middleborough Board of Selectmen established by a vote under Article 5 of the warrant for the Middleborough Town Meeting of March 10, 1986.
- B. Capital Improvements:** Any substantial rehabilitation, addition or improvements which appreciably add to the value of the property or prolongs its life or both, but not including ordinary repairs and maintenance, provided such rehabilitation, addition or improvements shall cost at least \$5,000 and have a useful life of at least five (5) years.
- C. Mobile Home:** A structure, built in conformance to the National Manufactured Home Construction and Safety Standards which is transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. A mobile home is also known as a "manufactured home" as defined in General Laws Chapter 140, Section 32Q.
- D. Mobile Home Park:** A lot or tract of land used for the site of three or more mobile homes occupied for dwelling purpose and licensed pursuant to General Laws Chapter 140, Section 32B. A mobile home park is also known as a manufactured housing community as defined in General Laws Chapter 140, Section 32F.
- E. Mobile Home Park Accommodations:**
1. The lot or space in a Mobile Home Park upon which is located a Mobile Home not owned by the holder of the license of said park and used and occupied as a one family dwelling unit or available for such use and occupancy.

2. A Mobile Home in a Mobile Home Park owned by the licensee of a mobile home park and used and occupied by a Tenant as a one family dwelling unit or available for such use and occupancy.

- F. Housing Services:** Services or facilities provided by an Owner or required by law or by the terms of a rental housing agreement to be provided by an Owner to a Tenant in connection with the use and occupancy of any mobile home park accommodation, which may include without limitation: Services, furniture, furnishings and equipment, repairs, decorating and maintenance, provisions of light, heat, hot water, cold water, telephone, kitchen, bath and laundry facilities and privileges, use of yard and other common areas, janitor service, refuse removal, parking facilities, lawn water sprinkler services, vehicle or equipment storage, and any other benefit, privileges or facility connected with the use or occupancy of any mobile home park accommodations.
- G. Owner:** The individual who holds a license granted pursuant to Mass. Gen. Laws, Chapter 140, Section 32B, to conduct, control, manage or operate directly or indirectly a mobile home park in any manner including, but not limited to, a partnership, corporation or trust.
- H. Operating and maintenance expenses:** The reasonable expenses of operating and maintaining a mobile home park including, but not limited to, maintenance, repair, management fee, real estate broker's commission to someone other than the Owner, insurance, utilities not included within the rent, but not including mortgage interest and amortization or an allowance for obsolescence or depreciation.
- I. Rent:** The consideration, including any bonus, benefit, gratuity or charge contingent or otherwise, demanded or received for or in connection with the use or occupancy of a mobile home park accommodation or for housing services or for the transfer of a lease of a mobile home park accommodation, exclusive of the license fee collected by the Owner and paid to the Town under General Laws Chapter 140, Section 32G; excluding therefrom, however, the consideration paid by a shareholder of a Cooperative Housing Corporation organized pursuant to General Laws Chapter 157B for a share of said corporation, a propriety lease, and any maintenance fees associated therewith. Rent shall include fees and charges for services assessed by the owner to a Tenant by an Owner, but not fees charged for discretionary or optional activities and/or services which may be offered for recreational activities, conveniences, etc.
- J. Rental Housing Agreement:** An agreement between an Owner and a Tenant for use and occupancy of a mobile home park accommodation and/or housing services, specifically excluding, however, any agreement for occupancy of a mobile home park accommodation between a Cooperative Housing Corporation as a defined in Massachusetts General Laws Chapter 157B and a shareholder of said corporation.
- K. Tenant:** A tenant, lessee, or other person entitled under the terms of a rental housing agreement with the Owner for the use and occupancy of any mobile home park

accommodation; excepting for this definition, however, any person who occupies a mobile home park accommodation pursuant to a proprietary lease as defined in General Laws Chapter 157B at Section 4, as a shareholder of a Chapter 157B Cooperative Housing Corporation.

L. Fair Market Value: Fair Market Value of property shall mean the current assessed valuation of the property or other valuation that the Board on basis of evidence presented before it considers more appropriate to the circumstances of the case before it. The Board shall evaluate all evidence presented by any party regarding the fair market value.

M. Fair Net Operating Income: Fair net operating income shall be that income which will yield a return to the Owner of a Mobile Home Park, after all reasonable operating expenses, on the fair market value of the Mobile Home Park, equal to the debt service rate for similar-type property generally available from institutional first mortgage lenders, a reasonable fair-market yield spread over the debt service rate or other rates of return that the Board on the basis of evidence presented before it considers more appropriate to the circumstances of the case. The Board shall evaluate all evidence presented by any party regarding the fair net operating income.

Section 2 – Maximum Rent:

- A. The maximum rent for mobile home park accommodations which a park owner may charge a tenant shall be as follows:
1. For mobile homes which are in existence, occupied by a tenant or occupant and subject to a rental housing agreement on the date these Rules and Regulations are adopted, the maximum rent shall be the rent set forth in Addendum A.
 2. For new mobile homes which have not been previously sold by the park owner and are not occupied by a tenant or occupant under a rental housing agreement on the dates these Rules and Regulations are adopted, the maximum rent shall be the rent set by a rental housing agreement between the park owner and the tenant or occupant of the home. The maximum rent may be higher or lower than the maximum rent for other mobile homes in the park when the rental housing agreement is made.
 3. For mobile homes which were previously sold by the park owner and/or occupied by a tenant or occupant under a rental housing agreement which is no longer in effect, the maximum rent shall be the rent set by a new rental housing agreement between the park owner and the new tenant or occupant of the home. The maximum rent shall not exceed the following:
 - a) If the park owner is offering new mobile homes for sale at the time the new rental housing agreement is made, the maximum rent shall

not exceed the rent then being offered to purchasers of new mobile homes.

- b) If the park owner is not offering new mobile homes for sale at the time the new rental housing agreement is made, the rent shall not exceed the highest rent then being paid by other tenants/occupants in the park.
4. Maximum rent for mobile home park accommodations may be adjusted from time to time by the Board pursuant to Section 4 and Section 5 of these Rules and Regulations. Maximum rent for mobile home park accommodations may also be adjusted under a rental housing agreement which provides for a rent adjustment based on application of a yearly consumer price index factor as described in Section 4-D.

B. No increase in maximum rent for a mobile home accommodation shall be effective unless:

1. The increase is approved by the Board pursuant to Section 4 and Section 5.
2. The increase is based on a yearly consumer price index factor approved by the Board; or
3. The increase is provided for by a yearly consumer price index factor under a rental housing agreement.

Section 3 – Registration:

The Board shall require registration of all mobile home park accommodations on forms approved by it within ninety (90) days of the approval of these regulations and annually on June 30th. A copy of registration shall be provided to tenants of the mobile home park upon their written request. Any new or additional accommodation must be registered prior to occupancy thereof. No petition for an upward adjustment of maximum rent shall be accepted by the Board until all statements and information required to be filed under this Section 3 have been filed and any such petition prior to such filing shall not be entertained by the Board. The Board shall require the following:

1. The legal name, address and business telephone of the owner;
2. The identification of each unit of mobile home park accommodations;
3. The legal name, address and business telephone of the manager;
4. The identification of each Tenant in the mobile home park, including the date the Rental Housing Agreement began, the date on which it terminates, or whether it is a tenancy at will, and the amount of rent due each month;

5. The lot type, if necessary, to distinguish different types of lots for which the owner charges different rents, including the description of the basis(es) for charging the rent differential;
6. A copy of all Rental Housing Agreements (or a copy of a representative Rental Housing Agreement which is substantially the same for all mobile home park accommodations involved in the registration) and any rules and regulations applicable to each Rental Housing Agreement. The owner shall update the registration annually by June 30th of each year.

The registration forms shall be signed by the Owner under the penalties of perjury.

Section 4 – Adjustment of maximum rent:

- A. The Board shall, by order or regulation as provided in Section 5, make such individual or general adjustments, either upward or downward, of the maximum rent established by Section 2 for any mobile home park accommodations as may be necessary to remove hardships or correct inequities for both Owner and Tenant, and make adjustments for capital improvements / equipment and in so doing shall observe the principle of maintaining rents at levels which will yield to Owners a fair net operating income for such mobile home park accommodations.
- B. The Board by regulation may establish further standards and rules consistent with the foregoing. The Board may promulgate a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.
- C. Notwithstanding any other provision of this section, the Board may refuse to grant an upward adjustment of maximum rent if it determines that the affected mobile home park accommodation does not comply with the State Sanitary Code or the Town of Middleborough codes or by-laws or any other applicable code, ordinance or state law regulating the conditions of housing accommodations, and if it determines that such lack of compliance is due to the failure of the Owner to provide normal and adequate repairs and maintenance. The Board may refuse to make a downward adjustment of maximum rent if it determines that the Tenant is more than thirty (30) days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of Section 8A of Chapter 239 of the General Laws or if the Tenant is in substantial violation of any enforceable rule of the mobile home park or if the Tenant is in violation of any laws or ordinances which protect the health and safety of other mobile home park residents.
- D. In setting or adjusting rent for mobile home park accommodations under Section 4 and Section 5, the Board may approve yearly adjustments of the rent based on application of a consumer price index factor as described in this subsection. A rental housing agreement may provide for yearly adjustments of the rent based on application of a consumer price index factor as described in this subsection. The yearly consumer price index factor authorized by these Rules and Regulations shall be based on the Consumer Price Index for All Urban Consumers (CPI-U): U.S. City

Average, All Items (unadjusted) (1982-84=100) published by the Bureau of Labor Statistics, U.S. Department of Labor, or if such index is no longer published, such other or successor index which is approved by the Board. Yearly adjustments in rent based on a consumer price index factor shall be calculated by determining the increase or decrease in the index by comparing the current monthly index ("current CPI") to the monthly index for the same month one (1) year prior to the month when the yearly adjustment is being determined ("prior CPI"). The difference between the current CPI and the prior CPI shall be divided by the prior CPI to derive a percentage increase or decrease. The percentage increase or decrease shall then be multiplied by the existing rent to determine the amount of the rent increase or decrease. For example, if the current CPI is 3% more than the prior CPI, the existing rent will increase by 3%.

- E. The Board in adjusting maximum rent for a mobile home park may equalize rent for all substantially similar or comparable mobile home park accommodations in those cases where the maximum rent which is to be adjusted is not equalized before adjustment.

Section 5 – Rent Adjustment Proceedings:

- A. **Individual Adjustment of Maximum Rent.** The Board shall consider an adjustment of rent for an individual mobile home park accommodation upon receipt of a petition for adjustment filed by the Owner or Tenant of such mobile home park accommodation or upon its own initiative. Such petition shall be made on a form approved by the Board. The Board shall notify the Owner, if the petition was filed by the Tenant, or the Tenant, if the petition was filed by the Owner, of the receipt of such petition and of the right of either party to request a hearing in writing within thirty (30) calendar days of receipt of such notice or the Board may schedule a hearing on its own initiative. If a hearing is timely requested by either party or if the action is undertaken on the initiative of the Board, notice of the time and place of the hearing shall be furnished to the Owner and Tenant and the hearing shall be conducted before the Board. The Board may consolidate petitions and actions relating to mobile home park accommodations in the same mobile home park, and all such petitions and actions may be considered in a single hearing.
- B. **General Adjustment of Maximum Rent by Regulation.** Upon application or petition by an Owner or Tenant, the Board may make a general adjustment by percentage or otherwise of the rental levels for mobile home park accommodations subject to such conditions, if any, as the Board shall determine. Prior to making such adjustment, a public hearing shall be held before the Board. Notice of the time, place, and purpose of such hearings shall be published at least once in a newspaper having a general circulation in the Town, and posted in the Town Hall, both not less than seven (7) days prior to such hearings.

- C. Limitation of Petition for Individual Adjustment.** Notwithstanding any other provision of this section, the Board may, without holding a hearing, refuse to adjust the maximum rent for an individual mobile home park accommodation and may dismiss any petition for adjustment if a decision has been made with regard to the maximum rent for such mobile home park accommodation within twelve (12) months or if the Board finds that the petition for adjustment is filed for purposes of harassment or for other purpose not intended herein.
- D. Hearing,** conducted pursuant to Section 5 above shall be conducted as adjudicatory hearings in accordance with the provision of Massachusetts General Laws Chapter 30A, Sections 10, 11 and 12. Rules and procedures for the conduct of said hearings shall be those rules and regulations outlined in 801 CMR 1.00 et seq. for the conduct of adjudicatory hearings before State administrative agencies, which the Board hereby adopts and shall implement as its own rules and regulations for the conduct of adjudicatory proceedings. Within thirty (30) days of the filing of a petition, the Board shall meet and determine whether to proceed on such petition pursuant to the formal or informal rules as outlined in 801 CMR 1.00 et seq. or under other procedures and shall indicate its determination as to which rules and procedures shall be followed in its notice of agency action to affected parties, and in the public notice of said hearing.
- E.** All decisions made by the Board under this Section shall be rendered in writing within 30 (thirty) days from the date the Board closes the public hearing on the petition.
- F.** The Board shall levy a filing fee upon any and all parties that make application to request a rent adjustment for a mobile home accommodation. The filing fee for any individual rent adjustment requested pursuant to Section 5 of these rules and regulations shall be \$50.00. The filing fee for a general rent adjustment pursuant to Section 5B of these regulations shall be \$300.00 for which a general adjustment is requested. The applicant for a general rent adjustment shall also pay the sum of \$100.00 to cover advertising costs. Filing fees and advertising costs shall be paid by check payable to the Town of Middleborough at the time of the filing of a petition.

Section 6 – Incorporation of Administrative Procedure Act and 801 CMR 1.00

The provisions of Massachusetts General Law Chapter 30A including those provisions giving agencies the power to issue, vacate, modify, and enforce subpoenas shall be applicable to the Board as if said Board were an agency of the Commonwealth, as well as, those provisions relating to judicial review of an agency order. The rules and regulations at 801 CMR 1.00 et seq. as adopted by the Secretary of Administration for Massachusetts for application and use by state agencies for the conduct of both formal and informal adjudicator hearings shall be the rules and regulations and procedures adopted for use before The Board for the hearing of all petitions for rent adjustment, and for eviction, unless at the time of the filing of the petitions and before the notice of agency action shall be published, the Board shall by vote determine to use an alternative procedure which nonetheless shall be consistent with the provisions of Massachusetts General Laws Chapter 30A, Section 10, 11, and 12.

Section 7 – Capital Improvements and Capital Equipment Rent Adjustment

A. Pre-Approval

A park owner or management may file a petition for the purpose of obtaining pre-approval from the Board for an increase in maximum rent to offset the cost of a substantial and necessary capital improvement or purchase of capital equipment. The procedures set forth in Section 5 above for rent adjustment petitions shall be used for capital improvement or capital equipment petitions. The park Owner or Management shall file with the petition for pre-approval any and all information relating to the cost of and need for financing the capital improvement or capital equipment purchase. Any pre-approval given by the Board shall also be deemed an approval of such financing. The Board shall consider whether the improvement is necessary and the reasonableness of the cost of the improvement in considering a rent increase to support the cost of the improvement. The rent increase shall be conditioned upon satisfactory and final approval of the improvement.

B. Final – Approval

Upon completion of capital improvement or purchase of capital equipment for which a park owner or management has received pre-approval, the Board may give final approval of the increase in maximum rent(s). Final approval shall only be given by the Board upon submission of satisfactory evidence by the park owner or management that the capital improvement has been satisfactorily completed or the capital equipment has been purchased and that the costs incurred for such improvement are equal to or exceed the cost upon which pre-approval was given. In the event that such costs are less than the original estimated costs, the maximum rent shall be increased only to the extent that it reflects such costs. The Board shall hold a public hearing upon submission by the park owner or management of evidence of completion of the capital improvement or purchase of equipment. A capital improvement/capital equipment rent increase approved by the Board shall be identified and separated from the remainder of the rent charge and eliminated from the rent charge when the approved rent increase has produced income equal to the cost of the improvement or equipment including the cost of debt service incurred in connection with such improvement or equipment.

Section 8 – Conference of Jurisdiction

The Wareham Division of the District Court Department shall have original jurisdiction concurrently with the Superior Court, of all petitions for review brought pursuant to Section 14 of Chapter 30A of the General Laws. The Superior Court shall have jurisdiction to enforce Chapter 703 of the Acts of 1985 and may restrain violations thereof.

Section 9 – Information to be supplied in Connection with Petitions for Adjustment:

Upon receipt by the Board of a petition for adjustment of maximum rent by an Owner, the Board may request documents, which information may include but not be limited to:

- A. Reviewed Financial statements certified by a CPA for the three (3) years preceding the year of the filing of the petition; such statements should clearly set forth income, sources of income, and a detailed breakdown of operating expenses.
- B. An interim updated financial statement showing income and operating expenses for the current year.
- C. A complete and current balance sheet.
- D. A statement of the number of employees, job titles and job descriptions of any employee whose employment relates to the affected mobile home park.
- E. Current capital improvements and dates of completion.
- F. Proposed capital improvements and proposed dates of completion.
- G. Proposed budget for the year in which the increase is to be effective.
- H. A statement of the rate of return sought and the assessed valuation of the property.

In any case where the Owner seeking an upward adjustment in rent owns and operates more than one mobile home park, all financial documentation submitted shall pertain solely to the operation of the mobile home park for which the upward adjustment is sought.

Upon receipt by the Board of a petition for a downward adjustment of maximum rent, the Board may request documents which information may include but not be limited to:

- A. Written reason for such downward adjustment; and
- B. Any evidence financial or otherwise, supporting such downward adjustment.

Section 10 – Evictions:

- A. Pursuant to the provisions of General Laws, Chapter 140, Section 32J, as amended, no Owner shall terminate any lease or tenancy and/or bring an action to recover possession of a mobile home park accommodation unless;
 1. the Tenant has failed to pay the rent to which the Owner is entitled; or
 2. the Tenant is in substantial violation of an enforceable rule of the mobile home park; or
 3. the Tenant is in violation of a law or ordinance which protects the health or safety of other mobile home park residents; or
 4. there is a discontinuance in good faith by the Owner of the use of part or all of the land owned and licensed as a mobile home park subject to any existing contractual right between the Owner and the Tenant located in the mobile home park. No such discontinuance shall be valid for any mobile home sold by the licensee and for which a mobile home site was made available at the time of the said sale by the licensee for a period of five (5) years from the date of said sale.

- B. The Owner must provide the Board with satisfactory evidence that all notice requirements as to any alleged violation have been provided to the Tenant in a timely manner and the Tenant has failed to cure the alleged violation in a timely manner, all as set forth in General Laws, Chapter 140, Section 32J as amended.
- C. 1. An Owner shall file an application in duplicate for obtaining a certificate of eviction with a filing fee of \$50.00 for each unit for which eviction is sought. The fee shall be paid by check or money order made payable to the Town of Middleborough and presented at the time of filing the application for a certificate of eviction.
2. An application for certificate of eviction shall be signed by the Owner under the pains and penalties of perjury and shall describe in complete detail the proposed basis (or bases) for eviction and the facts in support of such basis (or bases). A copy of the lease and the rules and regulations of the mobile home park Owner shall be submitted with the application where the Tenant is claimed to have violated either the lease or the park regulations.
3. An application for certificate of eviction which fails to comply with the foregoing provisions of this paragraph "C" shall not be processed until such defects have been corrected or removed.
4. The Board shall, by certified mail, return receipted requested and by first class U.S. Mail, forward to the Tenant or Tenants listed on the application for a certificate of eviction and to the park Owner a copy of the application for a certification of eviction as received, together with a notice of the date, time and place of the hearing.
5. The Board shall send a notice of hearing by mail with respect to an application for a Certificate of Eviction within twenty-one (21) days of receipt of an application. An application or an amended application for eviction shall be scheduled for a hearing not less than ten (10) days or more than twenty-one (21) days from the date on which the notice of hearing is mailed as aforesaid by the Board to the parties. Hearings shall be conducted by the Board and shall be adjudicatory hearings following the procedures set forth in Massachusetts General Laws, Chapter 30A.
6. A request for postponement of the hearing will be granted for good cause shown.
7. At the hearing the Owner shall have the burden of establishing the facts and basis for the eviction. Testimony shall be taken under oath and any party shall have the right to cross-examine witnesses of the other party and to introduce evidence in support of its position.
8. A written order granting or denying a certificate of eviction shall be issued by the Board within thirty (30) days of the date of the final hearing and its order denying a certificate of eviction shall be a defense in any summary process action commenced by the Owner against the Tenant or Tenants named on the application for a certificate of eviction.

- D. No Owner shall seek recovery of possession of a mobile home park accommodation in a summary process-eviction case unless the Board issues a certificate of eviction therefor.

- E. The provisions of this section shall be construed as additional restrictions on the right to recover possession of a mobile home park accommodation. No provision of this section shall entitle any person to recover possession of such a mobile home park accommodation. Upon a decision of said Board concerning the granting or withholding of a certificate of eviction, either party concerned may appeal to the Wareham Division of the District Court Department or the Plymouth Division of the Superior Court Department.

Section 11 – Severability:

If any provision of these rules and regulation or the application of such provision to any person or circumstance shall be held invalid by a final judgment of a court of competent jurisdiction, the validity of other provisions or the application of such provision to other persons or circumstances shall not be thereby affected.

Section 12 – Forms

Any forms adopted pursuant to the provisions of these rules and regulations shall be submitted to the Board under the pains and penalties of perjury.

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Advanced Source: Legal > /.../ > MA - Code of Massachusetts Regulations and Massachusetts Register
TOC: Code of Massachusetts Regulations > TITLE 801: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE > CHAPTER 1.00: STANDARD ADJUDICATORY RULES OF PRACTICE AND PROCEDURE > 1.02: Informal/Fair Hearing Rules
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801 CMR 1.02

CODE OF MASSACHUSETTS REGULATIONS

*** This document reflects all regulations in effect as of August 6, 2010 ***

TITLE 801: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
CHAPTER 1.00: STANDARD ADJUDICATORY RULES OF PRACTICE AND PROCEDURE

801 CMR 1.02 (2010)

1.02: Informal/Fair Hearing Rules

(1) Preamble. 801 CMR 1.02 of the Standard Adjudicatory Rules of Practice and Procedure is a self-contained segregable body of regulations of general applicability for proceedings in which formal rules cannot be utilized or federal fair hearing procedures are applicable. An Agency must determine for any class of hearings whether to hold hearings under 801 CMR 1.01, Formal Hearings, or 801 CMR 1.02. Agencies shall determine based on such factors as: the volume of cases held; whether claimants are represented by counsel; the complexity of the issues; or the applicability of Federal fair hearing procedures. All notices from which an Adjudicatory Proceeding can be claimed shall state which rules apply, whether formal under 801 CMR 1.01, or informal under 801 CMR 1.02. In addition, all notices shall contain a notice printed in English, Spanish, Portuguese, Italian, Greek, French and Chinese that informs the reader that the document is important and should be translated immediately.

(2) Scope, Construction and Definitions.

(a) Scope and Construction. 801 CMR 1.02 shall apply to Adjudicatory Proceedings involving review of action or inaction of an Agency or of a Veterans' agent with respect to a claim for benefits or services. Without intending to limit its applicability, 801 CMR 1.02 shall apply to all hearings held pursuant to the fair hearing requirements of 7 CFR 273; 42 USC 503 (a)(3) and M.G.L. c. 151A, §§ 39 and 41. 801 CMR 1.02 shall also apply to the hearing procedures of any other Agency which is, in whole or in part, governed by the requirements of similar law, and to classes of hearings of any Agency for which 801 CMR 1.02 establishes minimum procedural protections for applicants or recipients in such proceedings, and shall in no way be construed to limit the protections afforded by state or federal law.

(b) Definitions: Refer to all definitions included in M.G.L. c. 30A and in 801 CMR 1.01. In addition, the following words when used in 801 CMR 1.02 shall have the following meanings:

Applicant. An individual who has applied or been denied the opportunity to apply for benefits available under any program administered by an Agency, H.C.C. or veterans' agent appointed pursuant to M.G.L. c. 115, § 3.

ASAP. An Aging Services Access Point organized to provide services pursuant to a contract with The Executive Office of Elder Affairs.

Benefits. Any benefit to an individual or service administered or rendered by an Agency.

Case Manager. The person who performs case management services.

DALA. The Division of Administrative Law Appeals.

Division of Hearings (DTA). The Division of Hearings for the Department of Transitional Assistance.

Electronic Medium. Any device used to preserve or transmit information electronically, including but not limited to telephone, e-mail and facsimile.

Hearing. An Adjudicatory Proceeding held under these informal rules at 801 CMR 1.02.

Institution. Any licensed hospital, nursing home or public medical institution.

Presiding Officer. The individual(s) authorized by law or designated by the Agency or DALA to

conduct an Adjudicatory Proceeding.

Recipient. A Person or family receiving benefits under a program administered by an Agency, ASAP, or Veterans' Agent pursuant to M.G.L. c. 115, § 3.

(3) Representation.

(a) Appearance. An individual may appear in his or her own behalf, or may be accompanied, represented and advised by an Authorized Representative.

appearance

(b) Notice. An Authorized Representative shall appear by filing a written notice with the Agency or Presiding Officer. Notice shall contain the name, address and telephone number, as well as facsimile number and e-mail address if available, of the Authorized Representative and of the Party represented, and may limit the purpose of the appearance. The filing by an attorney of any pleading, motion or other paper shall constitute an appearance by the attorney who signs it, unless the paper states otherwise.

(c) Powers. An Authorized Representative may exercise on a Party's behalf any rights and powers vested in that Party by 801 CMR 1.00.

(4) Time. Papers shall be filed according to the procedures set forth in 801 CMR 1.01(4)(a) through (e).

(5) Filing. All papers filed with the Agency, its designee, or DALA should contain the name, address, telephone number and signature of the sender or Authorized Representative. Papers which do not contain all of this information shall be accepted for filing if they contain sufficient identifying information so they can be placed in the appropriate file.

(6) Initiation of Adjudicatory Proceedings.

(a) Notice of Agency, ASAP, or Veterans' Agent Action.

1. Requirements. Notice of action by an Agency, ASAP or Veterans' agent to deny, terminate, reduce, or suspend services or Benefits to a Recipient or to deny Benefits or services to an applicant shall include but not be limited to:

- a. clear and plain statement of the action to be taken;
- b. the date on which the action shall become effective;
- c. an explanation of reasons for the action;
- d. the regulation or other legal authority on which such action is based;
- e. the telephone number and address where further information may be obtained;
- f. an explanation of the applicant's or recipient's right to request a hearing (including the time limits and manner for request);
- g. a copy of the form used to request a hearing;
- h. an explanation of the circumstances, if any, under which Benefits or services will continue pending an Adjudicatory Proceeding;
- i. an explanation of the right to be represented, including if applicable, the availability of assistance; and
- j. the mailing address, telephone number and office hours of the office responsible for receiving and/or hearing appeals from the Agency action.

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2. Exceptions for ASAP.

- a. If a Recipient voluntarily assents in writing to a termination, reduction or suspension of services, the ASAP shall implement the change in service in accordance with the terms of that assent, without sending notice of action. ASAP shall use a written assent format provided by Elder Affairs.
- b. If a recipient is hospitalized or otherwise institutionalized, ASAP shall suspend the Recipient's services as soon as feasible, without sending notice of action. Upon discharge, the ASAP shall reassess the Recipient's service needs.
- c. If an ASAP has actual knowledge that a Recipient is temporarily absent from the ASAP service area and is therefore unavailable to receive services, the ASAP may suspend services for the period of the Recipient's absence without sending notice of action.

(b) Grounds for Appeal. A right to request an Adjudicatory Proceeding shall arise when controversy exists which by law or Agency regulation requires an Adjudicatory Proceeding, or

when a Person is aggrieved by an Agency, ASAP, or veterans' agent action or failure to act.

(c) Adjudicatory Proceedings - How Taken. A Person entitled to an Adjudicatory Proceeding or his or her Authorized Representative must request a hearing in writing in the form prescribed, or on the form provided by the Agency or the Presiding Officer, and must sign and date the request. At the discretion of the Agency, the request for hearing may be filed by Electronic Medium. The requesting Party must file with the Agency or the Presiding Officer within the time limit prescribed by law. In the absence of any time limit, the requesting Party must file within 60 days after receipt of the notice of action or, for failure to act, within 120 days from application, unless the Agency has established a longer period.

(d) Continuation of Benefits Pending Appeal. Benefits shall continue when required by applicable statute or regulation, if the Recipient or Institution has met the standard set forth by applicable statute or regulation.

(e) Termination of Continued Benefits. Benefits continued in accordance with 801 CMR 1.02(6)(d) shall be terminated if:

1. a determination is made at the hearing that the sole issue is a challenge to the validity of a particular law or regulation; or
2. a change affecting the Recipient's Benefits occurs subsequent to the Adjudicatory Proceeding request which makes the previously filed Adjudicatory proceeding request moot, and the Recipient fails to request a hearing on the subsequent matter within the applicable time period; or
3. a determination is made at the hearing that the Agency action to terminate Benefits was correct.

(7) Special Requests.

(a) Withdrawals. With the approval of the Agency or the Presiding Officer, a Petitioner may withdraw his request for an Adjudicatory Proceeding in a writing signed by the Petitioner or his or her Authorized Representative.

(b) Emergency Scheduling. The Agency or the Presiding Officer, on its own or by request of a Party, may for good cause order an accelerated hearing.

(c) Other Requests. A Party may request rulings or relief in writing at any time or orally during a hearing. After providing notice to the other Parties, the Agency or Presiding Officer shall rule on the request with or without a hearing.

(8) Discovery.

(a) Generally. Parties to an Adjudicatory Proceeding are encouraged to engage in voluntary discovery.

(b) Examination of File. At any time after an Adjudicatory Proceeding has been requested, a Party and its Authorized Representative shall have adequate access to and an opportunity to examine and copy or photocopy the entire content of his case file and all other documents to be used by the Agency, ASAP, or Veterans' Agent at the hearing. The cost of photocopying shall be determined from time to time by the Executive Office for Administration and Finance.

(9) Group Hearings.

(a) Purpose. A group hearing may be held if it appears from the request for a hearing or other written information submitted by the Parties that the matters involve questions of fact which are identical, or the sole issue involves federal or state law or policy, or changes in federal or state law. For these purposes, a change in federal or state law shall mean any change in standards governing eligibility or limitation in the amount of time for which Benefits or services are provided, affecting a class of Recipients or Applicants and promulgated by state or federal law or regulation.

(b) Severance of Individual Hearing. If, at any stage of such group hearing, the Presiding Officer finds that any individual appeal involves questions of fact unique to the individual Petitioner, such as the applicability of the law change to such Petitioner, the Presiding Officer shall sever the appeal and hear it individually.

(10) Hearings.

(a) Adjustment of Matters Related to Hearing. A filed request for hearing does not prohibit an adjustment in the matters at issue prior to the hearing. If as a result of an adjustment, the Petitioner is satisfied and wishes to withdraw all or part of his appeal, he or she shall file a signed withdrawal in writing with the Agency or the Presiding Officer in accordance with 801 CMR 1.02(7)(a). A hearing shall not be delayed or canceled because of a proposed adjustment under consideration unless the Petitioner requests a delay or cancellation.

(b) Submission Without a Hearing. The Petitioner may elect to waive a hearing and to submit any

documents without appearing at the time and place designated for the hearing. Submission of a case without a hearing does not relieve the Parties from supplying all documents supporting their allegations or defenses. Affidavits and stipulations may be employed to supplement other documentary evidence in the record.

(c) Notice of Hearing. The notice of the hearing must include the date, time, and place of the hearing, an explanation of the hearing procedure and an explanation of the Party's right to have an Authorized Representative present. Unless already provided in the notice of action under 801 CMR 1.02(6)(a)(1), the notice shall provide sufficient notice of the issues involved so that the Parties may have a reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all Parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

✓ Notice of Hearing

(d) Dismissals for Failure to Appear. If the Petitioner fails to appear at the hearing, the Presiding Officer shall notify the Petitioner in writing that a default will be entered against him unless within ten days from the date of said notice he files a motion for a rescheduled hearing, and the motion is granted. In the event a Petitioner fails to appear at the time and place of a granted rescheduled hearing, the appeal shall be dismissed and shall include an explanation of the manner in which dismissals may be vacated. Any motions to vacate a dismissal must be in writing, signed by the Petitioner or his Authorized Representative, and directed to the Presiding Officer. Dismissals shall be vacated only for good cause shown.

(e) Dismissal for Failure to Prosecute. The Agency or the Presiding Officer may order dismissal for failure to prosecute in accordance with the provisions of 801 CMR 1.01(7)(g)2.

(f) Presiding Officer's Duties and Powers at Hearings. The Presiding Officer shall have the duty to conduct a fair hearing to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence, including examining witnesses and authorizing the Agency to pay for an independent medical examination; to exclude irrelevant or unduly repetitious evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; to reach a fair, independent and impartial decision based upon the issues and evidence presented at the hearing and in accordance with the law; and to reconvene the hearing with notice to the parties at any time prior to the decision being issued.

Presiding Officer

(g) Rights and Duties of Parties.

1. Each Party may present his or her own case, or may be assisted by an Authorized Representative at his or her expense. The Party, or Authorized Representative, shall have a right to:

- a. present witnesses;
- b. present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- c. advance any pertinent arguments without undue interference;
- d. question or refute any testimony including an opportunity to cross-examine adverse witnesses; and
- e. examine and introduce evidence from his or her case record, and examine and introduce any other pertinent documents.

2. The Agency, in addition to the rights and duties above, at 801 CMR 1.02 (10)(g)1.:

- a. is responsible for submitting at the hearing all documented information on which its action or motions are based;
- b. shall introduce into the hearing only material which pertains to the issues; and
- c. may designate and may send a staff person to the hearing to testify as to its action or inaction. In cases involving the judgment of the Case Manager relative to reduction, suspension, or termination of services, the Case Manager, or a person authorized to represent the Case Manager, shall be present at the hearing.

emailed 30 A/11(2)

(h) Evidence.

1. General. The Agency or Presiding Officer shall admit and consider evidence in accordance with M.G.L. c. 30A, § 11(2).

2. Presented at Hearing. Except as the Agency, its designee, or Presiding Officer may otherwise order, any documentary evidence on which a decision is based must be presented either at the hearing or, in cases submitted without a hearing pursuant to 801 CMR 1.02 (10)(b), before notification that the case is ready for decision. Copies of any evidence shall be provided to all

copies provided

other Parties.

3. Oral Testimony. Oral testimony shall be given under oath or affirmation. Witnesses shall be available for examination and cross-examination.

*oath
not chosen by*

4. Stipulations. Stipulations may be used as evidence in accordance with the provisions of 801 CMR 1.01(10)(b).

5. Additional Evidence. The Agency or the Presiding Officer may in any case require any Party or the Agency, with appropriate notice to all other Parties, to submit additional evidence on any relevant matter.

(j) Subpoenas. The Agency or the Presiding Officer may issue, vacate or modify subpoenas in accordance with M.G.L. c. 30A, § 12. Parties may issue subpoenas in accordance with M.G.L. c. 30A, § 12(3). Witnesses may petition the Agency to vacate or modify subpoenas in accordance with M.G.L. c. 30A, § 12(4).

(j) Scheduling. Upon receipt of a request for a hearing, the Agency or Presiding Officer shall within a reasonable time register the appeal, set a date and designate a site for a hearing, and notify all Parties. If the Petitioner has a disability or is otherwise unable to appear at the designated site, the Petitioner may request that the hearing be held at another convenient location. The Agency or Presiding Officer may grant such request.

(k) The Hearing Record.

1. Contents of the Record All documents and other evidence offered or taken shall become part of the record, which shall be the exclusive basis of the decision. The record shall at reasonable business hours be available at the offices of the Agency or other designated location for inspection by the parties.

2. Stenographic or Taped Record. All evidence and testimony at the hearing shall be recorded either stenographically or by Electronic Medium. The Presiding Officer shall arrange for verbatim transcripts of the proceedings to be supplied at cost to any Party upon request, at the Party's own expense. The Agency by rule may elect to supply a copy of the tape, disc or other audio-visual preserving medium employed at the proceeding to record its events in lieu of a verbatim transcript at the Party's own expense. The Agency or the Presiding Officer may permit any Party to maintain his or her own stenographic or electronic record.

(l) Continuances. The Agency or the Presiding Officer may continue a hearing by notifying all parties and authorized representatives of the date, time and place of the continued hearing.

(11) Decisions. Upon completion of the hearing, the Agency or Presiding Officer shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8).

*Decision
30A/11(8)*

(12) Appeals.

(a) General. Within the time prescribed by law or regulation, or within ten days where no other time limit is prescribed, any Party entitled to further administrative review of the decision at an Agency which has a review process, may file a request for review with the appropriate reviewing Agency. Upon receipt of motion for administrative review, the reviewing Agency shall notify all other parties of any hearing scheduled.

(b) DALA Appeals. For any decision adverse to a Petitioner, DALA shall send the Petitioner a copy of the decision with a notice informing the Petitioner of his or her right to appeal. The notice should specify:

1. that the Petitioner must make a written request for appeal within 15 days of the date DALA mailed the notice;
2. that the Petitioner must send the written request for hearing to DALA;
3. that the Petitioner must ask for a new hearing in order to have a new hearing; and
4. that unless the Petitioner requests a new hearing, the appeal shall be limited to a review of the record to determine if the decision was supported by substantial evidence.

REGULATORY AUTHORITY

801 CMR 1.00: M.G.L. c. 30A, §§ 9 and 10.