

Chapter 1: RULES FOR APPEAL OF GRANT AWARDS

Summary: This chapter defines the procedures and criteria to be used in the appeal of grant awards, outlines the appointment of a hearing officer, describes procedures to be used in hearing an appeal and how appellants will be notified of final agency action pursuant to 5 M.R.S. §§ 9051, 9052-9064.

Section 1. DEFINITIONS

1. **AGGRIEVED PERSON:** Means a person who applied and met all application requirements for but did not receive a grant award and who is adversely affected financially, professionally, or personally by that decision.
2. **DIRECTOR:** Director of the Maine Office of Community Affairs
3. **GRANT:** Means an award, typically financial, given by the Maine Office of Community Affairs to an individual, municipality, Tribal government, for-profit entity, regional council, non-profit or company to facilitate performance of an activity that furthers particular goals of the State. Grants shall include those funded through emergency relief funds, bequests, gifts, or contributions from any person, corporation, or government, including for the purpose of economic opportunity, business growth, and other strategic investment.
4. **HEARING OFFICER:** Means an individual appointed by the Director of the Maine Office of Community Affairs, who must not have a direct or indirect personal, professional, or financial conflict of interest in the appeal and cannot be an employee of the program overseeing the grant.
5. **OFFICE:** Maine Office of Community Affairs

Section 2. APPEALS PROCEDURE

1. Notwithstanding any provisions or requirements of the originating funding, grant or award to the contrary, all grant programs in the Office shall follow the appeals process set forth in this rule chapter.
2. **APPEAL REQUEST:** An aggrieved person (hereinafter the “petitioner”) may request an appeal hearing on a grant award decision by submitting a request for appeal to the Director, in writing via electronic mail, no later than fifteen (15) calendar days from the date of the award decision. The written request for appeal must describe the specific nature of the grievance, including the appeal criteria as defined in Section 3, Subsection 2 of this rule. The Director shall grant an appeal hearing unless it is determined that:
 - A. The petitioner is not an aggrieved person; or
 - B. The written request for appeal was submitted more than fifteen (15) calendar from the date of award decision.

3. **NOTIFICATION:** The Director shall notify the petitioner in writing of the decision regarding a request for a hearing of appeal within fifteen (15) calendar days of receipt of the request. If a request for a hearing is granted, notification must be made at least twenty-one (21) calendar days before the hearing date. Notice of the appeal proceeding shall follow the requirements of 5 M.R.S. § 9052 and be provided to those entities as determined applicable by the Director. The notification must include the date and location of the hearing and the name of the Hearing Officer. Appeal proceedings may be held in person, virtually, or in a hybrid format at the discretion of the Hearing Officer. Failure to appear for a scheduled hearing may be grounds for default.

Section 3. APPEAL HEARINGS

1. **HEARING OFFICER:** The Hearing Officer shall preside over the appeal hearing and shall control all aspects of the hearing, rule on points of order, rule on all objections, and may question witnesses.
2. **APPEAL CRITERIA:** The burden of proof within the hearing of appeal lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following:
 - A. Violation of law;
 - B. Irregularities creating fundamental unfairness; or
 - C. Arbitrary or capricious award.

Evidence of any type that cannot be related to this criteria may be ruled inadmissible by the Hearing Officer.

In the event multiple appeal hearing requests are granted on a single grant award, the Director may assign the Hearing Officer to hear all petitioners within the same hearing as a combined appeal. Notwithstanding a combined appeal hearing process, the Hearing Officer may still decide each petitioner's appeal separately based solely on the evidence presented by each respective petitioner.

3. **PARTICIPANTS:** The petitioner may participate alone or be represented by an attorney. The Office may be represented by staff and/or its attorney. Other parties of interest may petition to intervene. Such petition shall be presented in writing via electronic mail to the Director at least fourteen (14) days prior to the hearing date. The Director will notify the Hearing Officer of the request to intervene. The Hearing Officer shall determine and allow or disallow participation in writing within seven (7) calendar days of receipt of the request to intervene. Copies of this notification shall be sent to the petitioner and the Office.
4. **PRESENTATION OF EVIDENCE:** The petitioner must present evidence to substantiate the specific grievances stated in the appeal. The evidence shall be confined to the record upon which the Director's decision was based. The burden is on the petitioner to prove one or more of the appeal criteria under Section 3, Subsection 2 by clear and convincing evidence. Brief opening statements may be made by the petitioner, the Office, and any intervenors, in that order. All testimony shall be under oath.

- A. Unless the parties agree otherwise, the petitioner shall present evidence first, using exhibits and witnesses who may be cross-examined by the Office and the intervenors. Re-direct questioning related to issues raised during cross-examination only may be done by the petitioner, followed by re-cross-examination by the Office and intervenors.
 - B. Witnesses may be called who can present factual information related directly to the appeal. All witnesses shall be sworn. Testimony of any witness may be pre-filed in written form. If used, pre-filed testimony must be made available to the Office, the Hearing Officer, and all intervenors a minimum of five (5) business days prior to the hearing. Every such witness must be present at the hearing and shall be subject to cross-examination.
 - C. EXHIBITS: Exhibits relating to any issue of fact in the proceeding may be presented. Documentary evidence may be incorporated into the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.
 - (1) COPIES: A petitioner must furnish copies of all documentary evidence to the Hearing Officer, Office, and all intervenors, in all cases, no less than five (5) business days prior to the hearing. Any costs associated with this subparagraph are the responsibility of the petitioner and shall not be recovered by any judgment of the Director.
5. OFFICE/INTERVENOR EVIDENCE: The Office and all intervenors shall have the opportunity to submit evidence relevant to the appeal through witnesses and exhibits. The procedures for presenting this evidence are the same as those for the petitioner.
- A. The order of examination and cross-examination when the Office presents evidence is as follows: the Office, all intervenors, and the petitioner.
 - B. The order of the examination and cross-examination when an intervenor presents evidence shall be as follows: remaining intervenors (if any), the Office, and the petitioner.
6. RECORD: A recording of the appeal hearing shall be made by audio tape or other media. All evidence received or considered shall be part of the record. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Hearing Officer may exclude irrelevant or unduly repetitious evidence. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

Section 4. APPEAL DECISIONS AND ACTIONS

- 1. DECISION: The Hearing Officer shall make the final decision after consideration of the evidence in the record. The Hearing Officer shall look for clear and convincing evidence that one or more of the standards set forth in Section 3, Subsection 2, of these rules has been proven by the petitioner. The actions of the Hearing Officer are limited to one of the following:
 - A. Validate all grant award decisions under appeal;
 - B. Invalidate all grant award decisions under appeal; or

- C. Place a hold on a subset of the contract award decisions and require the Office to reconsider the contract award decisions in accordance with the Hearing Officer's decision and the appeal criteria listed in Section 3, Subsection 2. The subset of awards placed on hold shall be the minimum necessary to remedy any potential errors in the decision-making process.

The Hearing Officer must issue a written decision and the reasons that support the decision to the Director within fifteen (15) calendar days following the final day of the hearing of appeal.

- 2. NOTIFICATION OF FINAL AGENCY ACTION: The Director shall notify the petitioner and all intervenors of this decision within ten (10) calendar days of receipt from the Hearing Officer. Such notification shall include the decision, an explanation of the reasons for the decision, and an explanation of the petitioner's right to judicial review of final agency action. This notification is considered final agency action.

STATUTORY AUTHORITY: 5 M.R.S. §§ 3204-3205(1), (5)

EFFECTIVE DATE

ACCESSIBILITY CHECK: