
STATUTORY INSTRUMENTS

2001 No. 3750

The Family Health Services Appeal
Authority (Procedure) Rules 2001

PART IV

GENERAL MATTERS RELATING TO CASES

(C)

DETERMINATION OF APPEALS OR APPLICATIONS BY PANELS

Powers to determine an appeal or application without a hearing

38.—(1) The panel may, if the parties so agree in writing, determine an appeal or application, or any particular issue, without an oral hearing.

(2) The panel may determine an appeal or application on the basis of the documents provided by the appellant under rules 6 and 7 or by the applicant under rules 16 to 18, as the case may be, without an oral hearing where—

- (a) no reply is received by the FHSAA within the time appointed under rule 12 or rule 23, or
- (b) the respondent Health Authority or the respondent states in writing that he does not resist, or withdraws his reply, to the appeal or application.

(3) The provisions of paragraph (2) of rule 40 and of paragraph (6) of rule 41 shall apply in respect of the determination of an appeal or application, or any particular issue, under this rule.

Hearings to be in public and exceptions

39.—(1) All hearings by a panel shall be in public except where a practitioner (as defined in paragraph 21 of Schedule 9A to the 1977 Act) has asked for the hearing be in private and the panel considers that it is reasonable in all the circumstances for that hearing to be held in private.

(2) The following persons shall be entitled to attend the hearing of an appeal or an application, whether or not it is in private—

- (a) the President or any member of the FHSAA, notwithstanding that he is not a member of the panel for the purpose of the hearing,
- (b) a member of the Council on Tribunals,

but such persons may not take part in the proceedings or in the making of any decision by a panel.

(3) A panel, with the consent of the parties, may permit any other person to attend the hearing of an appeal or application which is held in private.

Failure of parties to attend hearing

40.—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the panel may—

- (a) unless it is satisfied that there is reasonable excuse for such absence, hear and determine the appeal or application, as the case may be in the party's absence; or
- (b) adjourn the hearing.

(2) Before determining any appeal or application in the absence of a party, the panel shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal or application and any reply shall be treated as representations in writing.

Procedure at hearing

41.—(1) At the beginning of the hearing the Chairman shall explain to the parties the order of proceedings which the panel proposes to adopt.

(2) Subject to this rule, the panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings.

(3) The parties shall be heard in such order as the panel shall determine and they shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal or the application, as the case may be.

(4) Where the hearing is in public the panel may direct—

- (a) that the identity of a witness (other than a party) may, if the interests of justice require it, not be disclosed to the public; or
- (b) where in the panel's opinion it is strictly necessary, that some part of the hearing be held in private.

(5) Evidence before the panel may be given orally or, if the panel so directs, by written statement, but the panel may at any stage of the proceedings require the personal attendance of any maker of a written statement.

(6) The panel may receive evidence of any fact which appears to it to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(7) At any hearing the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, notice of application, or his reply in either case and, in respect of an appellant, to adduce any evidence not presented to the respondent Health Authority before or at the time it took the disputed decision.

(8) The panel may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of panel

42.—(1) The decision of the panel may be given orally at the end of the hearing or reserved.

(2) All decisions of a panel shall be recorded forthwith in a document which records the relevant party's professional registration number, where applicable, and save in the case of a decision by consent, shall also contain a statement of the reasons (in summary form) for its decision, and that document shall be signed and dated by the Chairman.

(3) Subject to paragraph (4), every document referred to in this rule shall be entered in the register and the FHSAA shall send a copy of the entry to each party.

(4) Where any such document refers to any evidence that has been heard in private or when a witness has given evidence in circumstances of anonymity as provided for under rule 41(4), it shall be entered in the register as the panel may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.

(5) Every copy of an entry sent to the parties under this rule shall be accompanied by a notification of their rights under section 11 of the Tribunals and Inquiries Act 1992 relating to appeals from decisions of the FHSAA and of the time within which and place at which such appeal shall be made.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant, or the applicant Health Authority, as the case may be.

Review of a panel's decision

43.—(1) Subject to the following paragraphs, if, on the application of a party or of its own motion, a panel is satisfied that—

- (a) its decision was wrongly made as a result of an error made by the panel;
- (b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear;
- (c) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen; or
- (d) the interests of justice require,

the panel may review and, by certificate under the Chairman's hand, set aside or vary the decision of the panel in question.

(2) An application by a party for the purposes of paragraph (1) shall be made to the FHSAA not later than fourteen days after the date on which the decision was sent to the parties in accordance with rule 42 and shall be in writing, stating the grounds in full.

(3) The parties shall have an opportunity to be heard on any application for review under this rule and the review shall, subject to rule 45, be determined by the panel which decided the case.

(4) Where for any reason it is not practicable for the review to be carried out by the same panel, the President shall allocate the matter to another panel.

(5) If, having reviewed the decision, the decision is set aside, the panel shall substitute such decision as it thinks fit or order a rehearing before it.

(6) The certificate of the Chairman as to the setting aside or variation of a panel's decision under this rule shall be sent to the President who shall ensure that such correction as may be necessary is made in the register and that a copy of the entry so corrected is sent to each of the parties.

(7) Where a decision is reviewed the FHSAA shall serve a copy of that revised decision on the parties as soon as practicable thereafter.

(8) Where a copy of the original decision has already been sent to any person or body referred to in rule 47, the President shall ensure that the person or body in question is notified immediately of the revised decision.

Miscellaneous powers of panel

44.—(1) A panel may, if it thinks fit—

- (a) dismiss the proceedings if the appellant or the applicant, as the case may be, shall at any time give notice of the withdrawal of the appeal or the application;
- (b) if both the parties agree in writing upon the terms of a decision to be made by the panel, decide accordingly (and in making any such decision, it shall not be necessary for the panel to give reasons).

(2) Subject to paragraph (3), at any stage of the proceedings a panel may direct that—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) there be struck out or amended any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or
 - (b) there be struck out any appeal or any application for want of prosecution.
- (3) Before making any direction under paragraph (2) the panel shall give notice to the party against whom it is proposed that any such direction should be made giving him an opportunity to show cause why it should not be made.

Irregularities

45.—(1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any directions before the panel has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the panel, the panel may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks fit to cure or waive the irregularity before reaching its decision.