

8.057 APPLICANT OR MEMBER APPEALS

[SECTIONS 8.057.1-8 ARE NOT AMENDED BY THIS PROPOSED RULE AND ARE THEREFORE OMITTED]

8.057.9 REVIEW BY THE OFFICE OF APPEALS

- 8.057.9.A. The Department's Office of Appeals shall promptly serve the Initial Decision upon each party to the fair hearing by first class mail. The Office of Appeals will also mail general information and available options with the Initial Decision. about general information and available options. -Party shall include the Department even if the Department has not previously appeared as a party to the appeal.
- 8.057.9.B. Any party seeking to reverse, modify or remand the Initial Decision shall file exceptions with the Office of Appeals within fifteen (15) calendar days, plus three-five (35) calendar days for mailing, of the date the Initial Decision is mailed to the parties.
- 8.057.9.C. Exceptions to Initial Decisions shall be in writing and shall state the specific grounds for reversal, modification, or remand of the Initial Decision.
- 8.057.9.D. A written transcript of the hearing is required where the party filing the exceptions asserts that the findings of evidentiary fact in the Initial Decision are not supported by the weight of the evidence.
1. The party requiring a written transcript of the hearing shall request the written transcript from the Office of Administrative Courts prior to the filing of exceptions. If the written transcript is not filed with the exceptions, the exceptions shall state that a written transcript has been requested. The party shall comply with all applicable due dates. Prior to the due date for filing exceptions, the party may request, in writing, an extension of time to file either exceptions or the written transcript.
 2. In cases where the applicant or member (Appellant) requests a written transcript in order to file exceptions based on findings of evidentiary fact, the Department shall pay the transcribing agency for the cost of one original transcript for the Office of Appeals, and one copy for the requesting applicant or member.
 - a. If the Appellant has timely requested a transcript from the Office of Administrative Courts, the Office of Appeals shall automatically grant an extension of forty-five (45) calendar days from the original due date to file exceptions. The Office of Appeals shall issue written notice confirming the revised due date for filing of Appellant's exceptions and transcript.
 3. While review of the Initial Decision is pending, the submitted written transcript of the hearing shall be available for examination by any party to the appeal, during regular business hours of the Office of Appeals.
- 8.057.9.E. The Office of Appeals shall promptly serve a copy of the exceptions on each party by first class mail. Each party may file a written response to an exception filed by another party within ten (10) calendar days, plus five (5) calendar days for mailing from the date the exceptions were mailed to the parties.

8.057.9.F. The parties shall not have the right to oral argument to the Office of Appeals.

8.057.9.G. The Office of Appeals shall conduct an administrative review of all Initial Decisions and compile data on outcomes. Initial Decisions shall be reviewed for quality to ensure they include findings of fact, conclusions of law, and an order granting or denying relief.

8.057.10 FINAL AGENCY DECISIONS

8.057.10.A. The Final Agency Decision shall be based on the record except that the Office of Appeals may remand for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not, with reasonable diligence, have produced at the hearing.

8.057.10.B. Record on appeal. The record shall consist only of:

1. The written transcript of testimony and exhibits;
2. All papers and requests filed in the proceeding;
3. The Initial Decision of the Administrative Law Judge; and
4. Any exceptions and requests filed in response to the Initial Decision of the Administrative Law Judge.

8.057.10.C. Access to the record. The applicant or member shall have access to the record at a convenient place and time.

8.057.10.D. Streamlined appeal resolution. Effective [TBD], if no exceptions, requests for transcripts, or requests for an extension of time to file exceptions are filed within ~~eighteen (18)~~twenty (20) calendar days after the date on which the Initial Decision is mailed to the parties, the Office of Appeals shall have ~~ten (10)~~twelve (12) calendar days to review the Initial Decision and mail a Final Agency Decision. If the Office of Appeals does not mail a Final Agency Decision within thirty (30) calendar days of the date on which the Initial Decision is mailed to the parties, the Initial Decision shall automatically become the Final Agency Decision. If a party does not agree with the Initial Decision but does not file exceptions, the party will not have a right to judicial review pursuant to C.R.S. 24-4-105(14)(c).

1. Initial Decisions subject to streamlined appeal resolution will undergo administrative review pursuant to section 8.057.9.G. After administrative review, some cases may be selected for further substantive review and issuance of a separate Final Agency Decision within ninety (90) calendar days from the date the request for hearing is received.

8.057.10.E. Effect of additional filings after Initial Decision issued. If exceptions, requests for transcripts, or requests for extension of time to file exceptions are filed within twenty (20) calendar days after the date the Initial Decision is mailed to the parties, the Office of Appeals shall ~~issue~~mail a separate Final Agency Decision within ninety (90) calendar days, except as stipulated in 8.057.10.F., belowE, from the date the request for a hearing is received unless an extension has been granted to the applicant or member, in which case the ninety (90) calendar day period shall be increased accordingly.

1. If a party requests an extension of time to file exceptions and does not file exceptions, the Office of Appeals shall mail the parties a separate Final Agency Decision consistent with 8.057.10.E., above, noting the party's failure to file exceptions.

8.057.10.FE. Expedited appeal resolution. The Office of Appeals shall ~~issue mail~~ a Final Agency Decision within three (3) calendar days from the date the request for an expedited hearing is received.

8.057.11 NOTIFICATION OF DECISION

8.057.11.A. The applicant or member: ~~shall be provided, in writing, with:~~

1. Will be mailed only the written Initial Decision if no exceptions or request for extension of time to file exceptions are were filed and the Office of Appeals does not issue a separate Final Agency Decision as part of its quality review process.
2. ~~Will be mailed a 1. A copy of the separate Final Agency Decision; and if exceptions and/or an extension of time to file exceptions are filed, per section 8.057.10.E., which will include 2. n~~Notification of their right to seek judicial review ~~and the effective date of the Final Agency Decision for purposes of requesting judicial review.~~

8.057.11.B. For purposes of requesting judicial review, the effective date of the Final Agency Decision ~~shall be~~is the third day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday or a legal holiday as follows:

1. If exceptions and/or a motion for extension of time to file exceptions were filed pursuant to 8.057.9.B., the effective date is the ~~third~~fifth calendar day after the date the Final Agency Decision is mailed pursuant to section 8.057.10.E., even if the ~~third~~fifth day falls on Saturday, Sunday, or a legal holiday;
2. If no exceptions were filed pursuant to section 8.057.9.B., and the Office of Appeals mails its own Final Agency Decision under section 8.057.10.E.1. as part of its quality review process, the effective date is the ~~third~~fifth calendar day after the date the Final Agency Decision is mailed to the parties, even if the third day falls on Saturday, Sunday, or a legal holiday; or
- 4.3. If no exceptions were filed pursuant to section 8.057.9.B., and the Office of Appeals does not mail a separate Final Agency Decision under section 8.057.10.E., the effective date is the thirty-~~fifth~~third calendar day after the Initial Decision was mailed to the parties, pursuant to section 8.057.10.D.

[SECTION 8.057.12 IS NOT BEING AMENDED BY THE PROPOSED RULE AND IS THEREFORE OMMITTED]

8.057.13 RECONSIDERATION OF FINAL AGENCY DECISION

8.057.13.A. A party may file a motion for reconsideration of a Final Agency Decision with the Office of Appeals:

1. Upon a showing of good cause for failure to file exceptions to the Initial Decision within the allowed ~~fifteen (15)~~twenty (20) calendar day period; or
 - a. For purposes of section 8.057.13.A.1., good cause shall mean circumstances beyond the control of the member. Good cause includes, but is not limited to, medical emergencies or hospitalization, a member who has a disability or other

medical condition(s) requiring additional time and/or assistance, or a statement that the party did not receive the Initial Decision prior to the deadline for exceptions.

2. Upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law.

8.057.13.B. The motion for reconsideration shall be filed, in writing, with the Office of Appeals within fifteen (15) calendar days plus five (5) days for mailing of the date that the Initial Decision becomes a Final Agency Decision under section 8.057.10.D. or the date that the Final Agency Decision is mailed to the parties under section 8.057.10.E. The motion shall state the specific grounds for reconsideration.

8.057.13.C. The Office of Appeals shall promptly serve a copy of the motion for reconsideration on each party by first class mail. Each party may file a written response to a motion for reconsideration filed by another party within ~~ten (10)~~ fifteen (15) calendar days from the date the motion was mailed to the parties.

8.057.13.D. The Office of Appeals shall promptly serve a copy of its decision on the motion for reconsideration on all parties by first class mail.