

EQUAL ACCESS TO JUSTICE

I. LEGAL AUTHORITY:

42-92-1 of the General Laws of Rhode Island, 1993.

II. POLICY STATEMENT OF PURPOSE:

It is the official policy of the Rhode Island DHS Office of Rehabilitation Services that individuals and small businesses should be encouraged to contest unjust administrative actions in order to further the public interest. Such parties should be entitled to state reimbursement of reasonable litigation expenses when they prevail in contesting an agency action which is, in fact, without substantial justification.

A. DEFINITIONS

1. "Adjudicative Officer" means the presiding officer or deciding official of any adversary adjudicatory proceeding of the DHS, without regard to whether the official is designated as an administrative law judge, hearing officer, examiner, or otherwise.
2. "Adversary Adjudicatory Proceeding" means any proceeding conducted by or on behalf of the DHS, whether administratively or quasi-judicially, which may result in the loss of benefits, the imposition of a fine, the suspension or revocation of a license or permit, or which may result in the compulsion or restrictions of the activities of a party.
3. "Agency" means Office of Rehabilitation Services as a subsidiary of Department of Human Services, including any board, commission, or officer of the Department.
4. "Party" means any individual whose net worth is less than two hundred and fifty thousand dollars (\$250,000) at the time the adversary adjudicatory proceeding was first initiated; and any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adversary adjudicatory proceeding was initiated.
5. "Reasonable Litigation Expenses" means those expenses which were reasonably incurred by a party in adversary adjudicatory proceedings, including but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred.

- a. Exceptions:
 - 1) The award of attorney's fees may not exceed seventy-five dollars (\$75) per hour.
 - 2) No expert witness may be compensated at a rate in excess of the highest rate or compensation for experts paid by this state.
6. "Substantial Justification" means that the initial position of the agency, as well as the agency's position in the proceeding, has a reasonable basis in law and fact.

III. PROCEDURES:

A. Application for awards of litigation expenses

1. All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the Department and shall be filed with the hearing office within thirty (30) days of the date of the conclusion of the adjudicatory proceeding which gives rise to the right to recover such an award. The proceeding shall be deemed to be concluded when the agency or adjudicative officer renders a ruling or decision.
2. The adjudicative officer may, at his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed.
3. All claims are filed on Form 121-D which is obtained from the hearing office. All claims must be postmarked or delivered to the hearing office no later than thirty (30) days from the date of the conclusion of the adjudicatory proceeding. These claims must contain:
 - a. A summary of the legal and factual basis for filing the claim;
 - b. A list of witnesses, if any, that the claimant expects to be called to substantiate the claim if a separate hearing on said claim is conducted by the agency;
 - c. A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceedings, including copies of invoices, bills, affidavits, or other documents, all of which may be supplemented or modified at any time prior to the issuance of a final decision on the claim by the adjudicative officer;

- d. A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this statement the claimant must also certify that legal fee time amounts were contemporaneously kept and that attempts were made to minimize the time spent.

B. Allowance of Awards

1. Whenever a party which has provided the agency with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, then the adjudicative officer shall award reasonable litigation expenses if the officer finds that the agency was not substantially justified in:
 - a. the actions leading to the proceeding; and
 - b. in the proceeding itself, an award shall be made of reasonable litigation expenses actually incurred.
2. The decision of the adjudicative officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.

C. Disallowance of Awards

1. No award of fees or expenses may be made if the adjudicative officer finds that the agency was substantially justified in the actions leading to the proceeding and in the proceeding itself.
2. There should be disallowance of fees or expenses if the party is not actually the prevailing party; for example, the party may be successful on one or two points but not the major issue.
3. The adjudicative officer may, at his/her discretion, deny fees or expenses if special circumstances make an award unjust.
4. The adjudicative officer may deny, in whole or in part, any application for award of fees and expenses where justice so requires or which is considered to be excessive.

5. Whenever substantially justified, the adjudicative officer may recalculate the amount to be awarded to the prevailing party, without regard to the amount claimed to be due on the application, for an award.
6. Notice of the decision disallowing an application for an award of fees and expenses shall be sent to the party by the agency via regular mail provided however, that if the party is represented by an attorney, said notice shall be sent by regular mail to the attorney of record.

D. APPEALS AND SEVERABILITY

1. Any party aggrieved by the decision to award reasonable litigation expenses may bring an appeal to the Superior Court in the manner provided by the Administrative Procedures Act, Rhode Island General Laws, Section 42-35-1, et seq.
2. If any provision of these rules and regulations, or the application thereof, to any person or circumstances are held invalid, such invalidity shall not affect the provisions of application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.