

Office of the Attorney General
State of North Dakota

Opinion No. 86-25

Date Issued: September 18, 1986

Requested by: Honorable Wayne K. Stenehjem
State Senator

--QUESTION PRESENTED--

Whether N.D.C.C. § 54-12-01(18) authorizes the Attorney General to appoint a hearing officer in appeals to the Department of Human Services by claimants aggrieved by decisions of a county social service board.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that N.D.C.C. § 54-12-01(17) does not authorize the Attorney General to appoint a hearing officer in appeals to the Department of Human Services by claimants aggrieved by decisions of a county social service board.

--ANALYSIS--

Under N.D. Admin. Code Ch. 75-01-03, an applicant or recipient of public assistance may appeal the decision of a county social service board regarding a public assistance case to the Department of Human Services. The Department's authority to review decisions of the county social service board in public assistance cases is founded in the Department's duty to direct and supervise county administration of public assistance programs such as food stamps, energy assistance, aid to dependent children, and medical assistance. N.D.C.C. §§ 50-06-05.1(18), (20), 50-09-02(3), and 50-24.1-04. The Department has the authority to adopt rules necessary to carry out its responsibilities and is specifically authorized in the medical assistance and aid to dependent children programs to make such rules as are necessary to receive aid from the federal government for these programs. N.D.C.C. §§ 50-06-15, 50-24.1-04, and 50-09-02(1). Federal regulations require that states receiving public assistance funds provide for a 'fair hearing' process for applicants and recipients. 7 C.F.R. 273.15; 42 C.F.R. 431, Subpart D; 45 C.F.R. 205.10. The state meets these requirements through the hearing process found at N.D. Admin. Code Ch. 75-01-03.

The executive director of the Department designates a hearing officer, referred to as an appeals referee, to conduct hearings under this chapter. N.D. Admin. Code § 75-01-03-01(3). The chapter provides that a dissatisfied applicant, recipient, registrant, or licensee may request departmental review of decisions made by a county social service board or by a division of the Department. N.D.

Admin. Code § 75-01-03-01(2). The executive director of the Department, therefore, has authority to appoint an appeals referee in both appeals of county social service board decisions and appeals of Department decisions.

N.D.C.C. § 50-06-05.1(21) declares an exception to the executive director's authority to appoint an appeals referee in appeals of Department decisions. The subsection states that the Department has the duty:

To provide an administrative appeal and hearing process for all claimants who are aggrieved by a decision of the department. Provided, however, that upon request of any claimant, the department shall refer the claimant's appeal or request for administrative hearing to the attorney general for the appointment of a hearing officer who is not an employee of the department and who has not been involved in the decision from which the claimant has appealed.

There is no exception in statute or rule to the executive director's authority to appoint appeals referees in appeals of decisions of county social service boards.

N.D.C.C. § 54-12-01(18) gives the Attorney General the duty:

To appoint, upon request, hearing officers to conduct hearings pursuant to chapter 28-32 in those instances where a claimant requests that the hearing be conducted by an individual who is not employed by the agency which made the decision from which the claimant has appealed pursuant to section 50-06-05.1.

Appeals of county social service board decisions are not appealed pursuant to N.D.C.C. § 50-06-05.1. Therefore, these statutes do not authorize the Attorney General to appoint an appeals referee in appeals of county social service board decisions.

A claimant who is aggrieved by the decision of the Department regarding the appeal of a county social service board decision may appeal it to the district court pursuant to N.D.C.C. Ch. 28-32. Since the decision to be appealed is a decision of the Department, the claimant would also be able to appeal it a second time through the Department's administrative process pursuant to N.D.C.C. § 50-06-05.1(21). In the second appeal, the claimant could request that the Attorney General appoint a hearing officer. However, the claimant would be appealing the decision of the executive director of the Department of the executive director. The Legislature may wish to address this anomaly.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Judith A. Cummings
Assistant Attorney General