

**DHS FAIR HEARINGS**

# **How Appealing!!**

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# Topics

- ▶ What are fair hearings?
  - ▶ What is the DHS Appeals Office?
  - ▶ What is its authority and scope?
  - ▶ How does the hearing process work?
  - ▶ Hearing challenges and tips . . .
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# What are Fair Hearings?

- ▶ Goldberg V. Kelly, 397 U.S. 254 (1970)
  - ▶ Mechanism by which an applicant or recipient of a publicly funded benefit program obtains an impartial review of a specified adverse or negative agency action concerning those benefits
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# Elements of *Goldberg*

- ▶ Timely and adequate notice, including the reasons for the agency action
  - ▶ Opportunity to confront and cross the agency
  - ▶ Opportunity to VERBALLY present one's arguments and evidence
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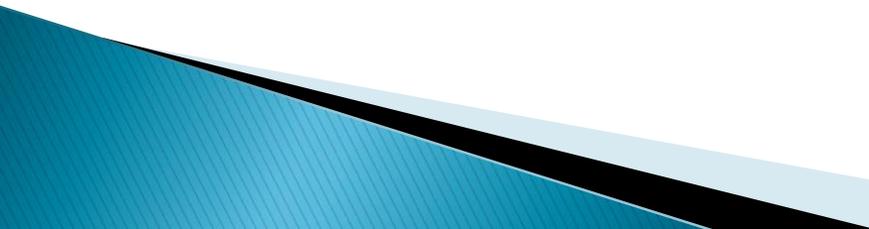
# Elements of *Goldberg*

- ▶ Representation by counsel or another representative that an individual chooses
  - ▶ Right to an impartial decision-maker
  - ▶ Written decision stating evidence relied on and reasons for determination
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# Hey, Who Put You in Charge?

- ▶ Minnesota Statute §256.045 is the statutory authority for fair hearings and gives:
    - The DHS commissioner the authority to conduct evidentiary hearings and issue binding decisions
    - Individuals the right to a hearing when they disagree with an agency decision affecting:
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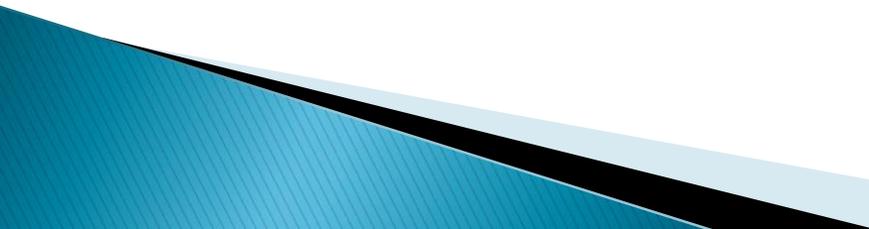
# Jurisdiction Over:

- ▶ Medical Assistance
  - ▶ MinnesotaCare
  - ▶ MNsure
  - ▶ Pre-Paid Health Plans
  - ▶ Child Care Assistance
  - ▶ SNAP
  - ▶ General Assistance
  - ▶ Minnesota Family Investment Program
  - ▶ Social Services: maltreatment, case management, background study disqualifications, adoption assistance, etc.
  - ▶ Revenue Recapture of Public Assistance
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# Appeals Office

- ▶ Over 11,500 appeals filed in calendar year 2014
  - ▶ Division Director
  - ▶ Three Co-Chief Human Services Judges (HSJs)
  - ▶ Twenty-four HSJs plus two vacancies
  - ▶ Four Intermittent HSJs
  - ▶ One Appeals Administrator
  - ▶ One Staff Attorney and Paralegal
  - ▶ Six Support Staff and Supervisor
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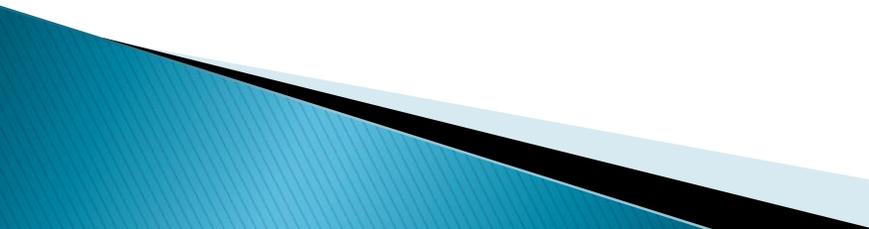
# How Do I Get a Fair Hearing?

- ▶ Individual receives a notice of action from state/county agency or agency fails to timely act on application
  - ▶ Individual must generally request hearing in writing within 30 days of receiving notice of decision or within 90 days for good cause
  - ▶ Individuals also have the right to *request* an expedited fair hearing
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# How Do I Get a Fair Hearing?

- ▶ Appellant may be represented by an attorney or another individual
  - ▶ Providers have a right to request a fair hearing on an enrollee's behalf with the written consent of the enrollee
  - ▶ The appeal may be dismissed if there is no indication the enrollee consented to the appeal request
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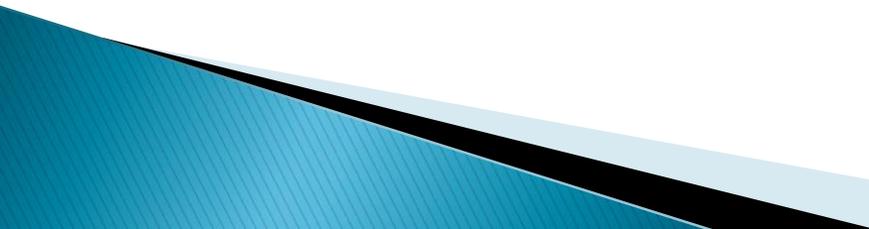
# Pre-hearing Process

- Hearing notice sent to parties, along with *info sheet* about fair hearings
  - Appellant has right to review file prior to the hearing
  - Agency Appeal Summary mailed/delivered at least three working days before the hearing
  - Summary must be adequate to inform appellant of evidence and legal basis for action
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# Pre-hearing Process

- ▶ Parties can ask HSJ to issue subpoenas
  - ▶ Requester must show testimony is relevant
  - ▶ Parties must serve subpoenas
- ▶ *Ex parte* contacts are improper
- ▶ Continuances allowed for good cause, but must contact the other party before requesting
- ▶ Pre-hearing conference, if needed

# Hearing Process

- ▶ HSJ is an unbiased decision-maker who had no role in agency's decision
  - ▶ Hearing recording and testimony under oath
  - ▶ Interpreters provided, if needed
  - ▶ HSJ does not independently investigate
  - ▶ Held by telephone or video conference + in-person if appellant or witness has a disability
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# Hearing Process

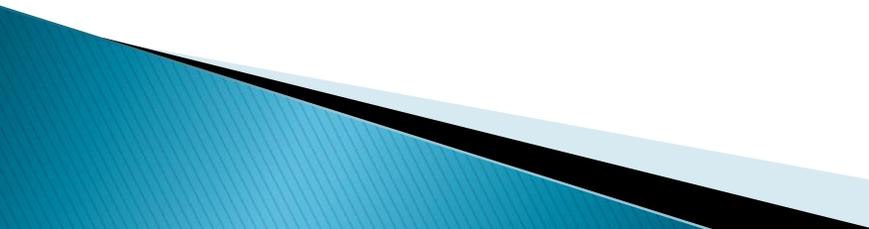
- ▶ HSJ convenes hearing by describing process and administering oaths
- ▶ Order of proof: agency usually first
- ▶ Right to confront witnesses
- ▶ The burden of proof is usually on the proponent of the action under review, usually “preponderance of the evidence”
- ▶ Hearing process found in Minnesota Statutes, sections 256.045 and 256.0451

# Evidentiary Standard

- ▶ Rules are relaxed and allow hearsay
- ▶ Statutory evidentiary standard states:
  - The HSJ shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the hearing.

*Minn. Stat. § § 256.045, subd. 4(b); and 256.0451, subd. 19*

# Post Hearing Process

- ▶ Decision based on the record and due within 90 days of the appeal filing in most cases
  - ▶ HSJ's recommended decision sets out issues, facts, law, HSJ's analysis of law to the facts and the outcome
  - ▶ Co-Chief HSJs make the final determination for the Commissioner of Human Services
    - ▶ Commissioners of Health and Education make their department's final decisions
    - ▶ 10-day letters are used by the Co-Chief HSJs when there is disagreement with the HSJ's recommended application of the law, rule, regulation, or policy
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# Decision Database

<http://appeals.dhs.state.mn.us>

# Reconsideration/Appeal of Decision

- ▶ Reconsideration request or appeal to district court must be within 30 days of final decision
- ▶ Reconsideration must be in writing to DHS appeals office
  - ▶ Burden on party seeking reconsideration
  - ▶ May include legal arguments and proposed additional evidence
- ▶ Opposing party has 10 days to respond to reconsideration request

# HSJs' Challenges

- ▶ Allowing parties to define the scope of their controversy while focusing on issues we can decide
  - ▶ Putting enough time and analysis into each appeal while also trying to meet the timelines in a high-volume process
  - ▶ Providing a comfortable forum for mainly *pro se* appellants while maintaining proper decorum
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**Questions???**

# THANK YOU!!

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