**Section 104.960 Conduct of Hearings**

a) A hearing requested pursuant to Sections 104.930(a)(7) and 104.940 shall be conducted by an attorney designated by the Director of the Department as an administrative law judge.

b) The administrative law judge shall inquire fully into the matters at issue and shall receive testimony of witnesses and any other evidence relevant and material to the issues presented. The administrative law judge shall determine the order in which evidence is taken and the procedure at the hearing.

c) The hearing shall be open to such persons as the administrative law judge deems necessary and proper for its orderly and efficient conduct.

d) Any person and/or his or her representative shall have the opportunity to:

1) examine the documents and evidence to be presented at hearing;

2) present evidence and witnesses on his or her behalf;

3) refute testimony or other evidence; and

4) cross-examine witnesses.

e) All papers or documents filed in any proceeding must be served on the Chief Administrative Law Judge. One copy of any such papers or documents must be served on all other parties involved. Service must be personal or by deposit in the United States mail, properly addressed with postage prepaid.

f) At any time before completion of the hearing, amendments may be allowed on just and reasonable terms to introduce any party who ought to have been joined, to dismiss any party, or to delete, modify or add allegations or defenses.

g) Any request that a Department issue a subpoena on behalf of a party to a hearing may be made in writing to the designated administrative law judge or, if none has been designated, to the Chief Administrative Law Judge. Any subpoena shall be granted by the Department only upon:

1) a showing of relevancy and reasonable scope;

2) a showing that, unless the subpoena is issued, the party will be unable to produce individuals or documents requested by the subpoena;

3) a showing that the individuals or documents requested by the subpoena are not unduly repetitious; and

4) a showing that there are not other individuals or documents available to establish the matters that the subpoenaed individuals or documents are intended to establish.

h) The burden of proof in hearings conducted pursuant to this Subpart shall be on the Department.

1) In the case of any new matter introduced in connection with any affirmative defense, the burden of proof shall be on the party that alleges the new matter.

2) The standard of proof with respect to all hearings conducted pursuant to this Subpart shall be a preponderance of the evidence.

i) Official notice may be taken of:

1) matters of which the Circuit Courts of this State may take judicial notice;

2) matters in prior administrative hearings within and outside the agency relating to the person to whom this Subpart applies (including findings and evidence made in hearings initiated prior to December 30, 1977);

3) generally recognized technical or scientific facts within the agency's specialized knowledge; and

4) generally recognized technical, scientific or customary and ordinary procedures and operations, without the agency's specialized knowledge.

j) Unless proven otherwise, computer generated documents, or photocopies of computer generated documents, prepared by the State, a State agency, or an agent of the State, shall be presumed to constitute an accurate reflection of State records.

k) Any party to the hearing is entitled to one postponement or continuance of up to 30 calendar days. All other requests for postponement or continuance made prior to the hearing ordinarily will be granted only when the party, or the party's representative, shows that he or she has good cause for not appearing for that hearing for reasons such as illness or similar circumstances beyond his or her reasonable control.

l) If any person, without good cause, fails to appear at a hearing scheduled by the Department, or fails to proceed at a hearing, the Department's action or decision, and the grounds asserted as the basis for the action or decision, shall be a final and binding administrative determination.

m) At the adjournment of the hearing, the record shall be closed and no further evidence may be submitted by any party unless, prior to the adjournment of the hearing, a request to leave the record open for a specific period for the submittal of additional evidence was made by a party and granted by the administrative law judge.

n) A complete record of the hearing shall include:

1) all pleadings (including all notices and responses to those pleadings, motions and rulings);

2) documentary evidence received;

3) offers of proof, objections and rulings thereon;

4) proposed findings and exceptions;

5) the recommended decision of the administrative law judge; and

6) any ex parte communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act [5 ILCS 100/10-60].

o) A copy of the record will be reproduced at the request of any party. The requesting party will bear the cost of reproducing the record.

p) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(Source: Added at 36 Ill. Reg. 7530, effective May 7, 2012)