

216-RICR-10-05-3

## **TITLE 216 – DEPARTMENT OF HEALTH**

### **CHAPTER 10 – PUBLIC HEALTH ADMINISTRATION**

#### **SUBCHAPTER 05 – PRACTICES AND PROCEDURES**

PART 3 – Equal Access to Justice

### **3.1 Authority**

These regulations are promulgated pursuant to the authority conferred by R.I. Gen. Laws Chapter 42-92, for the purposes of providing equal access to justice for small businesses and individuals and governing the application and award of reasonable litigation expenses to qualified parties in adjudicatory proceedings conducted by the Department of Health.

### **3.2 Definitions**

- A. Wherever used in these rules and regulations, the following terms shall be construed as follows:
1. "Act" means R.I. Gen. Laws Chapter 42-92 entitled "Equal Access to Justice for Small Businesses and Individuals."
  2. "Adjudicative officer" means the deciding official without regard to whether the official is designated as an administrative law judge, hearing officer, examiner, or otherwise, who presided at the adjudicatory proceeding.
  3. "Adjudicatory proceeding" means any proceeding conducted by, or on behalf of, the Department, whether administratively or quasi-judicially, that may result in: the loss of benefits; the imposition of a fine; or the denial, probation, suspension, or revocation of a license, registration, certification, or permit; or that may result in a party being compelled to perform an act or restricted from performing an act.
  4. "Department" means the Rhode Island Department of Health, any agent thereof, and any board or commission lodged therein.
  5. "Party" means any individual whose net worth is less than five hundred thousand dollars (\$500,000) at the time the 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 adjudicatory proceeding was initiated.

6. "Reasonable litigation expenses" means those expenses which were reasonably incurred by a party in an adjudicatory proceeding, including but not limited to, attorney's fees, witness fees of all necessary witnesses, and other costs and expenses as were reasonably incurred, except that:
  - a. The award of attorney's fees must conform to the requirements set forth in the Act; and
  - b. No expert witness may be compensated at a rate in excess of the highest rate or compensation for experts paid by the Department.
7. "Substantial justification" means that the initial position of the Department, as well as the Department's position in the adjudicatory proceeding, have reasonable bases in law and fact.

### **3.3 Procedures Governing Applications for Awards of Reasonable Litigation Expenses**

- A. All claims for an award of reasonable litigation expenses shall be made on forms provided by the Department and shall be filed with the adjudicative officer 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 adjudicatory proceeding shall be deemed to be concluded as of the date:
  1. The adjudicative officer renders a written ruling or decision in connection therewith;
  2. The Department terminates or disposes of it; or
  3. Any other act occurs that brings finality to it.
- B. The adjudicative officer may, in his or her discretion, permit a party to file a claim after the filing deadline provided in § 3.3(A) of this Part upon a showing of proof and finding by such adjudicative officer that good and sufficient cause exists for allowing a claim to be so filed.
- C. All claims filed hereunder shall be submitted on the approved application form pursuant to § 3.3(A) of this Part. All claims must be delivered to the adjudicative officer no later than thirty (30) days from the date of the conclusion of the adjudicatory proceeding. Such claims must contain the following information:

1. A summary of the legal and factual bases for filing the claim;
2. A list of witnesses, if any, that the claimant expects to call to substantiate the claim if a separate hearing on said claim is conducted by the Department;
3. A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceeding, 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; and
4. A sworn affidavit attesting to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this affidavit, the claimant must also attest that the legal fee time amounts were contemporaneously kept and that attempts were made to minimize the time spent.

### **3.4 Allowance of Awards**

- A. Whenever a party prevails in an adjudicatory proceeding, an award shall be made to such party of reasonable litigation expenses actually incurred in connection with that proceeding; provided that:
  1. Such party has satisfied the requirements of § 3.3 of this Part; and
  2. The adjudicative officer has determined that the Department did not have substantial justification.
- B. The decision of the adjudicatory 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 same is represented by an attorney, in which case, the decision will be sent to the attorney of record.

### **3.5 Disallowance of Awards**

- A. No award of fees or expenses may be made if the adjudicative officer finds that the Department had substantial justification. Any action initiated as the result of a statutorily-mandated complaint shall be deemed to have substantial justification for the investigation of that complaint and the adjudicatory proceeding subsequent to the investigation of that complaint.
- B. A claim for fees or expenses shall be denied if the party is not actually the prevailing party.

- C. The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances make an award unjust. An explanation of the special circumstances precluding fees and expenses shall be included in the adjudicative officer's decision.
- D. Whenever the adjudicative officer finds reasonable grounds to do so, he or she 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.
- E. Notice of the decision disallowing an application for an award of fees and expenses shall be sent to the party by the Department via mail; provided, however, that if the party is represented by an attorney, said notice shall be sent to the attorney of record.

### **3.6 Appeals**

Any appeal of a fee determination under this Part shall be pursued as set forth in R.I. Gen. Laws § 42-92-5.

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