

Opinion No. 72-25

May 10, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Richard A. Griscom, Assistant Attorney General

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QUESTIONS

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Read in the light of our telephone conversations I understand your question to be:

Must the Health and Social Services Board hear all appeals which are brought before it?

CONCLUSION

No.

OPINION

{*43} ANALYSIS

The relevant statutory is Section 13-1-18, N.M.S.A., 1953 Comp. (1971 P.S.) which reads in part:

" **Appeal to state board.** -- A. if an application is not acted upon within a reasonable time after the filing of the application, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of sections 13-1-1 through 13-1-43 NMSA 1953, or regulations of {*44} the board, the applicant or recipient may appeal for a fair hearing by a hearing officer in the manner and form prescribed by the state board. The hearing officer shall, upon receipt of such an appeal, give the applicant or recipient reasonable notice and opportunity for a fair hearing.

B. The state board may also, upon its own motion, review any decision of a local office, and may consider any application on which a decision has not been made by the local office within a reasonable time. The state board may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of sections 13-1-1 through 13-1-43 NMSA 1953 and regulations promulgated thereunder. Applicants or recipients affected by such

decisions of the state board shall, upon request, be given reasonable notice and opportunity for a fair hearing by the state board."

The use of the word "may" in the first sentence of Part B leaves the question of board review of local decisions to the discretion of the board itself. The board can hear or not hear as it sees fit. (Note that this was **not** the case prior to July 7, 1971 when the current law went into effect.)

This conclusion is buttressed by 13-1-18.1 which permits appeals from the hearing officer's decision directly to the Court of Appeals without involving the board.

Thus it appears to have been the legislative intent to involve the board in hearing appeals only if and when the board so desired.