**Section 337.170 Fair Hearing Appeal Rights**

a) The Department carries the burden of proof in showing by a preponderance of the evidence that the decision made or action taken is in the best interests of the child, in accordance with professional social work standards and Department administrative rules.

b) The appellant has the right to request a rescheduling or continuance of the hearing when:

1) the appellant, his or her representative, or witness is not available, and the appellant can demonstrate adequate cause for the lack of availability;

2) the appellant and the agency are in the process of negotiating an agreement to resolve the issue in dispute;

3) additional time is needed to respond to expert evidence produced pursuant to subsection (g).

 The time period from the date of request until the new hearing date shall not be considered as part of the 90 day time frame the Department has to issue and implement its final administrative decision.

c) A party may require a person's attendance at the hearing if the person has information relevant to the issues in dispute by asking the administrator of the administrative hearings unit to issue appropriate subpoenas. Witness fees and travel expenses for persons requested by the parties, other than Department employees or provider agency staff under contract with the Department, are the responsibility of the parties making the request.

d) A party may bring a representative, including legal counsel, and witnesses to the hearing at the party's expense.

e) Upon the request of a party, or when the need is demonstrated, the Department shall provide an interpreter at no cost if English is not the party's primary language, or if the party is hearing impaired.

f) Any prehearing motions shall be filed with the administrative law judge at least 10 calendar days before the hearing, unless the party filing the motion can show the required evidence or information was not available within the required time frame. Copies shall be provided simultaneously to the Administrator of the Administrative Hearings Unit and all other parties.

g) At least five calendar days before the fair hearing, each party shall disclose to every other party the documents, a list of witnesses, and other evidence the party intends to introduce at the hearing. If a party fails to disclose evidence and then seeks to introduce it at the hearing, the administrative law judge shall have the authority to rule on whether to admit or exclude the evidence. In determining the appropriate sanction, the administrative law judge shall consider the surprise or prejudice to the other parties, including prior disclosure at administrative case review, mediation and emergency review. The administrative law judge's authority includes adjourning or continuing the hearing to a later time or date to permit the other parties to examine the evidence and prepare their cases accordingly. The period between disclosure of the evidence and rescheduling the hearing shall not be considered in the 90 calendar day time frame the Department has to issue and implement its final administrative decision.

h) The parties have the right to obtain examining physician's reports, medical review team's decisions, or medical assessments at the expense of the Department, if the administrative law judge deems this information is necessary and pertinent to the issue under appeal.

i) During the fair hearing, the parties have the right to:

1) present and question witnesses;

2) present any information relevant to the issues;

3) question or disprove any information, including an opportunity to question opposing witnesses; and

4) dispose of any disputed issue by mutually agreeing to a resolution.

(Source: Amended at 26 Ill. Reg. 6246, effective June 1, 2002)