

NORTH CAROLINA

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REGISTER

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December 2, 2002

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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2002 – December 2002

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volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 th day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
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17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Coastal Resources Commission*

Rule Citation: *15A NCAC 07H .1401, .1404-.1405; 07J .0701-.0703*

Effective Date: *December 1, 2002*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rulemaking: *113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-120.1; 113A-124*

Reason for Proposed Action:

15A NCAC 07H .1401; .1404-.1405 - The North Carolina General Assembly Recently amended the Coastal Area Management Act (CAMA) to require riprap groins be given the same considerations as wooden ones under the General Permit provisions contained in the CAMA statute. The language requiring this change is contained in Section 29.2(f) of Session Law 2002-126, which amended G.S. 113.118.1 by adding a new subsection that states: "(e) The Commission shall allow the use of riprap in the construction of groins in the estuarine and public trust waters on the same basis as the Commission allows the use of wood."

15A NCAC 07J .0701-.0703 – The Division of Coastal Management had recognized a need to amend the variance procedure rules in 15A NCAC 07J .0700 in accordance with the statutory amendments to G.S. 113-120.1 which became effective August 8, 2002. The Administrative Procedures Act in G.S. 150B-21.1 allows an agency adopt a temporary rule without prior notice or hearing when it finds that adherence to the notice and hearing requirements would be contrary to the public interest and that the rule is required by a recent act of the General Assembly.

Comment Procedures: *Written comments should be submitted to Charles S. Jones, Assistant Director; Division of Coastal Management, 151-B, HWY 24, Hestron Plaza II, Morehead City, NC 28557. Phone (252) 808-2808; Fax (252) 247-3330; email Charles.S.Jones@ncmail.net.*

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF WOODEN GROINS IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1401 PURPOSE

17:11

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December 2, 2002

This permit will allow the construction of wooden [and riprap](#) groins in the estuarine and public trust waters AECs according to the authority provided in Subchapter 07J .1100 and according to the following guidelines. This general permit shall not apply to the ocean hazard AEC.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1998; [Temporary Amendment Eff. December 1, 2002.](#)

15A NCAC 07H .1404 GENERAL CONDITIONS

- (a) Structures authorized by this permit shall be simple, wooden [or riprap](#) groins conforming to the standards herein.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (c) There shall be no significant interference with navigation or use of the waters by the public by the existence of wooden or [riprap](#) groins authorized herein.
- (d) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. May 1, 1990; RRC Objection due to ambiguity Eff. May 16, 1994; Amended Eff. August 1, 1998; July 1, 1994; [Temporary Amendment Eff. December 1, 2002.](#)

15A NCAC 07H .1405 SPECIFIC CONDITIONS

- (a) Groins shall not extend more than 25 feet waterward of the mean high water or normal water level unless a longer structure can be justified by site specific conditions, sound engineering and design principles.
- ~~(b)~~ [\(c\) Riprap groins shall not exceed a base width of 10 feet.](#) Groins shall be set back a minimum of 15 feet from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two

adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.

~~(e)~~(d) The height of wooden groins shall not exceed 1 foot above mean high water or the normal water level and the height of riprap groins shall not exceed 2 feet above mean high water or the normal water level.

(e) Riprap groins shall be constructed of materials free from loose dirt or any other pollutant. It must be of sufficient size to prevent its movement from the site by wave or current action.

(f) The riprap material must consist of clean rock or masonry materials such as, but not limited to, granite or broken concrete.

~~(d)~~(g) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant can provide evidence that more structures are needed for shoreline stabilization.

~~(e)~~(h) "L" and "T" sections shall not be allowed at the end of groins.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Temporary Amendment Eff. December 1, 2002.

**SUBCHAPTER 07J - PROCEDURES FOR HANDLING
MAJOR DEVELOPMENT PERMITS: VARIANCE
REQUESTS: APPEALS FROM MINOR DEVELOPMENT
PERMIT DECISIONS: AND DECLARATORY RULINGS**

**SECTION .0700 - PROCEDURES FOR CONSIDERING
VARIANCE PETITIONS**

15A NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person who has received a final decision of an application for a CAMA major or minor development permit may petition for a variance from the CRC by means of the procedure described in this Section. In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.

(b) The procedure in this Section shall apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:

- (1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single quasi-judicial hearing as described in Section .0300 of this Subchapter;
- (2) the Commission determines that due to the extraordinary nature of a petition more facts are necessary, in which case the petition may be heard by means of a hearing; or
- (3) there are controverted facts that are significant in determining the propriety of a variance.

(c) Variance petitions shall be submitted on forms provided by the Department of Environment, Health, Environment and Natural Resources or CAMA local permit officers or, if not on

such a form, shall provide at a minimum the following information:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) an explanation of the reasons why the applicant believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
 - (A) that enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships; hardships would result from strict application of the development rules, standards, or orders issued by the Commission; and
 - (B) that such hardships/difficulties result from conditions peculiar to the petitioner's property; property such as the location, size, or topography of the property; and
 - (C) that such hardships did not result from actions taken by the petitioner; conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted; and
 - (D) that the requested variance/proposed development is consistent with the spirit, purpose and intent of the Commission's rules; rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice;
- (3) a copy of the permit application and denial for the development in question;
- (4) the date of the petition, and the name, address, and phone number of the petitioner; and
- (5) a complete description of the proposed development, including a site drawing with adequate topographical and survey information.

(d) In order to have a petition for a variance considered under the procedures set forth in this rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal will be required to agree that the time required to consider the petition shall not be counted in calculating the ~~180~~ 120 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner reaffirms the notice of appeal.

(e) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment, Health, Environment and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-1638 Mail Service Center, Raleigh, NC 27699-1638.

(f) A variance request will be considered by the Commission at a regularly scheduled meeting. Petitions will be scheduled no

later than the second regularly scheduled meeting following the date of receipt of the petition by the Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, must be received by the Division of Coastal Management a minimum of four weeks in advance of a regularly scheduled commission meeting to be considered by the Commission at that meeting.

(g) Written notice of variance hearings or commission consideration of variance requests shall be provided to the petitioner and the permit officer making the initial permit decision. Notice shall be published in a newspaper of general circulation in the area of the proposed variance five days prior to a commission decision on the petition.

History Note: Authority G.S. 113A-124; Eff. December 12, 1979; Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983; Temporary Amendment Eff. December 20, 2001; Temporary Amendment Expired October 12, 2002; Temporary Amendment Eff. December 1, 2002.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the commission, is hereby authorized to review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete applications and a description of the deficiencies shall be returned expeditiously to the petitioner. Complete requests shall be scheduled for the appropriate commission meeting.

(b) The staff shall prepare a written description of the variance petition which shall be presented to the Commission before the petition is considered. The written description shall include:

- (1) a description of the property in question;
- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
- (3) a discussion of whether the petition meets or does not meet each of the requirements for a variance including both the petitioner and the staff positions;
- (4) and any other undisputed facts relevant to the findings set forth in G.S. ~~113A-120(c)-113A-120.1~~ which the Commission must make in order to grant a variance.

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition will be

considered by means of an administrative hearing. Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

History Note: Authority G.S. 113A-124; Eff. December 12, 1979; Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988; Temporary Amendment Eff. December 20, 2001; Temporary Amendment Expired October 12, 2002; Temporary Amendment Eff. December 1, 2002.

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(a) The Commission may review the variance petition and staff comments and hear any oral presentation by the petitioner in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

(b) The Commission or its appointed member or members shall be provided with copies of the petition and any comments the staff deems necessary before considering the petition.

(c) The Commission staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The applicant shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

(d) The final decision of the commission may be made at the meeting at which the matter is heard or in no case later than the next regularly scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail at the earliest feasible date after the final decision is reached.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

- (1) that ~~enforcement of the applicable development guidelines or standards will cause the petitioner practical difficulties or unnecessary hardships~~ would result from strict application of the development rules, standards, or orders issued by the Commission; and
- (2) that such ~~hardships~~ difficulties result from conditions peculiar to the petitioner's ~~property;~~ property such as location, size, or topography; and
- (3) that ~~such hardships did not result from actions taken by the petitioner; conditions could not reasonably have been anticipated by the Commission when the applicable guidelines or standards were adopted;~~ and
- (4) that the requested variance proposed development is consistent with the spirit, purpose and intent of the Commission's rules; rules, standards or orders; will secure the

TEMPORARY RULES

public safety and welfare; and will preserve substantial justice.

~~or county-eligible applicant~~ for funding of facilities.

History Note: Authority G.S. 113A-120.1; Eff. December 12, 1979; Amended Eff. December 1, 1991; March 3, 1981; Temporary Amendment Eff. December 20, 2001; Temporary Amendment Expired October 12, 2002; Temporary Amendment Eff. December 1, 2002.

History Note: Authority G.S. 113-44.15; Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. April 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. December 9, 2002.

Rule-making Agency: Parks and Recreation Authority

Rule Citation: 15A NCAC 12K .0102, .0107

Effective Date: December 9, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 143B-313.1

Reason for Proposed Action: These rules are currently in the rule making process. The notice of rule-making proceeding, notice of text, and the public comment period have occurred. These rules apply to the Parks and Recreation Trust Fund grant program for local governments. Local governments are currently preparing applications that must be completed by January 31, 2003. The Parks and Recreation Authority is requesting temporary rules to provide guidance for the grant program until the permanent rules can go into effect according to the rule making process. The anticipated date for the permanent rules to go into effect is April 2003, which is after the application deadline. Unless the temporary rules are passed, the Division of Parks and Recreation does not have administrative rules to refer to when giving advice to local governments that are preparing applications that are due on January 31, 2003.

Comment Procedures: Comments from the public shall be directed to Bayard Alcorn, 1615 Mail Service Center, Raleigh, NC 27699-1615.

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12K .0102 ELIGIBLE APPLICANTS

All county governments and incorporated municipalities of the State of North Carolina are eligible to submit applications. Public authorities, as defined by G.S. 159-7, are eligible applicants if they are authorized to acquire land and/or develop facilities for public recreation purposes.

- (1) ~~Multiple municipalities and counties~~ Eligible applicants may apply jointly for a project.
- (2) School administrative units may submit a joint application with an ~~incorporated municipality~~

15A NCAC 12K .0107 MATCHING REQUIREMENTS

The ~~local governmental unit applicant~~ shall match PARTF funds on a dollar-for-dollar basis.

- (1) The appraised value of land that will be donated to the applicant may be used to match the PARTF grant.
 - (a) The donor of the land must be an individual or private organization.
 - (b) If a landowner sells land to the applicant for less than the appraised value, the amount of the donation is the difference between the appraised value and the amount paid by the applicant.
 - (c) The value of capital improvements that are located on the donated land and will be used for public recreation can be included in the value of the donation.
 - (d) Land that is transferred to the applicant due to a law or regulation is not considered a donation.
 - (e) The applicant must receive a grant and sign the grant agreement before taking title to donated land.
 - (f) Section .0106 of the PARTF administrative rules titled "Grant Agreement" also applies to donated land used as matching funds.

History Note: Authority G.S. 113-44.15; Temporary Adoption Eff. November 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. April 1, 1995; Amended Eff. August 1, 1998; Temporary Amendment Eff. December 9, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD

Rule-making Agency: North Carolina Medical Board

Rule Citation: 21 NCAC 32B .0104

Effective Date: December 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 90-6; 90-9; 90-11

Reason for Proposed Action: Pursuant to G.S. 90-11(b), the Board may request the North Carolina Department of Justice conduct a criminal record check. The statute allows the Department of Justice to charge each applicant a fee for conducting the background checks. The statute states that the Board "shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check..." Importantly, however, the statute does not require the applicant to provide the necessary information to the Board and, as previously mentioned, the Board's administrative rules do not permit the Board to require such information from the applicants.

Comment Procedures: Comments from the public shall be directed to Brian Blankenship, 1201 Front St. Raleigh, NC 27609, phone (919) 326-1109 and email brian.Blankenship@ncmedboard.org.

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0100 - GENERAL

21 NCAC 32B .0104 CRIMINAL BACKGROUND CHECK

(a) All applicants for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant contained in Subchapters 32B and 32S of these Rules, shall be fingerprinted and a search made of local, state, and national files to disclose any criminal record.

(b) All applicants shall submit a signed consent form, two completed Fingerprint Record Cards, Form FD-258, and such other form(s) that may be required at that time by the agency performing the criminal history check to the Board at the time of their application.

(c) The Board shall forward the consent form and completed Fingerprint Record Cards to the North Carolina State Bureau of Investigation for fingerprint and criminal history checks against local, state, and national files.

(d) The Board will receive a report of the results of the fingerprint card against local, state and federal files. Regardless of the disposition of the inquiry, the Board shall permanently retain the results of the fingerprint record check in the applicant's permanent file.

(e) An applicant for license to practice medicine in North Carolina may be licensed to practice medicine in North Carolina prior to the date on which the Board receives the report of the results of the fingerprint record check, if all the following requirements are met:

- (1) The completed Fingerprint Record Cards and signed consent form have been received by the Board; and
(2) The applicant meets all other minimum licensing requirements.

(f) Licenses to practice medicine issued prior to the receipt by the Board of the fingerprint and criminal history record check are conditional. Such conditional licenses may be summarily

suspended by the Board upon receipt of a fingerprint and criminal history record check that indicates that the applicant has been convicted of a crime as specified in G.S. 90-14(a)(7).

History Note: Authority G.S. 90-6; 90-9; 90-11; Temporary Adoption Eff. December 1, 2002.

TITLE 25 - OFFICE OF STATE PERSONNEL

Rule-making Agency: State Personnel Commission

Rule Citation: 25 NCAC 01E .1402, .1412

Effective Date: November 1, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 126-4(5); S.L. 2002-126, s. 28.3B

Reason for Proposed Action: The effective date of this provision was September 2002 and without temporary rules there are no guidelines for the agencies and universities to operate under.

Comment Procedures: Comments from the public shall be directed to Peggy Oliver, Human Resources Policy Administrator, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7108, fax (919) 715-9750, and email poliver@ncosp.net.

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1400 - FAMILY AND MEDICAL LEAVE

25 NCAC 01E .1402 ELIGIBLE EMPLOYEES

(a) Determining Eligibility - An employee's eligibility for Family and Medical Leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.

(b) Permanent, Probationary, Trainee, and Time-Limited - An employee who has been employed with State government for at least 12 months and who has been in pay status at least 1040 hours (half-time) during the previous 12 month period is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the reasons listed in this Paragraph.

- (1) For the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth; (An expectant mother may also take Family and Medical Leave pursuant to Paragraph (b)(4) of this Rule before the birth of the child for prenatal care or if her condition makes her unable to work.)
(2) For the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within

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a 12-month period following adoption; (Family and Medical Leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.)

- (3) For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or
- (4) Because the employee has a serious health condition that makes the employee unable to perform one or more of the functions of the employee's position.

Additional leave without pay is provided for employees to care for the employee's child, spouse or parent who has a serious health condition. See Rule 25 NCAC 01E .1412 Family Illness Leave. Leave without pay for other reasons beyond the 12-week period for employees not covered under this Section shall be administered under 25 NCAC 01E .1100 Other Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.

(c) Temporary Employees - This Section does not cover temporary employees since the maximum length of a temporary employees' appointment is one year. The employee shall be covered if the employee has worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to intermittent appointments.

History Note: Authority G.S. 126-4(5); P.L. 103-3; Eff. August 2, 1993;
Amended Eff. October 1, 1995; December 1, 1993;

Temporary Amendment Eff. November 1, 2002.

25 NCAC 01E .1412 FAMILY ILLNESS LEAVE

In addition to the 12 weeks of leave per year provided by the Family and Medical Leave Act as outlined in 25 NCAC 01E.1401-.1411, an employee is entitled to up to 52 weeks of leave without pay during a five-year period in order to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition.

(1) This leave is available to employees who qualify for Family and Medical Leave.

(2) The same provisions and procedures apply to this additional leave that apply to the 12 weeks except the following:

(a) A part-time employee is entitled to 52 weeks regardless of their work schedule;

(b) During this period of leave without pay, the employees must pay the health plan premiums if they choose to maintain coverage; and

(c) This period of leave may be accounted for separate from the 12 weeks. It will not affect the method used to determine the 12-month period. The five-year period will begin on the date that the employee uses the 52-week provision.

History Note: Authority G.S. 126-4(5); S.L. 2002-126, s. 28.3B;
Temporary Adoption Eff. November 1, 2002.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Joseph E. Teague, Jr. PE, CM v. NC Dept. of Transportation	01 OSP 1511	Lassiter	10/17/02	
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02	
Wade Elms v. NC Department of Correction	01 OSP 1594	Gray	06/27/02	
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR 103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02	
Gladys Faye Walden v. NC Department of Correction	01 OSP 1741	Mann	07/12/02	
Barbara A. Harrington v. Harnett Correctional Institution	02 OSP 2178	Conner	09/03/02	
Joy Reep Shuford v. NC Department of Correction	01 OSP 2179	Overby	06/25/02	

- 4 Combined Cases
- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases

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Debra R. Dellacroce v. NC DHHS	01 OSP 2185	Conner	09/11/02	
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02	
Bryan Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02	
Theressa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02	
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02	
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02	
James Donoghue v. NC Department of Correction	02 OSP 0011	Mann	08/26/02	
Robert N. Roberson v. NC DOC, Div. of Community Corrections	02 OSP 0059	Conner	10/14/02	
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR 329
Stacey Joel Hester v. NC Dept. of Correction	02 OSP 0071	Gray	10/18/02	
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	02 OSP 0110 ¹	Elkins	08/07/02	
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02	
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02	
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02	
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02	
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02	
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02	
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02	
Gerald W Jones v. NC Dept. of Transportation	02 OSP 0318	Wade	10/25/02	
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02	
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02	
Isiah A Black Jr v. NC DOC Div of Community Corrections	02 OSP 0435	Morrison	11/05/02	
Michael Forrect Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02	
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02	
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02	
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02	
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02	
Robert L. Swinney v. NC Dept. of Transportation	02 OSP 0570	Lassiter	10/23/02	
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02	
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02	
Linda Kay Osbon v. Isothermal Community College	02 OSP 0911	Elkins	09/25/02	
Deona Renna Hooper v. NCC Police Dept, NCCU	02 OSP 0984	Lassiter	10/31/02	
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02	
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02	
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02	
Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02	
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02	
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02	
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02	
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John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3	02 OSP 1067	Conner	10/21/02	
Donald B. Smith v. NC DOC, Div. of Community Corrections	02 OSP 1117	Chess	10/03/02	
Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst	02 OSP 1127	Lassiter	11/05/02	
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02	
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02	
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02	
Martha Ann Brooks v. State of NC Brown Creek Correctional Inst.	02 OSP 1468	Chess	10/25/02	
James Orville Cox II v. NC DOC, Adult Probation/Parole	02 OSP 1526	Chess	10/17/02	
<u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u>				
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02	
<u>UNIVERSITY OF NORTH CAROLINA</u>				
Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
01 DCS 2351

LISA WILLIAMS,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF SOCIAL SERVICES,
CHILD SUPPORT ENFORCEMENT SECTION,
Respondent.

DECISION

THIS MATTER was called for hearing and was heard by the undersigned Administrative Law Judge, Augustus B. Elkins II on August 13, 2002 in High Point, North Carolina. The Petitioner appeared *pro se*. The Respondent was represented by Brenda Eaddy, Assistant Attorney General.

EXHIBITS

The following exhibits were entered into evidence by the **Petitioner**:

- Exhibit 1 - CCSES Payments/Distributions for Case No. 648-99-0020.
- Exhibit 2 - State of Connecticut Zero Delinquency Notice dated 11/25/01.
- Exhibit 3 - Guilford County Child Support Enforcement Agency letter dated January 16, 2002.

The following exhibits were entered into evidence by the **Respondent**:

- Exhibit A - State of Connecticut check dated 11/13/2001 for \$9,395.51. Two pages.
- Exhibit B - Prorating of Payment Received from Ct.

PURSUANT to agreement of the parties, the Undersigned finds and accepts the following:

STIPULATIONS

Stipulated Exhibit 1 - eight pages:

- a. State of Connecticut Superior Court order dated 12/20/93;
- b. State of Connecticut Superior Court order dated 3/23/94;
- c. State of North Carolina Guilford County order dated 8/25/97;
- d. State of North Carolina Guilford County order dated 9/30/97;
- e. State of Connecticut Superior Court order dated 7/19/99;
- f. State of Connecticut Superior Court order dated 10/18/99;
- g. State of Connecticut Superior Court order dated 4/17/00
- h. State of Connecticut Superior Court order dated 5/15/00.

BASED UPON the above stipulations and upon careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

CONTESTED CASE DECISIONS

1. A Petition for a contested case hearing was filed in the North Carolina Office of Administrative hearings on December 19, 2001. The Petitioner contested Respondent's distribution of child support money, specifically the distribution of funds received from the State of Connecticut on behalf of the non-custodial father.
2. Respondent is a state agency responsible for the establishment and enforcement of child support obligations. Respondent's activities are governed by state and federal laws and regulations.
3. Petitioner is a custodial parent and receives child support enforcement assistance from Respondent.
4. The non-custodial father in this matter, Jeffrey Champion, has two separate child support obligations. One is for Sylvia Green, a custodial mother in a county in North Carolina, and one is for Petitioner in Guilford County in North Carolina. As of the date of the hearing in this matter Mr. Champion lived and worked in the State of Connecticut.
5. Petitioner's case is being enforced by the State of Connecticut's IV-D office. Such enforcement is pursuant to a request by Respondent via the Unified Interstate Family Support Act (UIFSA).
6. In April 2000, the Connecticut IV-D office became aware that Jeffrey Champion was expecting an insurance settlement from an automobile accident and a letter of protection was sent to the attorney handling that lawsuit. By November 2001 substantial arrears existed in both (Ms. Green and Petitioner) child support cases.
7. In November 2001, Mr. Champion's arrears in Sylvia Green's case totaled \$13,860.76, broken down into the following categories:
 - a. \$ 304.21 due for current support;
 - b. \$9,356.55 for non public assistance arrears unadjudicated;
 - c. \$4,400.00 for non public assistance arrears adjudicated.
8. In November 2001, Mr. Champion's arrears in Petitioner's case totaled \$10,912.93, broken down into the following categories:
 - a. \$ 140.41 due for current support;
 - b. \$ 131.52 for non public assistance arrears unadjudicated;
 - c. \$3,363.07 for unassigned pre assistance arrears unadjudicated;
 - d. \$7,135.66 for unassigned pre assistance arrears adjudicated;
 - e. \$ 46.88 for temporary assistance to needy families unadjudicated;
 - f. \$ 95.39 for unassigned during assistance arrears unadjudicated.
9. On 11/23/2001 Respondent received a check in the amount of \$9,395.51 from the State of Connecticut. Such amount represented the insurance settlement funds on behalf of Jeffrey Champion. Both the check itself and the stub attached to the check listed a file number used by the State of Connecticut, Department of Social Services. Further, the check stub cited "Lisa Bartlett vs. Jeffery Champion." Lisa Bartlett is the same person as Lisa Williams, the Petitioner.
10. Upon receipt of the check from the State of Connecticut, Respondent disbursed the funds in the following way: Sylvia Green received \$304.21 applied to current support and \$8,825.90 applied to arrears; Petitioner received \$140.41 applied to current support and \$125.09 applied to arrears. Ms. Green received the great majority of the money sent to Respondent. Respondent did not call or write the State of Connecticut to seek the meaning or purpose of listing Lisa Bartlett vs. Jeffery Champion on the check stub.
11. Jean Beasley is employed as an Accounting II Tech with Respondent and has worked in Respondent's distribution section for nine years. Ms. Beasley audited Petitioner's and Ms. Green's case to determine if the funds received from the State of Connecticut were disbursed appropriately according to state and federal laws and regulations. Ms. Beasley was not involved in the original distribution.
12. Ms. Beasley testified that regardless of how checks are designated, Respondent will distribute proceeds according to a set formula.
13. For a period of approximately six weeks from 2/5/01 through 4/1/01, Petitioner received child support assistance from the State of North Carolina in the form of Temporary Assistance for Needy Families (TANF).

14. Up until that time the arrears Mr. Champion owed to Petitioner and Ms. Green were classified as non-public assistance arrears. Non-public assistance arrears are those that accrue prior to or during a time a custodian is not receiving public assistance funds from the state.
15. Once Petitioner accepted TANF funds, the existing arrears were no longer classified as non-public assistance arrears, but became classified as unassigned pre-assistance arrears, TANF arrears, and unassigned during assistance arrears. The majority of arrears owed to Petitioner were placed in a different category which fell into a lower priority for distribution of funds had she not been on public assistance.
16. The total amounts of arrears do not disappear because of this classification. The classifications are used to determine the 'hierarchy' under which recovered arrears are to be paid either to the custodial parent or to the State.
17. Current monthly support must always be paid first. Amounts received for current support which is owed on two or more cases must be split pro-rata between the cases. Respondent next paid non-public assistance arrears in this case. Respondent asserted they must be paid in full before any arrears classified as public assistance are disbursed either to the custodial parent or to the State.
18. The check for \$9,395.51 recovered by the State of Connecticut was not a lien payment to be applied only to Petitioner's case. Ms. Beasley testified that had there been a Court Order attached to the check designating it solely for distribution to Petitioner, that is how it would have been distributed. Since it was not, the check represented a recovery of funds by the State of Connecticut to be used to pay off Mr. Champion's child support debt, which in the present case involved two different children with two different mothers.

BASED UPON the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Respondent is to follow state and federal laws and regulations in the distribution of child support funds. N.C.G.S. §§110-128; 110-136.4; 110-136.6; 110-136.7; 110-136.9; and 110-140.
2. N.C.G.S. §§110-136.4 regarding withholding based on arrearages states that in the case of two or more withholdings against one obligor, the obligee or obliges shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by G.S. 110-136.6. N.C.G.S. §§110-136.6 states that when income withholding is implemented, the amount to be withheld shall include an amount sufficient to pay current child support and an additional amount toward liquidation of arrearages.
3. N.C.G.S. §§110-136.7 states that where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced.
4. 42 UCS §657 is the applicable federal law which sets forth a distribution of collected support. That federal statute sets out distribution of collected support on behalf of a family as support by a State pursuant to a plan approved under the statute. 42 UCS §657 goes on to read (regarding the State's option for applicability) that notwithstanding any other provision of the related sections, a State may elect to apply the rules described and if the State makes such an election, shall apply the provisions in effect and applied on the day before August 22, 1996.
5. 42 UCS §302 provides that the State plan shall provide, for purposes of distribution in a IV-D case, that amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, the excess amounts shall be treated as amounts which represent payment on the required obligation for previous months.
6. Respondent presented no plan, rule or regulation showing the State's option for applicability of the federal options that states may or may not choose. N.C.G.S. §§110-136.6 states that when income withholding is implemented, the amount to be withheld shall include an amount sufficient to pay current child support and an additional amount toward liquidation of arrearages. Further case law holds a recognition that the federal law give each State great latitude in dispensing its available funds.
7. Respondent correctly first distributed funds to pay current support. Such distribution must be and was pro-rata between the two child support cases. N.C.G.S. § 110-136.6 and 136.7.
8. Though Petitioner sought the whole of the amount sent by the State of Connecticut, North Carolina law and equity requires that a fair and equitable distribution be made toward liquidation of the arrearages. Arrears in Sylvia Green's case totaled

CONTESTED CASE DECISIONS

\$13,860.76 and arrears in Petitioner's case totaled \$10,912.93. Thus after payment of current support, statistically and in accord with North Carolina law (no other option of applicability having been shown by the Respondent), Ms. Green should receive 56% of the remaining amount for her arrearages and Petitioner should receive 44% of the amount.

9. Respondent distributed amounts to Ms. Green under the label of non-public assistance arrears, citing 42 UCS 657, which provided her with the great majority of monies (\$8,825.80) from the check received from the State of Connecticut which was labeled "Lisa Bartlett vs. Jeffery Champion." Respondent followed distribution to Petitioner citing various categories of public assistance arrearages after non-public assistance arrears (42 UCS 657(a)(2)) and thus provided Petitioner with \$125.09 under the NPAAU category.
10. The money received from the State of Connecticut did not create a lien in favor of Petitioner. Once received, Respondent was to distribute the funds pursuant to state and federal (as applicable) laws and guidelines.
11. Respondent presented no evidence that the State had abandoned its policy of a fair and equitable pro rata distribution of arrearages and selected a different (from State law and policy) option of applicability as set forth in federal law. In attempting to take any official notice of such an election or plan, the Undersigned was informed that Respondent's particular distribution arrangement was loaded in the computer at the inception of the program but there appeared no rule, policy or the like of rejection of State law for equitable distribution in favor of a different federal scheme.
12. Furthermore in the case of *State by and through Pender County Child Support Enforcement Ex. Rel. Crews v. Parker*, 354 S.E.2d 501, 319 N.C. 354 (1987), North Carolina's Supreme Court found that federal statutes clearly express the intention that an AFDC recipient, notwithstanding an assignment by operation of state law, retain some active and continuous interest in support rights. That is, an individual may assign her right to that support necessary to reimburse the state for the amount of public assistance it expended on behalf of a child but not her right to compensation already owed for the years of support prior to receipt of AFDC. This appears to stand, broadly speaking, for the proposition that Petitioner should maintain her right to compensation for arrearages owed before going on public assistance in the same manner and under the same priority as it was before going on the assistance.
13. The effect of Respondent's distribution for arrearages was a harsh and strict penalty on Petitioner for having been on public assistance for a very short time and was not in keeping with the North Carolina statutes and policies looking to a fair and equitable distribution. When placing Petitioner in a separately labeled category of arrearages after coming off of her brief time with public assistance for the exact same arrearages she experienced before public assistance, such action was arbitrary and capricious and had the effect of punishing Petitioner and the child in her custody for having gone on public assistance. Petitioner was no longer on a "level playing field" for back child support by relabeling her arrearages because of public assistance and such action in truth and fact had and has a discriminatory effect on those children looking to support from their non-custodial parent.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

DECISION

Based on the foregoing, including all evidence presented, the undersigned Administrative Law Judge finds and holds as his Decision that the Respondent erred in the distribution of the money it received from the State of Connecticut. Further, the Undersigned finds that Petitioner is not entitled to all monies received from the State of Connecticut as sought by her at hearing. In accord with State law and in equity, the Undersigned finds that after payment of current support, the amount remaining, that being approximately \$8950.89, should be distributed as 56% to Ms. Green and 44% to Petitioner. Further, as evidence at the hearing showed that the State of Connecticut has "dissolved" the debt of Mr. Jeffrey Champion toward Petitioner, believing the whole of the \$9395.51 went to Petitioner, the Undersigned finds as stated at the hearing that Respondent should with all haste correct both their records and those records regarding this matter with the State of Connecticut.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency

CONTESTED CASE DECISIONS

that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Department of Health and Human Services.

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36.

IT IS SO ORDERED.

This the 28th day of October, 2002.

Augustus B. Elkins II
Administrative Law Judge