

41-1007. Award of costs and fees against a department in administrative hearings; exceptions; definitions

A. Except as provided in section 32-3632 and section 42-2064, subsection F, a hearing officer or administrative law judge shall award fees and other costs to any prevailing party in a contested case or an appealable agency action brought pursuant to any state administrative hearing authority. For purposes of this subsection, a person is considered to be a prevailing party only if both:

1. The agency's position was not substantially justified.
2. The person prevails as to the most significant issue or set of issues unless the reason that the person prevailed is due to an intervening change in the law.

B. Reimbursement under this section may be denied if during the course of the proceeding the party unduly and unreasonably protracted the final resolution of the matter.

C. A party that seeks an award of fees or other costs shall apply to the hearing officer or administrative law judge, within thirty days after the final decision or order, providing:

1. Evidence of the party's eligibility for the award.
2. The amount sought.
3. An itemized statement from the attorneys and experts stating:
 - (a) The actual time spent representing the party.
 - (b) The rate at which the fees were computed.

D. The award of reasonable attorney fees pursuant to subsection A of this section need not equal or relate to the attorney fees actually paid or contracted, but an award may not exceed the amount paid or agreed to be paid.

E. A decision of a hearing officer or administrative law judge under this section is subject to judicial review. If fees and other costs were denied by the hearing officer or administrative law judge because the party was not the prevailing party but the party prevails on appeal, the court may award fees and other costs for the proceedings before the hearing officer or administrative law judge if the court finds that fees and other costs should have been awarded under subsection A of this section.

F. The department shall pay the fees and costs awarded pursuant to this section from any monies appropriated to the department and available for that purpose, or from other operating costs of the department. If the department fails or refuses to pay the award within thirty days after the demand, and if no further review or appeals of the award are pending, the person may file a claim for the award with the department of administration which shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the department shall be responsible for the total amount awarded and shall pay it from operating monies. If the department

had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the department's operating appropriation for the following fiscal year by the amount of the award and appropriate that amount to the department of administration as reimbursement for the loss.

G. This section does not apply to:

1. Any grievance and appeal procedure pursuant to title 36, chapter 29.
2. Any appeal procedure pursuant to chapter 4, article 6 of this title.
3. Any administrative appeal filed by an inmate in an Arizona state prison.

H. For the purposes of this section:

1. "Department" includes a state agency, department, board or commission, and the universities.
2. "Party" includes an individual, partnership, corporation, limited liability company, limited liability partnership, association and public or private organization.