

6. THE SECOND NOTICE

An administrator sends a second notice to a person when they have made a **final decision**. If they have followed procedure properly the administrator has given the person adequate opportunity to represent themselves, and has still decided to make a decision that is not in their favour.

As mentioned in the previous chapter, it may happen that no **first notice** has been sent, and your client has not had the opportunity to represent themselves. If this is the case, please refer back to the previous chapter and object to the administrator.

1. Responding to a second notice

As an NGO you may receive a lot of requests to assist people when they have received second notices. There are three important things to check when a person receives a second notice:

a. A clear statement of the decision

In the second notice, the administrator should have clearly laid out the **final decision** they have made, in a manner that can be understood by the person receiving the notice.

The letter should include a clear statement of the decision:

- **Who** took the decision;
- **What** decision was taken;
- **When** the decision was taken;
- **Where** the decision was taken (which department does the administrator work for);
- **How** the decision was taken.

b. Notice of right to request reasons

If the administrator does not include reasons for their decision in the second notice, they should clearly state **how the person can go about receiving reasons**. Chapter 7 of the Workbook goes into reasons in some depth and outlines how to go about writing a letter to request reasons.



BY THE END OF THIS SECTION

You will:

- understand that a second notice is a final decision;
- know whether an administrator has followed proper procedure;
- be able to recognise a properly written second notice;
- know how to take the matter further if your rights have been affected.



BEING UNDERSTOOD

The AJA says that everyone should be able to receive a decision and reasons in a language that they can understand. You can ask the administrator to send a letter to the person in their own language.

The letter should clearly state:

- **When** reasons should be requested (within 90 days);
- **Where** the request should be sent;
- **To whom** it should be sent; and
- **How** the request should be made (for example, in writing).

c. Internal appeal

The second notice should also include information on any **internal appeal or review processes** which may be available. Not all departments have internal appeal options, but where they exist, the law states that they must be followed before a matter is taken to court.

An administrator **must** tell the person that they have these rights without waiting for the person to ask. If there is an internal appeal in the department, they must state at least the following:

- The **name and address of the person or body** to which the appeal must be made;
- When it must be made (**the deadline** or time period in which it must be made);
- The **formal requirements of the appeal** (such as that it must be in writing or that it must be on a special form. A copy of the form must be included with the notice).

If there is no internal appeal, then the administrator must tell the person:

- That **they can take the matter on review**;
- **When and how to do so**, that is, to which court and within 180 days (6 months) of the person receiving your notice. Or, where there is an internal appeal, within 6 months of the final decision.

An example of a properly written second notice appears on the opposite page.

A SECOND NOTICE

Department of Social Development
Private Bag X 61
Johannesburg
0001
Tel: 011-322-7558
Fax: 011-322-7550
Email: abrooks@dspd.gov.gau.za

4 October 2002

Reference: 12345/01

CERTIFIED MAIL

Ms A Dube
PO Box 123
Diepkloof, 0123

Dear Ms A Dube

RE: Your application dated 20/08/2002

You have applied for an old age pension. Unfortunately, I have had to decide not to award this to you because it appears that you are not a South African citizen. Section 3 of the Social Assistance Act says that social grants (including old age pensions) can only be paid to South African Citizens.

Section 10 of the Social Assistance Act gives you the right to appeal against this decision if you believe that it is wrong. Your appeal must be in writing and it must be made within ninety (90) days of receiving this letter. When appealing, you should use the proper form. I am enclosing a copy of this form with this letter for you to use.

The appeal may be lodged at your nearest District/Service Office.

You also have the right to request written reasons for my decision from me. If you would like written reasons, you must send me a request for these, in writing, to my address above. You may send it by mail, fax or email, or you can deliver it personally. The request must reach me though within 90 days of you receiving this letter. Please note that if you have any difficulty writing this request, you can go to any of our offices and the staff there will help you.

Please remember to quote my reference number (12345/01) in your request for reasons and to provide me with your address and any contact telephone or fax numbers you may have.

Sincerely



A Brooks
DIRECTOR GENERAL, DEPT OF SOCIAL DEVELOPMENT
ab

The Administrator's address, telephone number, fax number and email (usually be on their letterhead).

Date

Reference number

Mailing instruction

Applicants name and address

Greeting / salutation

Subject

Clear statement of the decision / administrative action

Notice of the right to internal appeal – note that the appeal form must be attached to the letter

Notice of the right to request written reasons (and how to go about doing this)

Complimentary closing
Signature

Administrator's name, job title and department
Administrator's initials

2. Role for NGOs

There are a number of things NGOs can do to assist people with respect to the second notice:

1. Firstly, check that the notice letter that the person has received complies with the above criteria.
2. If information is missing, write to the administrator to **complain and assert your client's rights** under the AJA. In doing so you will help to popularise the AJA, and bring the conduct of the administration in line with the AJA.
3. Few members of the public understand their **rights in respect of reasons and internal appeal**. This is an area where you can offer support to someone who feels that their rights have been unfairly compromised.

In the chapters that follow we discuss reasons, internal appeal and judicial review in some depth. It is worth noting, however, that there are other options than judicial review which are available as a last resort should reasons and internal appeal not solve the person's problems. These are discussed at the end of the chapter on judicial review.