

10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program

Authority: Health-General Article, §2-104,
Annotated Code of Maryland

.01 Definitions.

[A. “Department of Health and Mental Hygiene”, hereinafter referred to as “Department”, means the single state agency which, pursuant to Title XIX of the Social Security Act, is responsible for implementing fair hearing requirements.]

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Administrative law judge” means an individual appointed by the Chief Administrative Law Judge under State Government Article, §9-1604, Annotated Code of Maryland, or designated by the Chief Administrative Law Judge under State Government Article, §9-1607, Annotated Code of Maryland, to adjudicate contested cases at the Maryland Office of Administrative Hearings.

(2) “Appellant” means any individual who requests a fair hearing for the reasons specified in Regulation .02 of this chapter.

(3) “Authorized representative” means:

(a) The appellant's spouse or domestic partner;

(b) The appellant's parent if the appellant is a minor;

(c) The appellant's legal guardian, if one has been appointed;

(d) An individual appointed to make legal or medical decisions on behalf of the appellant pursuant to a validly executed power of attorney if a copy of the power of attorney is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter;

(e) The appellant's health care surrogate as defined in Health-General Article, §5-605, Annotated Code of Maryland; or

(f) Any other person the appellant has named in writing if:

(i) The appointment details the specific issue the appellant wishes to appeal;

(ii) The appointment details that the person only has the authority to pursue the appellant's appeal rights regarding this specific issue;

(iii) The appointment details that the authority does not extend to any other representation on behalf of the appellant in any other matter;

(iv) The appointment details that the authority shall remain in effect for all levels of the appeal process but shall automatically terminate thereafter; and

(v) A copy of the appointment of the person signed by the appellant is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter.

[B.] (4) “Delegate agency” means the Department of Human Resources and its affiliate local departments which, under contractual agreements with the Department, [are responsible for determining] *determine* initial and continuing eligibility in the [Medical Assistance Plan] *Program*.

[C. “Hearing examiner” means any impartial official designated by the Secretary of Health and Mental Hygiene to conduct and make administrative decisions in fair hearings. The hearing examiner may not have had any prior connection with the action which is the subject of the fair hearing.]

[D. “Appellant” means any individual who requests a fair hearing for the reasons specified in Regulation .02.]

(5) “Department” means the Department of Health and Mental Hygiene, the single state agency which, pursuant to Title XIX of the Social Security Act, implements fair hearing requirements for Program applicants and recipients.

(6) “MCO” means a managed care organization qualified to participate in the Program under COMAR 10.09.65.

(7) “Program” means the Department’s Medical Assistance Program.

.02 Opportunity for a Fair Hearing.

A. An opportunity for a fair hearing shall be granted if:

[A. An individual is denied medical assistance, or his application for medical assistance is not acted upon within 30 days;

B. An individual is aggrieved by any Department or delegate agency policy, action, or inaction which affects the receipt, quality, or conditions of medical assistance, or results in reduction or termination of medical assistance;

C. In the judgment of an applicant or recipient of medical assistance, he is adversely affected by any other Department or delegate agency policy, action, or inaction.]

(1) A Program applicant claims their application for Program eligibility is denied;

(2) A Program applicant claims their application for Program eligibility is not acted upon within 30 days from the date of application or 60 days from the date of application in the case of determination of disability;

(3) A Program recipient asserts their claim for Program services has been erroneously denied or is not acted upon with reasonable promptness;

(4) A Program recipient asserts that the Program has acted erroneously;

(5) A Program recipient residing in a skilled nursing facility or nursing home asserts that the Program recipient has been erroneously transferred or discharged;

(6) A Program recipient asserts that the Program has made an erroneous decision related to nursing home preadmission and annual review; or

(7) A Program recipient in an MCO asserts that the MCO has denied coverage of, or payment for, Program benefits.

B. A Program recipient in a MCO shall first exhaust all of the complaint and appeal procedures specified in COMAR 10.09.71 before filing an appeal under this chapter unless the recipient is a waiver-eligible individual.

C. The administrative law judge may not grant a fair hearing if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all Program recipients.

.03 Notification of Right to Request a Fair Hearing.

A. [Written notification of] *The Program or delegate agency shall notify an individual in writing:*

(1) Of the right to obtain a fair hearing[, and] ;

(2) Of the method of obtaining the hearing [shall be given by the Department or delegate agency to each applicant or recipient of medical assistance at the time of application and reconsideration application] ; and

(3) That the individual may represent himself or use an authorized representative at a fair hearing if:

(a) The individual applies for Program benefits;

(b) An action affects the individual's claim to Program benefits;

(c) A skilled nursing facility or a nursing facility notifies the individual that the individual is to be transferred or discharged; and

(d) The individual receives an adverse determination by the Department or delegate agency concerning a skilled nursing facility's or a nursing facility's:

(i) Preadmission screening; or

(ii) Annual resident review.

[B. Written notification of the right to obtain a fair hearing and the method of obtaining the hearing shall be given by the Department or delegate agency whenever it notifies an applicant or recipient that it intends to take any action which may or will adversely affect him or his benefits.

C. The notification specified in §§A and B shall:

(1) Advise the individual of the matters which are the proper subject of a fair hearing as provided in Regulation .02.

(2) Advise the individual of his right to be represented by a lawyer or other person of his choice during the entire fair hearing process.

(3) Advise the individual that he may present witnesses and documents in his behalf at the fair hearing.

(4) Advise the individual of the circumstances under which assistance is continued if a fair hearing is requested, as provided in Regulation .04B.]

B. The notification specified in §A of this regulation shall:

(1) Include a statement of what action the Program, skilled nursing facility, or nursing facility intends to take;

(2) Include the reasons for the intended action;

(3) Include the specific regulations that support, or the change in federal or State law that requires, the action;

(4) Include an explanation of the individual's right to request a fair hearing;

[(5) Advise the individual that expenses incurred in connection with a fair hearing, such as transportation and baby-sitting costs, but not including attorney's fees, shall be paid by the Department when incurred by the appellant and may be paid by the Department when incurred by the appellant's witnesses. Sums may not be paid if the hearing examiner determines that their payment is unnecessary for the proper conduct of the hearing.]

[(6)] (5) Include a summary of the regulations relating to fair hearing procedures[.];

(6) Include an explanation of the circumstances under which assistance is continued if a fair hearing is requested, as provided in Regulation .04B of this chapter; and

(7) Except as specified in §C of this regulation, be mailed at least 10 days before the date of action.

C. The notice specified in §A of this regulation may be mailed less than 10 days before the date of action if:

(1) The Program has information confirming the recipient's death;

(2) The Program receives a clear written statement signed by a recipient that:

(a) The recipient no longer wishes services; or

(b) Gives information that requires termination or reduction of the recipient's services and indicates that the recipient understands that this change in services is the result of supplying that information;

(3) The recipient has been admitted to an institution where the recipient is ineligible under the Program for further services;

(4) Subject to Regulation .10B(4) of this chapter, the recipient's whereabouts are unknown and the U.S. Post Office returns to the Program or delegate agency mail directed to the recipient indicating no forwarding address;

(5) The Program establishes that the recipient has been accepted for Program services by another local jurisdiction, State, territory, or commonwealth;

(6) The recipient's physician prescribes a change in the level of care;

(7) The notice involves an adverse determination made with regard to preadmission screening requirements;

(8) The date of action will occur in less than 10 days; or

(9) The Program has facts indicating that action should be taken because of probable fraud by the recipient and the facts have been verified, if possible, through secondary sources, in which case the notice specified in §A of this regulation may be mailed 5 days before the date of action.

.04 Request for Fair Hearing.

A. Statement of Request.

(1) Any individual, either himself or through [a] an authorized representative, may request a fair hearing by giving a clear written statement[, oral or written,] to [any

member of the Department] *the Program's Office of Eligibility Services, the Program's Office of Health Services, or the delegate agency, that he desires an opportunity to present for review any matter which is the proper subject of a fair hearing as provided in Regulation .02 of this chapter. [This statement shall be forwarded immediately to the Office of Hearings.]*

(2) The [Department] *Program's Office of Health Services or delegate agency [to whom an expression] that receives the request for a hearing [is made shall] may assist the appellant or the appellant's authorized representative in submitting and processing the request.*

(3) *The Program's Office of Eligibility Services, the Program's Office of Health Services, or the delegate agency that receives a written statement requesting an appeal shall:*

(a) *Immediately forward an appellant's statement to the Office of Administrative Hearings; and*

(b) *Note in its correspondence with the Office of Administrative Hearings if the appeal:*

(i) *Concerns the medical necessity of a denied benefit or service to an MCO enrollee; and*

(ii) *Meets the Program's criteria for an expedited resolution.*

B. *Acknowledgement. The [Department] Office of Administrative Hearings shall [promptly] :*

(1) *Promptly acknowledge any request for a fair hearing; [and shall give]*

(2) *Give advance notice in writing of the date, time, and place of the fair hearing[.] ; and [The acknowledgement shall include]*

(3) *Provide the appellant or the appellant's authorized representative with the information specified in Regulation [.03C] .03B of this chapter.*

C. *Postponements.*

(1) *If any party notifies the [Department] Office of Administrative Hearings that either the time or place designated by the [Department] Office of Administrative Hearings is not convenient to [him] them, and requests a different time or place for the fair hearing, the [hearing examiner] administrative law judge shall designate another time or place convenient to the parties if [he] the administrative law judge deems that the party has sufficient reason for requesting the change.*

(2) *If the appellant is employed during the periods when fair hearings are normally held, the [hearing examiner] administrative law judge shall attempt to schedule the hearing so that the appellant will not be required to miss employment.*

D. *Timeliness of Appeal.* A request for a fair hearing may not be granted unless [it] *the request in §A of this regulation is [made] postmarked or delivered in person to the Program's Office of Eligibility Services, the Program's Office of Health Services, or the delegate agency* within 90 days of the receipt of the notification specified in Regulation .03A[and B or, if Regulation .03A does not apply, within 90 days following the conclusion of the action or inaction which is the subject of the appeal] *of this chapter.*

E. *Dismissal.*

(1) The [Department] *Program* may dismiss a request for a fair hearing when [it] *the appeal* has been [withdrawn] :

(a) *Withdrawn* in writing by the appellant or his *authorized* representative; or [abandoned]

(b) *Abandoned.*

(2) An appellant shall be deemed to have abandoned [his] *the appellant's* request for a fair hearing if [he does not] *the appellant or the appellant's authorized representative fails to appear* for the fair hearing on the established date [and does not promptly respond to a Department letter asking whether he wishes to withdraw his request for a fair hearing] *without good cause.*

F. *Department's Response.* In responding to timely filed requests for a fair hearing, the Department:

(1) *May respond to a series of individual requests for hearing by conducting a single group hearing; and*

(2) *Shall permit each appellant to present his own case or be represented by his authorized representative.*

.05 Pre-Hearing Procedures.

A. The Department *or* delegate agency shall prepare a hearing summary containing pertinent information respecting the specific action or inaction [which] *that* is the basis for the appeal. The summary shall [be] :

(1) *Be* forwarded to the appellant or his *authorized* representative at least 6 days before the hearing date[,] ; and [shall include]

(2) *Include* notification that the appellant or his *authorized* representative may examine documents and records to be used at the hearing at the office of the [hearing examiner] *administrative law judge* at a reasonable time before the date of the hearing.

B. (text unchanged)

.06 Hearing Procedures.

A. The appellant, the [Department] *Program*, and the delegate agency shall have the opportunity to [present] :

(1) *Present* witnesses[,] ;

(2) *Present* documentary evidence[, and] ;

(3) *Present* oral and written argument [, and to] *without undue interference*;

(4) *Establish all facts and circumstances the administrative law judge judges to be pertinent; and*

(5) *Question or refute any testimony or evidence, including an opportunity to confront and cross-examine all [adverse] witnesses the administrative law judge judges to be adverse.*

B. [If the appellant wishes to call as witnesses] *All parties that wish to call a witness at the hearing, including calling any employees of the Department or delegate agency whose action [or inaction] is being contested by the appellant or whose testimony [is, in the judgment of the hearing examiner,] the administrative law judge judges relevant to the issues under consideration, [the hearing examiner] shall [require their presence at the fair hearing] subpoena the witness in accordance with Office of Administrative Hearings procedures in COMAR 28.02.01.11.* [If the appellant has knowledge of the names or other identifying descriptions of these employees before the fair hearing, he shall supply the hearing examiner the names or other identifying descriptions at least 5 days before the fair hearing.]

C. If the [Department] *Program* or delegate agency introduces as evidence documents from the case record, special investigation file, or other sources, the appellant shall have the opportunity to examine [persons] *the*:

(1) *Persons* who prepared the documents; and [to examine the case]

(2) *Case* record or special investigation file for the purpose of discovering information favorable to [his] *the appellant's* case.

D. When a hearing involves a medical [issues] *issue*, such as [those concerning] a diagnosis, an examining physician's report or a medical review team's decision, an additional medical assessment of the appellant's condition shall be obtained and made part of the record if the [hearing examiner] *administrative law judge* considers it necessary. Any additional medical assessment shall be made by a person other than the person who made the original medical [determination] *assessment* and shall be obtained at the Department's expense.

E. *The delegate agency shall be a party to the fair hearing if the fair hearing involves an issue of eligibility.*

F. Appeal for a Waiver-Eligible Individual Enrolled in an MCO.

(1) If the appeal concerns the medical necessity of a denied benefit or service to an MCO enrollee, a fair hearing that meets the Department-established criteria for an expedited hearing shall be scheduled by the Office of Administrative Hearings and a decision shall be rendered within 3 days of the hearing.

(2) If the appeal does not concern the medical necessity of a denied benefit or service, the hearing shall be scheduled within 30 days of the receipt by the Office of Administrative Hearings of the notice of appeal.

(3) The requirements specified in COMAR 10.09.72.05 shall apply to an appeal under this section.

.07 The Record.

A. A verbatim recording of the fair hearing shall be made. *Nonrecorded or confidential information, which the appellant does not have an opportunity to hear or see, may not be made a part of the hearing record.* One transcribed copy of the recording shall be supplied to the appellant at no cost [whenever] *if the appellant takes a further appeal.*

B. The [recording, together with all exhibits and papers admitted into evidence,] *following shall constitute the exclusive record [for decision] of the hearing:*

(1) The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;

(2) All papers and requests filed in the proceeding; and

(3) The administrative law judge's decision.

[Nonrecorded or confidential information, which the appellant does not have an opportunity to hear or see, may not be made a part of the hearing record.]

[B.] C. The recording [and copies of all exhibits and papers] *of testimony shall remain in the custody of the Office of Administrative Hearings for a period not to exceed 2 years, or until all litigation involving the decision is terminated. All other components of the record shall remain in the custody of the Program for a period not to exceed 2 years, or until all litigation involving the decision is terminated.*

D. *The appellant or the appellant's authorized representative shall have access to the record at a convenient place and time.*

.08 Findings, [Conclusions, and] Timing of Decision, and Effect of Decision.

A. *Findings.*

(1) The [hearing examiner] *administrative law judge* shall [prepare] :

(a) *Prepare* a written summary of findings and conclusions based exclusively on the record; and [shall make]

(b) *Make* a decision based on his findings and conclusions.

(2) The summary of findings and conclusions shall [state]:

(a) *State* the *evidence*, policies, regulations, or laws upon which the [hearing examiner's] *administrative law judge's* decision is based; and

(b) *Provide written notice to the appellant or the appellant's authorized representative that, if they are not satisfied with the decision, they may seek additional appeals as specified in §C of this regulation.*

B. [Notice] *Timing of Hearing Decision.*

(1) [A copy of the findings, conclusions, and decision shall be forwarded to the appellant or his representative no later than 90 days after the date of the initial request for a fair hearing.] *If the appellant is not a waiver-eligible individual, the administrative law judge shall forward to the appellant or the appellant's authorized representative a copy of the findings, conclusions, and decision within 90 days from the earlier of the following:*

(a) *The date the appellant or the appellant's authorized representative postmarked or delivered in person to the MCO an MCO appeal, not including the number of days the appellant or the appellant's authorized representative took to subsequently file for a State fair hearing; or*

(b) *The date the appellant or the appellant's authorized representative postmarked or delivered in person to the Program's Office of Eligibility Services, the Program's Office of Health Services, or the delegate agency a request for a fair hearing pursuant to Regulation .04 of this chapter.*

(2) *If the appellant is a waiver-eligible individual enrolled in an MCO, the administrative law judge shall forward to the appellant or the appellant's authorized representative a copy of the findings, conclusions, and decision within:*

(a) *3 days of the hearing if the appeal concerns the medical necessity of a denied benefit or service, and the hearing meets the criteria, as determined by the Department, for an expedited hearing; or*

(b) *30 days of the hearing if the appeal does not concern the medical necessity of a denied benefit or service.*

[(2)] (3) If the date of the fair hearing is postponed at the appellant's request, the length of the postponement may not be counted as part of [the 90 day period] *any of the time periods specified in §B(1) or (2) of this regulation.*

[(3) The hearing examiner shall further provide written notice to the appellant or his representative that, if he is not satisfied with the decision, he may seek administrative review as provided in the Health-General Article, §2-206, Annotated Code of Maryland, and judicial review as provided in the State Government Article, §10-215, Annotated Code of Maryland, or any other provision of law.]

[C. Final Decision; Compliance.

(1) The decision of the hearing examiner shall be final and binding upon the Department and the delegate agency and shall be implemented immediately unless otherwise specifically indicated in the decision or unless the appellant takes an appeal as provided in the Health-General Article, §2-207, Annotated Code of Maryland.

(2) When the decision requires action by the delegate agency, that agency shall notify the Department of its compliance with the decision.

(3) When the decision is favorable to the appellant, or when the Department or delegate agency grants the appellant the relief he requests before the decision, the Department, where applicable, shall authorize corrected payments or relief retroactive to the date the incorrect action was taken.]

[D. The Office of Hearings shall maintain a copy of the decision, with the name of the appellant and witnesses deleted, in a reference file of hearing decisions that will be accessible to the public. Copies of all decisions, either in full text or in summary form, shall be forwarded to the delegate agency and its affiliate local departments and to all local health departments.]

C. Appeal Rights.

(1) Any party may seek administrative review of the administrative law judge's decision as provided in the Health-General Article, §§2-206 and 2-207, Annotated Code of Maryland, and subsequent judicial review as provided in the State Government Article, §10-215, Annotated Code of Maryland.

(2) An administrative law judge decision adverse to the appellant shall be implemented immediately and may not be stayed pending appeal.

D. Effect of Decision.

(1) If the decision requires action by the delegate agency, that agency shall notify the Program of its compliance with the decision.

(2) If the decision is favorable to the appellant, or if the Department, Program, or delegate agency grants the appellant the relief the appellant requests before the decision, the Department, Program, or delegate agency, as applicable, shall:

(a) Authorize corrected payments or relief retroactive to the date the incorrect action was taken if appropriated funds are available; and

(b) If appropriate, provide for admission or readmission of the appellant to a facility.

(3) Any payment or action by the Department, Program, or delegate agency in §D(2) of this regulation may not constitute a waiver of the Department's, Program's, or delegate agency's sovereign immunity from suit.

.09 Confidentiality.

A. If the appellant waives in writing his privilege of confidentiality as to the fair hearing, the [hearing examiner] *administrative law judge* shall permit members of the public to attend the hearing.

B. The [hearing examiner] *administrative law judge* may cause the removal of any member of the public whose conduct impedes the orderly progress of the hearing, or recess the hearing until [such time as] it may proceed in orderly fashion.

C. The [hearing examiner] *administrative law judge* may exclude from the hearing [persons] *individuals* who have *not* given the Department [no] advance notice of their intention to attend if the size of the hearing room is too small to accommodate them.

.10 Benefits [Pending Hearing Decision] *During Appeals Process.*

A. [Whenever a recipient of medical assistance requests a fair hearing to contest a proposed termination or limitation on his eligibility for medical assistance, the proposed action may not be taken until:

(1) The right to obtain a fair hearing has expired unexercised;

(2) A request for a fair hearing has been withdrawn in writing or abandoned;

(3) A decision is made by the hearing examiner following a fair hearing and his decision upholds the Department or delegate agency in its proposed action; or

(4) The Department has made a determination that the contested matter is one of Department policy and not one of fact or judgment relating to the individual case, including a question of whether the Department regulations or policies were correctly applied to the facts of the particular case.] *Benefits Maintained Pending Outcome of the Hearing.*

(1) If the Program timely mails the notice as required under Regulation .03 of this chapter, and the appellant or the appellant's authorized representative does not request a hearing before the date of the action or if the appellant or the appellant's authorized representative withdraws or abandons a request for a fair hearing in writing, the Program may terminate or reduce services effective as of the date specified in the notice.

(2) If the Program timely mails the notice as required under Regulation .03 of this chapter, and the appellant or the appellant's authorized representative requests a hearing before the date of the action, the Program may not terminate or reduce services until a decision is rendered after the hearing unless:

(a) The administrative law judge determines at the hearing that the sole issue is one of federal or State law or policy, or the request for a fair hearing is withdrawn in writing or abandoned; and

(b) The Program includes in the notification required by Regulation .03 of this chapter that services are to be terminated or reduced pending the hearing decision.

(3) If the Program's action is sustained by the hearing decision, the Department may institute recovery procedures against the appellant to recoup the cost of any services furnished to the appellant to the extent that the services were furnished solely because of §A(2) of this regulation.

B. [Other Exceptions; Reinstatement] *Reinstating* Benefits.

(1) [If the recipient requests a hearing before the effective date of the proposed action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless:

(a) It is determined at the hearing that the sole issue is one of federal or State law or policy; and

(b) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision] *If the Program terminates or reduces services pursuant to §A of this regulation, the Program may reinstate services if a Program recipient requests a hearing not more than 10 days after the date of action.*

(2) [If a recipient requests a hearing not more than 10 days after the effective date of action, the agency may reinstate services.] The reinstated services shall continue until a hearing decision, unless, at the hearing, [it is] *the administrative law judge* [determined] *determines* that the sole issue is one of federal or State law or policy.

(3) The [agency] *Program* shall reinstate and continue services until a decision is rendered after a hearing if:

(a) Action is taken without the advance notice being given to the recipient as required by [federal regulations] *Regulation .03 of this chapter*;

(b) (text unchanged)

(c) The [agency] *Program* determines that the action resulted from other than the application of federal or State law or policy.

(4) If a recipient's whereabouts are unknown, as indicated by the return of unforwardable [agency] *Program* mail directed to [him] *the recipient*, any discontinued services shall be reinstated if [his] *the recipient's* whereabouts become known during the time [he] *the recipient* is eligible for services.

(5) The [hearing examiner] *administrative law judge* may provide for an additional period during which time the request for a fair hearing will result in reinstatement of a *recipient's* assistance to be continued until the hearing decision.

(6) If the [agency's] *Program's* action is sustained by the hearing decision, the [agency] *Department* may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent [they] *the services* were furnished solely [by reason] *because* of this [section] *regulation*.

10.09.24 Medical Assistance Eligibility

Authority: Health-General Article, §§2-104(b), 2-105(b), 15-103, 15-105, and 15-121,
Annotated Code of Maryland

.13 Hearings.

The procedures for the Program granting a hearing to an applicant or a recipient and the status of benefits pending a hearing are set forth in COMAR 10.01.04.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene