FAIR HEARING REQUEST FORM
HOME AND COMMUNITY-BASED WAIVER SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION

This application is from the Department of Public Welfare, Office of Developmental Programs. If you need language assistance, free of charge, please call 1-888-565-9435.

Esta solicitud es del Departamento de Bienestar Público, Oficina de Programas de Desarrollo. Si necesita ayuda con el idioma, gratis, llame por favor al 1-888-565-9435.

ពាក្យដាក់សុំនេះចេញពីក្រសួងសាធារណៈណើលវ៉ែ ការិយាល័យទទួលបន្ទុកលើកម្មវិធីបណ្តុះបណ្តាល។ បើណោកអ្នកត្រូវការជំនួយផ្នែកភាសា ដោយមិនបាច់ចេញលុយ សូមទូរស័ព្ទមក 1-888-565-9435។

这是公共福利部发展计划办公室提供的申请书．你如果需要语言方面的免费协助，请致电 1-888-565-9435.

Настоящее заявление – от Бюро программ развития Отдела социального обеспечения (Department of Public Welfare). Если вам нужна помощь переводчика, звоните по телефону 1-888-565-9435 (бесплатно).

Mẫu đơn này là của Sở Trợ Cấp Phúc Lợi Công Cộng, Văn Phòng Phát Triển các Chương Trình. Nếu quý vị muốn được trợ giúp về ngôn ngữ, miễn phí, xin gọi số 1-888-565-9435.

TO: DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS
(THE COUNTY MH/MR PROGRAM OR ADMINISTRATIVE ENTITY WILL FORWARD THIS APPEAL TO THE APPROPRIATE BUREAU OF HEARINGS AND APPEALS OFFICE LISTED ON PAGE 3)

DATE:

FROM:

NAME OF APPELLANT:	DAY TELEPHONE NUMBER: ( )
MAILING ADDRESS:	

SIGNATURES:

APPELLANT:	
WITNESS: *(If APPELLANT Makes Mark)*	WITNESS: *(If APPELLANT Makes Mark)*

I hereby request a Fair Hearing before the Department of Public Welfare, Bureau of Hearings and Appeals. I am requesting this appeal on behalf of the following individual who is applying for or receiving home and community-based services funded under a Medicaid Waiver for individuals with mental retardation.

NAME OF INDIVIDUAL APPLYING FOR OR RECEIVING SERVICES:	
MEDICAID ACCESS NUMBER OF INDIVIDUAL APPLYING FOR OR RECEIVING SERVICES:	
I REQUEST THIS APPEAL BASED ON THE FOLLOWING ACTIONS:	
I REQUEST THE FOLLOWING REMEDIES TO RESOLVE THIS APPEAL (EXPLAIN):	
NAME OF INDIVIDUAL'S SURROGATE *(If Applicable)*:	
MAILING ADDRESS:	
DAY TELEPHONE NUMBER: ( )	RELATIONSHIP TO INDIVIDUAL:
SIGNATURE OF INDIVIDUAL'S SURROGATE *(If Applicable)*:	

PLEASE INDICATE WHICH TYPE OF HEARING YOU ARE REQUESTING: *(See Instructions For More Information)*

☐ **TELEPHONE HEARING**
(Appellant and Administrative Entity or County Program will be at Different Telephone Numbers)
Appellant Number ( ) _____

☐ **FACE-TO-FACE HEARING**
(All parties involved in the hearing are at one location.)

☐ **TELEPHONE HEARING**
(Appellant and the Administrative Entity or County Program will be at the same telephone number)

☐ **FACE-TO-FACE HEARING**
(Appellant and local office of Bureau of Hearings and Appeals will be at one location for the hearing. The Administrative Entity or County Program will participate in the hearing via telephone. This type of telephone hearing is expected to be an available option for individuals or surrogates in April 2008 or soon thereafter.)

Please indicate below if information is needed in a language other than English and specify the language. Indicate any communication assistance (interpreter, device, sign language) or other accommodation that you require at the hearing:

INSTRUCTIONS AND NOTICE OF RIGHT TO FAIR HEARING

HOME AND COMMUNITY-BASED WAIVER SERVICES OR ICF/MR SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION

If you are applying for Waiver services or services in an Intermediate Care Facility for the Mentally Retarded (ICF/MR), or if you object to an action taken affecting your claim for Waiver services, you have the right to a county or local pre-hearing conference with the County Program or Administrative Entity and a Fair Hearing before the Department of Public Welfare, Bureau of Hearings and Appeals, if:

- The individual with mental retardation who is determined likely to meet an ICF/MR level of care and is enrolled in Medical Assistance or surrogate[1] is not given the opportunity to express a service delivery preference for either Waiver-funded or ICF/MR services.
- The individual or surrogate is denied the individual's preference of Waiver-funded or ICF/MR services.
- Based on a referral from the Administrative Entity (AE) or County Program, a Qualified Mental Retardation Professional (QMRP) determines that the individual does not require an ICF/MR level of care as a result of the level of care determination or re-determination process and eligibility for services is denied or terminated.
- The individual or surrogate is denied Waiver-funded service(s) of the individual's choice, including the amount, duration, and scope of service(s).
- The individual or surrogate is denied the individual's choice of willing and qualified Waiver provider(s).
- A decision or an action is taken to refuse, suspend, reduce, or terminate a Waiver-funded service authorized on the individual's ISP.

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[1] Not everyone can make legally binding decisions for themselves. This would include minor children and some adults who have substantial mental impairment. In these instances, a substitute decision-maker may be identified under State law. Substitute decision-makers have various legal titles, but for the purposes of this bulletin, they will be referred to as "surrogates." "Surrogates" include the following:

- Parents of children under 18 years of age under the common law and 35 P.S. § 10101.
- Legal custodian of a minor as provided in 42 Pa.C.S. § 6357.
- Health care agents and representatives for adults as provided in 20 Pa.C.S. Ch. 54.
- Guardians of various kinds as provided in 20 Pa.C.S. Ch. 55 (as limited by 20 Pa.C.S. § 5521(f)).
- Holders of powers of attorney of various kinds as provided in 20 Pa.C.S. Ch. 56.
- Guardians of persons by operation of law in 50 P.S. §4417(c).

Any of these would be considered "legal representatives" as the Center for Medicaid and Medicare Services uses that phrase. Please see Application for a §1915(c) Home and Community-Based Waiver: Instructions, Technical Guide and Review Criteria *(www.cms.hhs.gov/HCBS/02_QualityToolkit.asp)*.

County or Local Pre-hearing Conference: If you choose to have a county or local pre-hearing conference with your County MH/MR Program or Administrative Entity Designee, you may do so without forfeiting your appeal rights if you contact the County MH/MR Program or Administrative Entity Designee within ***13 DAYS*** of your notification of the decision or action that is to be taken that you want to appeal. A county or local pre-hearing conference is optional for you.

Appeal to Bureau of Hearings and Appeals: You have the right to file an appeal directly with the Department of Public Welfare, Bureau of Hearings and Appeals. You have a right to appeal any action or failure to act and to have a hearing if you are dissatisfied with any decision to refuse, suspend, reduce, or terminate Medicaid Home and Community-Based Waiver services. Form DP 458 (attached) must be used to file your appeal with the Bureau of Hearings and Appeals.

Appeal Timeframe for the Continuation of Waiver Services: If you are appealing a change [that is, reduction, termination, or suspension] in Waiver-funded services that were approved and authorized in your individual support plan, are already being provided to you and you want those Waiver services to continue without change during the appeal process, you must file the appeal within ***13 DAYS*** of the Administrative Entity's notification of the decision to change your Waiver services. Form DP 458 must be completed and sent to your Administrative Entity within the 13 day period. They will forward your appeal to the Bureau of Hearings and Appeals. Please note that services will **NOT** continue if the action to reduce, terminate, or suspend services is based solely on a change in Federal or State law or regulations that requires an automatic change in the amount and type of services available under the Waiver.

Appeal Timeframe where the Continuation of Waiver Services is not Involved: Form DP 458 must be completed within **30 days** of your notification of the decision or action that is to be taken that you want to appeal. The completed Form DP 458 must be sent to your County MH/MR Program or Administrative Entity. They will forward your appeal to the Bureau of Hearings and Appeals.

Type of Hearing Requested: The Bureau of Hearings and Appeals will conduct a hearing for you over the telephone or face-to-face. Please check the appropriate box to indicate the type of hearing you want to occur.

- Telephone Hearings: If you do not have a telephone that can be used to conduct this hearing, you may use a telephone at the County MH/MR Program or Administrative Entity office, or the telephone of a friend, relative, or neighbor. Please indicate the telephone number where all parties may be reached to conduct the hearing.
- Face-to-face Hearings: This type of hearing is held in one of the following locations: Erie, Harrisburg, Philadelphia, Pittsburgh, Plymouth, or Reading. More information on the exact location of the hearing site will be sent to you and the AE or County Program if you request a face-to-face hearing. In the near future, a second option will be given to the appellant for face-to-face hearings in which the appellant and the Administrative Law Judge will be at the Bureau of Hearings and Appeals and the AE or County Program will participate via telephone.

Accommodations Needed by You at the Hearing: If you need accommodations to attend or participate in the hearing, please indicate the specific accommodations required (language interpreter, communication device, etc.) on Form DP 458 when you file your appeal. You may supply your own interpreter or bring your own communication device, etc., to the hearing. However, if you cannot supply your own accommodation, all requests for assistance in obtaining an accommodation must be made in advance of the hearing. Please contact your County MH/MR Program or Administrative Entity Designee or the Bureau of Hearings and Appeals to request assistance.

Contact Information: If you want a county or local pre-hearing conference to discuss your concerns, or if you need assistance to file an appeal, please contact the County MH/MR Program or Administrative Entity Designee listed below:

NAME:
ADDRESS:
ADDRESS:
TELEPHONE NUMBER: ( )

Your County MH/MR Program or Administrative Entity Designee will photocopy Form DP 458 and send a copy to you and the appropriate Regional Office and Central Office of Developmental Programs. The Office of Developmental Programs Regional and Central Office addresses are as follows:

SOUTHEAST REGIONAL OFFICE OF DEVELOPMENTAL PROGRAMS

1400 SPRING GARDEN STREET
PHILADELPHIA, PA 19130-4064

NORTHEAST REGIONAL OFFICE OF DEVELOPMENTAL PROGRAMS

100 LACKAWANNA AVENUE
SCRANTON, PA 18503

CENTRAL REGIONAL OFFICE OF DEVELOPMENTAL PROGRAMS

ROOM 430, WILLOW OAK BLDG.
HARRISBURG STATE HOSPITAL
HARRISBURG, PA 17120

WESTERN REGIONAL OFFICE OF DEVELOPMENTAL PROGRAMS

300 LIBERTY AVENUE
PITTSBURGH, PA 15222

OFFICE OF DEVELOPMENTAL PROGRAMS

ROOM 512, HEALTH AND WELFARE BUILDING
P. O. BOX 2675
HARRISBURG, PA 17105

The Department of Public Welfare, Bureau of Hearings and Appeals contact information is provided below:

BUREAU OF HEARINGS AND APPEALS HEADQUARTERS
and
BUREAU OF HEARINGS AND APPEALS CENTRAL REGION

Bureau of Hearings and Appeals
2330 Vartan Way, Second Floor
Harrisburg, Pa 17110
Phone: (717) 783-3950

BUREAU OF HEARINGS AND APPEALS NORTHEAST REGION

Federal Hearings and Appeals
117 West Main Street
Plymouth, Pa 18651
Phone: 1(800) 664-7177

BUREAU OF HEARINGS AND APPEALS SOUTHEAST REGION

Bureau of Hearings and Appeals
1400 Spring Garden Street, Room 1608
Philadelphia, Pa 19130-9943
Phone: (215) 560-2145

BUREAU OF HEARINGS AND APPEALS WESTERN REGION

Bureau of Hearings and Appeals
Two Gateway Center, Suite 1125
603 Stanwix Street
Pittsburgh, Pa 15222
Phone: (412) 565-5213

Representation at the Hearing: You have the right to represent yourself at the hearing. You or your surrogate may present the reasons why you disagree with the action or decision to the Bureau of Hearings and Appeals' Administrative Law Judge presiding over the hearing. You or your surrogate may present evidence and witnesses to support your case.

You have the right to have someone else represent you. If you need Legal Counsel, a list of Legal Aid Offices is attached. If you request additional help, the County MH/MR Program or Administrative Entity Designee will refer you to advocacy organizations in your community.