



# DEVELOPMENTAL PROGRAMS BULLETIN

## COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE

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**00-08-05**

SUBJECT:

**Due Process and Fair Hearing Procedures  
for Individuals with Mental Retardation**

BY:

**Kevin T. Casey**  
**Deputy Secretary for Developmental Programs**

### SCOPE:

County Mental Health and Mental Retardation Program Administrators  
Administrative Entity Directors or Administrators  
Supports Coordination Entities

### PURPOSE:

This bulletin is to disseminate the Office of Developmental Programs' (ODP) policy on due process for individuals who register for or receive base-funded (non-Waiver) mental retardation services. This bulletin also delineates ODP's policy on fair hearings for individuals who apply for or receive services through the Consolidated and Person/Family Directed Support (P/FDS) Waivers.

### BACKGROUND:

As a result of revised service delivery preference procedures and questions raised by individuals regarding due process rights, ODP is issuing this Bulletin to:

- Clarify the due process and fair hearing and appeal processes.
- Reinforce the requirement for written County Mental Health and Mental Retardation (MH/MR) Program public procedures for appeals of decisions related to base-funded (non-Waiver) services.

The procedures contained in this Bulletin reflect the rights of individuals registering for services and supports as well as the rights of individuals receiving services and supports.

### DISCUSSION:

Both Waiver and base-funded (non-Waiver) applicants and recipients of mental retardation services and supports have due process rights. The due process procedures for each funding source are described below.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

**The Appropriate Developmental Programs Regional Office**

## **POLICY:**

### **I. DUE PROCESS PROCEDURES FOR INDIVIDUALS WHO REGISTER FOR OR RECEIVE BASE-FUNDED (NON-WAIVER) SERVICES**

Eligibility for Mental Retardation base-funded (non-Waiver) Services through a County Program is assessed through procedures contained in Bulletin 4210-02-05 “*Clarifying Eligibility for Mental Retardation Services and Supports*”. Denial of eligibility for mental retardation base-funded (non-Waiver) services for any reason is subject to due process under 2 Pa.C.S. §§ 551-555 (relating to Local Agency Law).

Individuals who wish to register for mental retardation services and recipients of base-funded (non-Waiver) services have the right to appeal under the Local Agency Law when base-funded (non-Waiver) services are denied, reduced, or terminated (*Nason v. Commonwealth*, 533 A.2d 435 [Pa. 1987]). Each County Program shall have clearly-defined, written policies and procedures of this appeal process. Local Agency Law mandates counties to establish an administrative review procedure to examine appeals of service decisions when requested and to provide a written decision regarding this review as well as rights of appeal of the decision.

Each County Program must develop a procedure containing the following:

- The requirement to provide a timely, written notice of the decision to deny, reduce, or terminate an individual’s services and clearly explain the reasons for this decision. This notice shall be sent to the individual or surrogate<sup>1</sup> and the individual’s providers of service and Supports Coordination Entity<sup>2</sup>, if applicable. The written notice shall explain due process rights of the individual. A copy of the written notice shall be maintained in the individual’s file at the County Program and at the Supports Coordination Entity, if applicable, until the case file is closed.
- The process of a team meeting with County Program representatives, the individual or surrogate, Supports Coordination Entity representatives if

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<sup>1</sup> 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 Centers for Medicare and Medicaid Services uses that phrase. Please see *Application for a §1915(c) Home and Community-Based Waiver: Version 3.5 Instructions, Technical Guide and Review Criteria* [[www.cms.hhs.gov/HCBS/02\\_QualityToolkit.asp](http://www.cms.hhs.gov/HCBS/02_QualityToolkit.asp)].

<sup>2</sup> The phrase “Supports Coordination Entity” as it is used in Section I includes the Targeted Service Management or base-funded case management provider.

applicable, and service providers as appropriate to discuss and attempt to resolve the issue.

- The process of appeal. This process shall contain the following steps:
  - Each County Program will appoint an impartial reviewer to hear the issues and arguments involved in base-funded appeals. The reviewer must be conflict free [that is, not involved in the decision-making process of the issue in question at the County Program or be a member of the individual's team]. The reviewer must provide a fair, impartial hearing of the situation and related facts. The County MH/MR Administrator, the County Mental Retardation Director, a member of the County MH/MR Board, or a person who is contracted to do the review could also fulfill this role. A County Program may use another County Program's reviewer to perform the associated duties to ensure an impartial review.
  - A hearing is scheduled with reasonable written notice given to the individual or surrogate of the date and time of the hearing.
  - The hearing shall be tape recorded at no expense to the individual or surrogate. Transcripts of the hearing may be obtained by the individual or surrogate at the individual's or surrogate's expense.
  - The individual or surrogate and other persons involved in the individual's life [family, advocates, providers, etc.] may present relevant documentation, new information, or testimony related to the appeal at the hearing. The reviewer may ask questions of the individual or surrogate.
  - The County Program and Supports Coordination Entity, if applicable, involved in the decision-making process shall be present to give relevant testimony and facts about the decision. The reviewer and the individual, surrogate, or other persons may ask questions of the staff involved in the decision.
  - The reviewer will issue a written decision within 30 calendar days of the date of the hearing. The decision shall contain the reasons for the hearing, the findings of the hearing, the decision of the reviewer, and the reasons for the decision. The individual or surrogate, the County Program, and the Supports Coordinator, if applicable, will receive a copy of the written decision. This decision will be kept in the individual's file at the County Program and the Supports Coordination Entity, if applicable, until the individual's case file is closed.
  - If the individual or surrogate is not satisfied with the reviewer's decision, the individual or surrogate has further appeal rights through the Court of Common Pleas. For more information regarding the appeal process to the Court of Common Pleas, please see 2 Pa.C.S. §§ 751-754 (relating to Local Agency Law).

## **II. DUE PROCESS PROCEDURES FOR WAIVER APPLICANTS AND PARTICIPANTS**

Eligibility requirements for services provided through the Consolidated and P/FDS Waivers may be found in Bulletin 00-08-04, "*Individual Eligibility for Medicaid Waiver Services*". The Department of Public Welfare's fair hearing process and procedures found in Title 55 Pa.Code Chapter 275 are delegated to the Bureau of Hearings and Appeals. The right to a hearing applies to recipients of Medicaid Waiver services pursuant to 42 CFR 431.220 (relating to Hearings).

An individual's rights to fair hearing and appeal will be discussed at least annually during the Individual Support Plan (ISP) annual review meeting and at any time the individual or surrogate requests to change services or add new services. The discussion will be documented on the individual's ISP and through a service note in Home and Community Services Information System (HCSIS).

### **A. Individual's Rights to Fair Hearing and Appeal**

When any of the following actions occur, the Administrative Entity (AE) or County Program is required to provide a copy of the Department's fair hearing and appeal procedures to the individual or the individual's surrogate and explain the right to a fair hearing. The Supports Coordination Entity may issue rights to fair hearing and appeal only with the concurrence of the AE or County Program around the following circumstances:

1. The individual is determined likely to require an Intermediate Care Facility for the Mentally Retarded (ICF/MR) level of care and is provided information about Waiver-funded services.
2. The individual who is determined likely to meet an ICF/MR level of care and is enrolled in Medical Assistance or surrogate is asked to sign the service delivery preference form (DP 457).
3. A decision or an action is taken that affects the individual's claim for eligibility or receipt of services. This applies to the individual's annual planning meeting as well as to any meeting or time that services are discussed with the individual or surrogate.
4. A decision or an action is taken to deny the individual a Waiver-funded service or to deny a willing and qualified provider of the individual's choice.
5. A decision or an action is taken to deny, suspend, reduce, or terminate a Waiver-funded service that is authorized on the individual's ISP.
6. The individual or surrogate notifies the AE or County Program of the decision to file an appeal, or requests information about the individual's appeal and fair hearing rights under the Waiver. The AE or County Program may not limit or interfere with the individual's or surrogate's freedom to file a request for a hearing (42 CFR 431.221 [relating to Hearings]). The AE or County Program must help the individual file the appeal if assistance is requested.

### **B. Appealable Actions**

The individual or the individual's surrogate has the right to request a fair hearing before the Department of Public Welfare (Department), Bureau of Hearings and Appeals, for any of the following adverse actions:

1. 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 is not

2. given the opportunity to express a service delivery preference for either Waiver-funded or ICF/MR services.
3. The individual or surrogate is denied the individual's preference of Waiver-funded or ICF/MR services.
4. Based on a referral from the 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.
5. The individual or surrogate is denied Waiver-funded service(s) of the individual's choice, including the amount, duration, and scope of service(s).
6. The individual or surrogate is denied the individual's choice of willing and qualified Waiver provider(s).
7. A decision or an action is taken to deny, suspend, reduce, or terminate a Waiver-funded service authorized on the individual's ISP. An individual or surrogate may sign the ISP signature page; however, the individual or surrogate may file a request for a fair hearing regarding those services if any services were reduced, suspended, changed, or terminated.

The individual or the individual's surrogate has the right to request a pre-hearing conference with the AE or County Program (Title 55 Pa.Code § 275.4(a)(3)(ii) [relating to Procedures]). The pre-hearing conference is optional for the individual or surrogate. The pre-hearing conference gives both parties the opportunity to discuss and attempt to resolve the matter prior to the hearing. Neither party is required to change its position. The pre-hearing conference does not replace or delay the fair hearing process. The date of the pre-hearing conference and notes of the discussion should be entered in a service note or the appropriate eligibility screen in HCSIS.

Certain Waiver actions related to level of care and Medicaid ineligibility are also subject to fair hearing and appeal procedures established through the local County Assistance Office (CAO). AE or County Program participation is expected whenever the CAO sends a notice confirming the level of care determination and the individual or surrogate appeals that notice through the CAO. The AE or County Program will receive notice of the hearing from the Department.

### **C. Actions Not Subject to Fair Hearing and Appeal**

The Department's fair hearing and appeals process does not apply to the following actions:

- Changes caused solely by Federal or State law or regulations requiring an automatic change adversely affecting some or all recipients (42 CFR 431.220 [relating to Hearings]).
- Changes solely established by a Waiver amendment approved by the Centers for Medicare and Medicaid Services.

- A non–Medicaid service funded outside of the Consolidated or P/FDS Waiver.
- A service provided during a period in which the individual is ineligible for Waiver funding.

#### **D. Written Notices and Appeal Timelines**

##### 1. Written Notices

Written notices are required to be sent to the individual or surrogate, the Supports Coordinator, and associated providers of service, if applicable, for the following reasons:

- To give the results of any ICF/MR level of care determination or re-determination.
- When a Waiver service is denied, suspended, reduced or terminated (advanced notice required).
- There is a delay in the receipt of authorized Waiver services as follows:
  - A delay of 45 calendar days after the effective date of Waiver enrollment.
  - A delay of 30 calendar days after the identification of the individual's change in need where funding exists to meet the need.
  - A delay of 30 calendar days after authorization of funding to meet the individual's change in need.
- To deny the choice of willing and qualified providers.

A written notice is required to be sent to the individual or surrogate at the time of any action affecting the individual's claim for services. In addition, the AE is required to provide an advance written notice of at least 10 calendar days to the individual or surrogate anytime the AE initiates action to reduce, suspend, change, or terminate a Waiver service. The advance notice shall contain a date that the appeal must be received by the AE in order to have Waiver services, already being provided to the individual at the time of appeal, continue during the appeal process. The 10-calendar day advance notice is determined from the mailing date of the written notice. The mailing date must be noted at the top of the written notice (for example, Mailing Date: January 15, 2008). The Mailing Date will be the actual date that the written notice is postmarked by the United States Postal Service.

All written notices should include the following:

- A statement of the action the AE intends to take.
- The reasons for the intended action.
- The specific regulations or policies that support or require the action.
- An explanation of the rights to a pre-hearing conference.
- An explanation of the individual's fair hearing and appeal rights.
- The appeal conditions under which affected services will continue (for example, the latest date the written appeal may be postmarked to meet the 10-calendar day requirement or the latest date the oral appeal may be received by the County Program or AE to meet the 10-calendar day requirement).

## 2. Appeal Timelines

When written notice is sent to the individual or surrogate that Waiver services will be reduced, suspended, or terminated because of an action taken or decision made by the AE, the individual has 10 calendar days to appeal the decision or action if they wish the Waiver services to continue during the appeal process. If the individual files an appeal (written or oral) within 10 calendar days of the noted mailing date of the written notification from the AE, the appealed Waiver service(s) are required to continue until a decision is rendered after the appeal hearing [Title 55 Pa.Code § 275.4(a)(3)(v)(C)(I)]. The postmark of a mailed appeal will be used to determine if the individual or surrogate met the 10-calendar day requirement.

The individual or surrogate has 30 calendar days to appeal a decision or action where the continuation of Waiver services is not desired. In addition, appeals regarding ICF/MR level of care decisions or actions regarding service delivery preference must be appealed within 30 calendar days of the mailing date of the written notification of the action by the AE to be considered by the Department [Title 55 Pa.Code § 275.3(b)(1)]. The postmark of a mailed appeal or the date the AE or County Program is notified of the oral appeal will be used to determine if the individual or surrogate met the 30-calendar day requirement.

If the AE initiates an action on Waiver services and does not provide the written notice as required, the individual will have 6 calendar months from the effective date of the action to file an appeal. When this appeal is filed, services will be reinstated retroactively to the date of discontinuance and will continue until an adverse decision is rendered after the appeal hearing.

Services that are denied without first being authorized in the ISP cannot be provided pending appeal. In these circumstances, the individual is afforded 30 calendar days to appeal the denial of the service.

### **E. Responsibility of the AE or County Program When an Individual Requests an Appeal**

When an individual or surrogate requests an appeal, it is the AE's or County Program's responsibility and the Supports Coordination Entity as appropriate to provide any help or guidance the individual or surrogate needs in the fair hearing request process. This help and guidance may include the following:

- Clearly explaining all factors and reasons for the questioned decisions or actions.
- Explaining appeal rights and fair hearing proceedings to the individual or surrogate, including appeal timeframes.
- Providing the Fair Hearing Request Form (DP 458, Attachment 1), explaining how to file the appeal, and, if necessary, explaining how to fill out the form. If the individual or surrogate requests help to complete the DP 458 form, the AE or County Program or Supports Coordination Entity may provide assistance in completing the form. All DP 458 forms must contain the signature of the individual or surrogate when the appeal is filed. If the signature is missing from the DP 458 form, the Bureau of Hearings and Appeals will contact the individual or surrogate directly to obtain the signature.

- Advising the individual that the individual may be represented by an attorney, family, friend, or other person. The AE or County Program or the Supports Coordination Entity should explain that the individual may contact his local bar association to locate legal services available to the individual and supply the individual with the agency contact information.
- Providing the individual or surrogate with contact information for local advocacy organizations that may help the individual or surrogate with the appeal process and assure that the individual's rights are protected.

## **F. Completion of the Fair Hearing Request Form (DP 458) and Cover Sheet**

Form DP 458 must be submitted for all Waiver appeal requests. The AE or County Program or Supports Coordination Entity may help the appellant complete the DP 458 form. The AE or County Program is responsible to ensure that the form is completed correctly and includes the following information:

- Date the form is completed.
- Name of Appellant (Individual or Surrogate).
- Appellant's Daytime Telephone Number.
- Appellant's Mailing Address.
- Appellant's signature. If the appellant makes a mark as the signature, two witnesses should also sign the form at that time. If the appellant is not able to sign or make a mark, the surrogate's signature will suffice.
- Reason for the appeal; an attached copy of the written notice that was issued by the AE notifying the individual of the decision or action can be considered as the reason.
- The Appellant's suggested remedy to the appeal.
- Name of the individual's surrogate, if applicable.
- Surrogate's current mailing address, if applicable.
- Surrogate's current telephone number, if applicable.
- Surrogate's relationship to individual (that is, provider, parent, attorney, etc.), if applicable.
- Surrogate's signature, if applicable.

Two types of hearings are available to the appellant:

- Telephone hearing. Telephone hearings are conducted between the Administrative Law Judge, the AE or County Program, and the appellant over the telephone. If the appellant does not have a telephone, a telephone at the County MH/MR Program or AE office or a phone of a neighbor, relative, or friend may be used to participate in the hearing.
- Face-to-face hearing. Currently, the appellant and the AE or County Program must travel to a hearing site in one of the following locations to attend a face-to-face hearing: Erie, Harrisburg, Philadelphia, Pittsburgh, Plymouth (Luzerne County), or Reading. 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.

If a language interpreter or other communication assistance is required by the individual or surrogate, the requirement should be indicated on the appeal form. In addition, any reasonable accommodations needed for the individual or surrogate to participate in the hearing should be noted on the appeal form.

The AE or County Program must complete and attach the Bureau of Hearings and Appeals Agency Appeal Cover Sheet (Attachment 2) to DP 458. This cover sheet is required for the Bureau of Hearings and Appeals to schedule the hearing. Parts II, III, IV, V, and VI of the cover sheet must be completed by the AE or County Program. Instructions to complete the form are included as part of Attachment 2. Part V requests an Issue Code for the appeal. A list of Mental Retardation Services Appeal Issue Codes is included as part of Attachment 2. A copy of the completed cover sheet and completed DP 458 form is sent to the appropriate ODP Regional Office and the ODP Central Office of Developmental Programs **within 3 business days of completion.**

The Request for Fair Hearing form and the Agency Appeal Cover Sheet are sent to the appropriate Bureau of Hearings and Appeals' Regional Office below so that a hearing may be scheduled. All questions regarding the appeal process (see Title 55 Pa.Code § 275.4 [relating to Procedures]) must be directed to the Bureau of Hearings and Appeals Site Administrator at the appropriate Bureau of Hearings and Appeals regional location as follows:

**Central Region:** Adams, Berks, Centre, Cumberland, Dauphin, Franklin, Fulton, Huntington, Juniata, Lancaster, Lebanon, Lehigh, Lycoming, Mifflin, Montour, Northampton, Northumberland, Perry, Schuylkill, Snyder, Union, York

Bureau of Hearings and Appeals  
2330 Vartan Way, 2nd Floor  
Harrisburg, PA 17110  
Phone: (717) 783-3950  
Fax: (717) 772-2769

**Northeast Region:** Bradford, Carbon, Clinton, Columbia, Lackawanna, Luzerne, Monroe, Pike, Tioga, Sullivan, Susquehanna, Wayne, Wyoming

Federal Hearings and Appeals  
117 West Main Street  
Plymouth, PA 18651  
Phone: (800) 664-7177  
Fax: (570) 719-0306

**Southeast Region:** Bucks, Chester, Delaware, Montgomery, Philadelphia

Bureau of Hearings and Appeals  
1400 Spring Garden Street, Room 1608  
Philadelphia, PA 19130-9943  
Phone: (215) 560-2145  
Fax: (215) 560-2378

**Western Region:** Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, Westmoreland

Bureau of Hearings and Appeals  
Two Gateway Center, Suite 1125  
603 Stanwix Street  
Pittsburgh, PA 15222  
Phone: (412) 565-5213  
Fax: (412) 565-5514

## **G. Appeal and Fair Hearing Submission Procedures**

### 1. Written and Oral Appeals

Appeals are usually made in writing, but may be made orally (Title 55 Pa.Code § 275.4(a)(2) [relating to Procedures]). The appeal must be made to the agency that notified the individual of the action to be taken (that is, the AE or County Program) within 10 or 30 calendar days of the mailing date of the written notice of the action. If the AE or County Program does not give a written notice at the time of the action, the individual or surrogate is afforded 6 calendar months from the effective date of the action to file an appeal. Appeals must specify the action that is appealed, suggest remedies to resolve the appeal, and be signed by the individual or surrogate.

#### a. Oral Appeals

If the request for a hearing is made orally, the AE or County Program will do one of the following:

- Record the date of the oral request for a hearing, a statement of the appealed action, and the reasons given for the appeal on Form DP 458. The AE or County Program will then obtain the signature of the individual or surrogate on Form DP 458.
- Supply Form DP 458 to the individual or surrogate for completion, signature, and return to the AE or County Program **within 3 business days** as required by Title 55 Pa.Code § 275.4(a)(2)(iv).

Appeals must be filed in writing using form DP 458 and include a signature of the individual or surrogate. For oral appeal requests that are not documented in writing by Form DP 458 within the 3 business days, the AE or County Program will send a completed DP 458 form that includes a notation of the oral appeal, any written confirmation of the appeal signed by the individual or surrogate, if appropriate, and a copy of the written notice of proposed action or decision to the Bureau of Hearings and Appeals. A cover sheet is also attached to the appeal (please see Section II.F. above). However, this appeal will not be considered by the Bureau of Hearings and Appeals as complete

(perfected). The Bureau of Hearings and Appeals will contact the appellant to obtain the signature and additional information as needed.

b. Written Appeals

When the AE or County Program receives the written appeal form (DP 458), it is immediately date stamped to show receipt. The AE or County Program will review the appeal internally to assure that the decision in question is in accordance with Department regulations and policies and that the AE's or County Program's decision was correct.

- If the AE or County Program determines that the decision was correct, the appeal is forwarded to the Bureau of Hearings and Appeals, the appropriate ODP Regional Office, and the ODP Central Office **within 3 business days from the date the appeal was received and date stamped**. A cover sheet is also attached to the appeal (please see Section II.F. above).
- If the AE or County Program finds that the decision in question is not in accordance with Department regulations and policies or if new or additional information that alters the decision is included with the appeal, the AE or County Program will forward the appeal to the Bureau of Hearings and Appeals, the appropriate ODP Regional Office, and the ODP Central Office **within 3 business days from the date the appeal was received and date stamped**. A cover sheet is also attached to the appeal (please see Section II.F. above). In addition, the AE or County Program will take corrective action to resolve the issue and notify the appellant and the Supports Coordinator in writing of the action taken to correct the issue under appeal. A copy of the notification will be kept in the individual's file and the corrective action taken and date of the written notification will be documented in a service note or on the appropriate eligibility screens in HCSIS. If the appellant is satisfied with the corrective action, the individual or surrogate may submit a written request to the AE or County Program to withdraw the appeal. The written request for withdrawal that includes a visible date stamp received notation will be forwarded to the Bureau of Hearings and Appeals for processing.

For both written and oral appeals, a copy of the appeal and the Cover Sheet is sent to the appropriate ODP Regional Office, the ODP Central Office, and to the individual or surrogate at the time of submission to the Bureau of Hearings and Appeals. The ODP Regional Office will conduct a Service Review of appeals by a Waiver participant to ensure that the appealed actions are in compliance with regulations, Waivers, the State Medicaid Plan, and applicable Bulletins. Please refer to Bulletin 00-06-13, "Service Review Protocol for Individuals in the Consolidated and Person Family Directed Support Waivers" for more information on the service review process.

In the event an individual or surrogate submits form DP 458 directly to the Bureau of Hearings and Appeals instead of to the local AE or County

Program, the Bureau of Hearings and Appeals will forward the DP 458 form to the AE or County Program for normal processing.

## 2. The Hearing is Scheduled

The Bureau of Hearings and Appeals has 90 calendar days from the receipt of the request to adjudicate the appeal (Title 55 Pa.Code § 275.4(b)(1) [relating to Procedures]). Hearings are scheduled by the Bureau of Hearings and Appeals as soon as possible, allowing at least 10 calendar days notice to be given to the individual or surrogate. Less advance notice may be given if requested by the individual or surrogate.

Postponement of the hearing may be requested by the individual or surrogate or by the AE or County Program. The individual or surrogate or the AE or County Program must contact the Bureau of Hearings and Appeals Administrative Law Judge and provide a reason for the postponement request. The Bureau of Hearings and Appeals Administrative Law Judge may approve or deny the request for postponement. If postponed, the hearing will be rescheduled as soon as possible.

## 3. The Hearing

The hearing is held before a Bureau of Hearings and Appeals Administrative Law Judge. The Bureau of Hearings and Appeals Administrative Law Judge will obtain testimony from the individual or surrogate, witnesses, and the AE or County Program pertaining to the issues in question. Each side will present its view and may submit additional information to support its position on the issue. The hearing decision will be based solely on the information presented at the hearing.

The following are situations that may affect the hearing process:

- The request for hearing may be withdrawn only by a written request from the individual or surrogate. If the appeal request forms have been forwarded to the Bureau of Hearings and Appeals, the AE or County Program will immediately notify the Bureau and send a copy of the withdrawal that shows a date stamp of receipt.
- The appellant or the surrogate fails to appear at the scheduled hearing without good cause as determined by the Administrative Law Judge. The appeal will be dismissed.
- The AE or County Program fails to appear at the hearing without good cause as determined by the Administrative Law Judge. The appeal will be sustained by the Administrative Law Judge. The AE or County Program will be notified of the Judge's written decision.
- If neither the individual or surrogate nor the AE or County Program appears at the hearing, the hearing will be rescheduled.

For additional information on the hearing process and what is required from the individual or surrogate and the AE or County Program, please refer to Title 55 Pa.Code § 275.4(f) and (g) (relating to Procedures).

#### 4. Appeal Decision Rendered

The Director of the Bureau of Hearings and Appeals will issue a decision based on the recommendation of the Administrative Law Judge. The decision must be rendered 90 calendar days from the date of the appeal request (Title 55 Pa.Code § 275.4(b)(1) [relating to Procedures]). A copy of the decision will be sent to the individual or surrogate and the AE or County Program. Hearing decisions are binding to the individual or surrogate as well as to the AE or County Program. However, each side has the right to appeal the Bureau of Hearings and Appeals Administrative Law Judge's decision by requesting Reconsideration of the decision by the Secretary of the Department. The individual or surrogate may also appeal the decision to Commonwealth Court (for more information, please see Sections II.H and II.I below).

The notice of decision will specify the reasons for the decision and identify the supporting evidence. The decision will also specify the eligibility of the individual and specify the services for which the individual is eligible. It will inform the appellant of the right to petition the Commonwealth Court or request Reconsideration by the Secretary of the Department if the appellant is dissatisfied with the adverse hearing decision. The AE or County Program is required to implement the hearing decision immediately, or as otherwise indicated in the Bureau of Hearings and Appeals' decision.

#### **H. Appeal to Commonwealth Court**

When an adverse decision to the appellant is rendered by the Director of the Bureau of Hearings and Appeals, the appellant has 30 calendar days to appeal the decision and petition the Commonwealth Court (Title 55 Pa.Code § 275.4(h)(3)(i)).

#### **I. Reconsideration of the Appeal Decision by the Secretary of Public Welfare**

When the Bureau of Hearings and Appeals renders a decision on the appeal, the AE or County Program and the individual or surrogate have the right to request Reconsideration of the decision by the Secretary of the Department. The Request for Reconsideration must be filed in writing within 15 calendar days of the date of the Bureau of Hearings and Appeals' decision (Title 55 Pa.Code § 275.4(h)(4)(ii) [relating to Procedures]). The Reconsideration request must be made in writing and include the reason for the reconsideration and detailed reasons why the AE or County Program or the individual disagrees with the appeal decision. Requests for Reconsideration that are received by the Department will halt any proposed action outlined in the written appeal decision. All requests for Reconsideration should be addressed to the Secretary of Public Welfare, but mailed to the Director of the Bureau of Hearings and Appeals.

The Secretary may affirm, amend, or reverse the decision of the Director of Hearings and Appeals, or remand the case to the Bureau of Hearings and Appeals for further investigation. Further information regarding the Reconsideration process may be found in Title 55 Pa.Code § 275.4(h)(4) (relating to Procedures).

## **J. Appeal to Commonwealth Court**

If the individual or surrogate disagrees with the Reconsideration decision rendered by the Secretary of Public Welfare, an appeal may be filed to the Commonwealth Court. This appeal must be filed within 30 calendar days of the date of the Secretary's written decision (Title 55 Pa.Code § 275.4(h)(4)(iv) [relating to Procedures]).

### **OBSOLETE BULLETINS:**

MR Bulletin 00-00-09, "*Service Preference in Medicaid Waivers for Individuals with Mental Retardation*" (all parts)

MR Bulletin 00-04-07, "*Clarifying Procedures for Individual and Provider Appeals*", (Individual Appeals information contained in this Bulletin is obsolete; Provider Appeals information remains in effect.)

MR Bulletin 99-86-01, "*Procedures for Review of Service Eligibility and Termination Decisions*"

### **OBSOLETE FORMS:**

MR 458, Fair Hearing Request Form (**replaced by DP 458 dated 4/08**)

DP 458, Fair Hearing Request Form dated 3/08 (**replaced by DP 458 dated 4/08**)