

## **Fair Hearing Request Procedures**

### **Request for a Fair Hearing:**

A Request for a Fair Hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present its case to a higher authority.

The State or local agency shall not limit or interfere with the individual's freedom to request a hearing (7 CFR &246.9, (d)). Hearing requests by appellants can be made verbally, or in writing and delivered or sent to the State or local agency.

When possible, an **Agency Conference** should be held to resolve the problem on the local level. The State Agency may adopt Local Level Hearings (agency conferences) in some areas, such as those with large caseloads, and maintain only State Level Hearings in other areas.

### **Agency Conference:**

An Agency Conference is defined as problem resolution discussion with the supervisory personnel of the clinic and the participant. The State Agency will have a representative present at all Agency Conferences (TBD). In participating in the Agency Conference, the participant agrees to try and resolve the problem. If the Agency Conference does not resolve the problem to the applicant's satisfaction, or if the applicant does not want an Agency Conference, she/he has the right to a Fair Hearing with the State Department of Health Hearing Officer.

The participant must be informed that the Agency Conference is optional and that they have a right to a Fair Hearing instead.

### **Notification of Appeal Rights:**

The local agency shall provide to all applicants and participants the statements on the appropriate forms that outline their rights to an Agency Conference or Fair Hearing, including instructions for making the appeal. Applicants and participants shall also be informed of their rights to be represented by a relative, friend, legal counsel, or other spokesperson.

Copies of the Agency Conference/Fair Hearing form shall be given to each person at the time of denial of participation or termination, one given to the individual, the other retained in their chart.

This notification is not to be given at the expiration of a certification period, unless their benefits may be jeopardized at the next certification visit (as would be the case when Priority System was being used by a local agency).

### **Time Limit for Request:**

Agency Conference/Fair Hearing must be requested within sixty (60) days from the date of the notice of adverse action was mailed or given to the applicant by the local agency (7 CFR &246.9, (e)).

The Agency Conference should be held within two (2) weeks of the request. A Fair Hearing must be held within three (3) weeks of receipt of request by the State Agency.

Written notification of the decision made in the Conference must be made to the appellant by registered mail within fifteen (15) days; in the case of a Hearing, notification must be made within forty five (45) days.

If the appellant is not satisfied with the Conference decision, she/he may request a Fair Hearing; this request must be made within sixty (60) days from the effective date of the original adverse action taken by the local agency.

### **Denial or Dismissal of Request:**

The State and local agencies shall NOT deny or DISMISS a request for a hearing unless:

- a. The request is not received within the sixty (60) working day limit set above.
- b. The request is withdrawn in writing by the appellant or a representative of the appellant;
- c. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
- d. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

### **Continuation of Benefits:**

Participants who appeal the termination of benefits within the period of time provided as defined by this section **MUST** continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to:

- a. Applicants denied benefits at initial certification;
- b. Participants whose certification period has expired; or
- c. Participants who become categorically ineligible for benefits;

Under the three circumstances stated above, applicants or participants may appeal the denial or termination, but **MUST NOT** receive benefits while awaiting the Hearing (7 CFR &246.9, (g)).

### **Uniform Rules of Procedures:**

State and local agencies shall process each request for a Conference/Hearing under uniform rules of procedure and shall make these rules of procedure available for public inspection and copying. At a minimum, such rules shall include:

- a. the time limits for requesting and conducting a Conference/Hearing;
- b. all advance notice requirements;
- c. the rules of conduct at the Conference/Hearing; and
- d. the rights and responsibilities of the appellant.

These rules shall not be unduly complex or legalistic (7 CFR &246.9, (h)).

### **Hearing Official:**

The Conference/Hearing shall be conducted by an impartial official who has no personal stake or involvement in the decision, and who was not directly involved in the initial determination of the action being contested.

The **Hearing Official** shall (7 CFR &246.9, (i)):

- a. administer oaths or affirmations if required by the State;
- b. ensure that all relevant issues are considered;
- c. request, receive and make part of the Hearing record all evidence determined necessary to decide the issues being raised;
- d. regulate the conduct and course of the Hearing consistent with due process to ensure an orderly hearing;
- e. order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the agency; and
- f. render a Hearing decision which will resolve the dispute.

## **Conduct of the Agency Conference/Hearing:**

The Hearing Official shall mail a notice of the Hearing, which includes an explanation of the procedure and the date, time, and place and reason for the Conference to the appellant and the appellant's representative.

- a. State or local agency shall ensure that the Hearing is accessible to the appellant and is held within three (3) weeks from the date the State or local agency received the request for a hearing. The Conference should be held within two (2) weeks of the request.
- b. The State or local agency shall provide the appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice.
- c. Local agency staff that has knowledge of the dispute should be in attendance as well as legal counsel for the agency if the agency desires. The local agency shall have the opportunity to present oral and documentary evidence and to examine, question, or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.
- d. The agency representative shall conduct the Conference without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.
- e. The Hearing Official (State or local agency – in Federal regulations) shall also provide the appellant or representative an opportunity to:
  1. examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
  2. be assisted or represented by an attorney or other persons;
  3. bring witnesses;
  4. advance arguments without undue interference;
  5. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
  6. Submit evidence to establish all pertinent facts and circumstances in the case.

### **Timeframe for Fair Hearing Official's Decision:**

Written notification of the decision made in the Conference must be made to the appellant by registered mail within fifteen (15) days; in the case of a Hearing notification must be made within forty five (45) days.

The decision by the hearing official shall:

1. summarize the facts of the case;
2. specify the reasons for the decision; and
3. identify the supporting evidence and the pertinent regulations or policy;
4. the decision shall become part of the record.

Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the Hearing Official. The State or local agency shall retain the hearing record for three (3) years (&246.25) and make them available for copying and inspection, to the appellant or representative at any reasonable time.

### **Fair Hearing Decisions:**

When a State or local agency pursues collection of a claim against an individual participant who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits, which must be repaid, and of the right to a fair hearing.

1. If the decision is **IN FAVOR** of the appellant and benefits were denied or discontinued, benefits shall begin immediately.
2. If the decision concerns **DISQUALIFICATION**, and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.
3. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State Agency.

4. The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within fifteen (15) days of the mailing date of the hearing decision notice.
5. If the decision being appealed concerns **DISQUALIFICATION** from the program, the appellant shall **NOT** continue to receive benefits while an appeal to the State Agency of a decision rendered on appeal at the local-level is pending.

The decision of a hearing official at the local-level is binding on the local agency and the State Agency **UNLESS** it is appealed to the State-level and **OVERTURNED** by the State hearing official.

### **Judicial Review:**

If a State-level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State Agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State Agency shall explain the right to pursue the judicial review of the decision.