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Hearings

Objectives for Section 1300

1. Define authorized representative in a fair hearing process;
2. Define adequate and timely notice;
3. Explain the conduct of hearings.

1300.1 Introduction-Hearings

The Department shall notify an individual in writing of the right to obtain a fair hearing, the method to obtain the hearing, and that the individual may represent himself/herself or use an authorized representative at a fair hearing.

1300.2 Description of an Authorized Representative of the Appellant in the Fair Hearing Process

For the purposes of this chapter, an "Authorized representative" means:

1. The appellant's spouse or domestic partner;
2. The appellant's parent if the appellant is a minor;
3. The appellant's legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the appellant's legal guardian but who has not yet been appointed the appellant's legal guardian as of the date required to request a fair hearing under COMAR Regulation 10.01.04 if a copy of the request for guardianship is provided to the Department along with the request for a fair hearing;
4. 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;
5. The appellant's health care surrogate as defined in Health General Article, §5-605, Annotated Code of Maryland;
6. The appellant's legal counsel, if the counsel files a statement attesting to his/her active, simultaneous and on-going representation of the appellant along with the request for a fair hearing;
7. The personal representative of the estate of the appellant who has been appointed by the State's Orphan's Court if a copy of the appointment is provided to the Department along with the request for a fair hearing;
8. Any person the appellant has named in writing where:
    a. The appointment details the specific issue the appellant wishes to appeal;
    b. The appointment details that the person only has the authority to pursue the appellant's appeal rights regarding this specific issue;
    c. The appointment details that the authority does not extend to any other representation on behalf of the appellant in any other matter;
    d. The appointment details that the authority shall remain in effect for all levels of the appeal process but shall automatically terminate thereafter; and
    e. A copy of the appointment of the person signed by the appellant is provided to the Department;
9. Any person who in good faith is acting in the best interest and on behalf of the appellant if:
    a. The person or the person's directors, employees, officers or employers, if any, do not have a direct financial interest in the outcome of the fair hearing; and

b. The person provides the Department with a declaration declaring the appellant's legal incapacity along with the request for a fair hearing; or

10. In the event that none of the individuals listed in section 1- 8 above exist and that no person covered by section 9 above is willing and able to act on behalf of the appellant, then and only then, any person with a direct financial interest in the outcome of the hearing or a person whose employer has a direct financial interest in the outcome of the hearing if the person provides the Department with a declaration along with the request for a fair hearing declaring:
    a. To the best of his/her belief, the appellant's legal incapacity;
    b. To the best of his/her belief, the non-existence of any of the individuals listed in section 1-8 above;
    c. To the best of his/her belief, the non-existence of any person covered by section 9 above who is willing and able to act on behalf of the appellant; and
    d. That the individual only has the authority to pursue the appellant's appeal rights regarding this specific issue, that the authority does not extend to any other representation on behalf of the appellant in any other matter, and that the authority remains in effect for all levels of the appeal process but automatically terminate thereafter.

1300.3 Hearings

(a) Request a Hearing

1. The Department shall grant an opportunity for a hearing to:
    a. Any applicant who requests it because he/she believes the LDSS has denied his/her eligibility incorrectly or has not acted on his/her application with reasonable promptness; and
    b. Any recipient who requests it because he/she believes the Department or the LDSS has taken an action erroneously.

Note: *The local department may not deny an applicant or recipient the right to request a hearing. The granting of the request is within the scope of responsibility of the Hearings Office, DHMH, even when the sole issue being appealed is a federal or state law requiring an automatic change.*

2. A person requesting a hearing shall notify the Department on a form designated by the Department, within 90 days from the date the notice of action was mailed by the LDSS.
3. A hearing is not required if the hearing officer decides that the sole issue is a federal or State law requiring an automatic change which adversely affects some or all recipients.

(b) Timely and Adequate Notice

The LDSS may not terminate assistance or reduce benefits unless timely and adequate notice has been given to a recipient. For purposes of this requirement:

1. "Timely" means that the notice is mailed at least 10 days before the action becomes effective. The LDSS shall shorten the period of advance notice to 5 days before the date of action if:
   a. It has facts indicating that action should be taken because of probable fraud by the recipient; and
   b. The facts have been verified, if possible through secondary sources.
2. "Adequate notice" means a written notice that includes:
   a. A statement of the intended action;
   b. The reason for the intended action;
   c. The specific regulatory citation supporting the intended action;
   d. Explanation of the right to request a hearing; and
   e. Explanation of the circumstances under which assistance will be continued if a hearing is requested.

Note: *The issuance of timely and adequate notification where applicants or recipients are determined ineligible is the responsibility of the local departments. In general, no adverse action may be taken without giving adequate notice; some adverse actions may be taken without giving timely notice.*

3. Waiver of Timely Notice Requirement
   a. Timely notice need not be provided in the following circumstances:
      - The recipient who was the sole member of the assistance unit dies.
      - The recipient indicates in writing that he/she no longer wishes assistance, and that he/she understands that termination of assistance will be the consequence of that written statement.

Note: *An SSI recipient's request to withdraw from the Program cannot be honored because the agreement between the federal government and the State requires the State to establish coverage for all SSI recipients. The SSI recipient who wishes to avoid claim against his/her estate by the program may choose not to use his/her Medical Assistance card.*

- The recipient gives information which requires termination of assistance and indicates in writing that he understands that termination of assistance will be the consequence of supplying the information;

- The recipient is admitted to an institution where he is ineligible under the Program for further services.

Note: *Such institution include state mental hospitals for anyone under age 65, out of state institutions except when DHMH has authorized the placements, and state-owned and operated residential facilities housing persons under the jurisdiction of the Juvenile Service Administration. Ineligibility is established beginning with the first full month of institutionalization.*

- The recipient's whereabouts are unknown as evidenced by the return of unfowardable mail directed to him/her; or
- The recipient is accepted for Medicaid services in another jurisdiction, state, territory, or commonwealth.

b. Adequate notice shall be provided by the LDSS upon receipt of acceptable written verification, but no later than the date of action.

4. If a recipient files a request for a hearing within 10 days from the date the notice of action was mailed, the recipient's benefits shall continue at their previous level until a decision is rendered after the hearing or the request for a hearing or the request for a hearing is dismissed by the hearing officer.

The initial continued coverage period is a one-time-only period of three months. Subsequent one-time-only periods of one month each must be granted until the hearing officer's written decision is received by the local department.

5. A request for a hearing shall be dismissed if the hearing officer determines that the sole issue appealed is one of federal or State law. The recipient shall be notified in writing that eligibility for assistance is being terminated or benefits are being reduced.

(c) Recovery of Medical Assistance Expenditures Made on Behalf of Ineligible Persons

1. The LDSS shall refer to the Medical Assistance Compliance Administration on a form designated by the Department, all cases in which:
   a. An otherwise ineligible recipient is granted Medical Assistance coverage pending a hearing decision; and
   b. The hearing officer subsequently affirms the decision made by the local department of social services.

2. The Medical Assistance Compliance Administration shall institute procedures to recover the cost of any expenditures made on behalf of a recipient in cases identified in §C (1) of this regulation. This provision may not apply to a person who requested a hearing and extended benefits resulting from a bona fide belief that the LDSS has taken an adverse action erroneously.

A significant feature of the hearing regulation involves the recovery of expenditures made on belief of ineligible persons, who appealed without a bona fide belief that the LDSS was wrong in its decision. An ineligible recipient may be granted a continuation of coverage solely because he/she appeals the decision of ineligibility; if the hearing officer affirm the decision of ineligibility, the program will seek reimbursement from the recipient for any expenditures made on his/her behalf during the period for which he/she was covered solely because he/she appealed, unless he/she can demonstrate that this appeal was based on a bona fide belief that the LDSS was acting in error in declaring him/her ineligible . The local department will be responsible for advising the recipient of the possible consequences of using the Medical Assistant card, for identifying the case records for future referral, and for completing a referral form for the Medical Assistance Compliance Administration on all such cases in which the hearing officer affirms the local department's decision. Medical Assistance Compliance Administration will determine the recipient's intent in appealing and the extent of programs expenditures, and will seek reimbursement if appropriate.

(d) The Conduct of Hearings

The conduct of hearings is governed by the regulations of the Office of Hearings, DHMH. The local departments are involved in the process as conduits for hearing requests and as custodians of the case record. A representative of the LDSS is expected to attend the appeal hearing and present the LDSS's position on the issues which form the basis for the appeal. The local department should offer a pre-appeal conference to the appellant to ensure that the appellant understands the reason for the local department's decision; the appellant must be advised that he/she does not give up his/her right to a hearing by participating in such a conferences.

Hearings shall be conducted according to COMAR 10.01.04

Section 1300 Frequently Asked Questions and Answers

Hearings

1. If a customer is not eligible for MA, how long does the customer have to request a hearing?

   The customer has 90 days from the date the notice of action was mailed by the local department.

2. Does every customer have the right to request a hearing?

   Yes. Every customer has the right to request a hearing in regards to their MA eligibility.

3. Will a customer benefits continue if the customer files a request for hearing within the appropriate time from the date the notice of action to closing case benefits was mailed?

   Yes. If the customer files a request for hearing within 10 days from the date that the notice of action was mailed or prior to the actual closing of case benefits, the benefits shall be continued until a decision is rendered after the hearing.

4. What does "adequate notice" mean in reference to Hearings in Chapter 13?

   Adequate notice means written notice that includes intended action, reason for intended action, regulatory citation, right to request for intended action, regulatory citation, right to request a hearing and circumstances which assistance will be continued if a hearing is requested.

5. What are the requesting methods?
   1. Oral Request
   2. Written Request
   3. Customer completed DHR/FIA 334 form (Requesting for Hearing)