

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

100.03.05 RIGHT TO APPEAL AND FAIR HEARING

At the time of any action affecting an applicant or recipient's claim for assistance, the applicant or recipient must be:

- Informed of his right to a fair hearing;
- Notified of the method by which he may obtain a hearing, and
- Informed of his right to represent himself at the hearing or to be represented by an authorized person such as an attorney, relative, friend, or other spokesperson.

The agency must grant the opportunity for a fair hearing to any applicant or recipient who requests it because his claim for medical assistance is denied or not acted upon with reasonable promptness or because he believes that the agency has taken an action erroneously. A hearing request made in connection with a rebuttal prior to any adverse action being taken will not be accepted. **NOTE:** The agency need not grant a hearing when the sole issue is a federal or state law requiring an automatic change which adversely affects some or all recipients.

Notification Regarding Appeal Rights

If an interview is conducted, the right to appeal must be discussed with the applicant/recipient. In addition, individuals are notified of appeal rights by statements included on the ABD and FCC application forms and on all notices. A hearings pamphlet is included with adverse action notices informing clients of the right to appeal and providing other information about the hearings process. These pamphlets are also available for distribution in regional offices.

100.03.05A THE HEARING PROCESS

Hearings Defined

A fair hearing is an orderly, but informal meeting in which a client or his representative is afforded an opportunity to address an impartial hearing officer for the purpose of presenting oral testimony and/or evidence of his entitlement to medical assistance and services. The applicant or recipient has the right of confrontation and cross-examination as described further in this section. A fair hearing is a *de novo hearing* which means it starts over from the beginning. A new determination of the client's eligibility is made based on all the evidence that can be secured, without regard to whether the evidence was available at the time the regional office took action. Thus, the process is not essentially different from a determination of eligibility.

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Types of Hearings

The client or his representative may request to present an appeal through a local-level hearing, a state-level hearing, or both. In an attempt to resolve issues at the lowest level possible, offices should encourage clients to request a local hearing first. The only exception to requesting a local hearing is when the issue under appeal involves disability, blindness or level of care. Therefore, the actions below which involve medical decisions cannot be addressed in a local hearing. A state hearing must be requested for:

- A disability or blindness denial, or termination, or
- A level of care denial or termination for a Disabled Child Living at Home.

Hearing Methods

Local and/or state level hearings will be held by telephone unless, at the discretion of the hearing officer, it is determined that an in-person hearing is necessary.

Regional Office Handling Local Hearing Request

An appeal will ordinarily be filed in the regional office responsible for the adverse decision or delay in action. If the client has moved to another regional office's jurisdiction at the time the appeal is made, it is possible for the regional office serving the client's current county of residence to act for the former regional office. However, the hearing officer may request the participation of staff in the regional office where the action was originally taken if necessary or advisable.

Representation

The request for a state or local hearing must be made in writing by the client or his legal representative.

“Legal representative” includes the client's authorized representative, an attorney retained to represent the client, a paralegal representative with a legal aid service, the parent of a minor child (if the client is a child), a legal guardian or conservator or an individual with power of attorney for the client.

The client may be represented by anyone he designates. If the client elects to be represented by someone other than a legal representative, he must designate the person in writing. If a person, other than a legal representative, states that the client has designated him as the client's representative and the client has not provided written verification to this effect, the regional office will ask the person to obtain written designation from the client.

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Oral Hearing Requests

An oral request for a hearing must be put in written form. When an oral request is made, the specialist will inform the client that the request must be put in a letter or signed statement and mailed to the regional office *or* the specialist will mail the appropriate hearing request form, i.e., DOM 350, Request for Local Hearing, or DOM 352, Request for State Hearing, to the client for signature and return. The specialist must explain that the hearing will not be scheduled until a written request is received by either the regional or state office. If the written request is not received within the adverse action period, continuation of benefits is not applicable. If the request is not received in writing within 30 days, a hearing will not be scheduled unless good cause exists.

Written Hearing Requests

A simple statement requesting a hearing that is signed by the client or his legal representative is sufficient; however, if possible, the client should state the reason for the request. The written request may be mailed to the regional office or state office. If the letter does not specify the type of hearing desired, the specialist will contact the person making the request to determine whether a local or a state hearing is being requested. If contact cannot be made within three (3) days of receipt of the hearing request, the regional office will assume a local hearing is requested and schedule accordingly. However, if the hearing involves a medical decision, which requires that a state hearing be held or if a state hearing is requested, the request will be forwarded to Executive for assignment to a hearing officer.

Hearing Requests Made In Person

The client may come to the regional office or meet with a specialist in person to request a hearing. The specialist must first determine what level of hearing, local or state, is desired. If a state level hearing is *required* because the hearing request is based on a medical decision, this will be explained to the client. Otherwise, if the client is unsure of the type hearing desired, the specialist will explain the difference between the two levels of appeal and explain a state hearing may still be available if the local hearing decision is not favorable. The specialist will assist the client in completing the appropriate form, DOM-350 or DOM 352, whichever is applicable. If a state hearing is required or requested, the specialist can assist in mailing the request to state office or the client may choose to mail it himself.

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Appeal By Both Members Of A Couple

When both members of an eligible couple wish to dispute the action or inaction of the regional office that affects both applications and cases similarly and arose from the same issue, one or both members may file the request for a hearing. The couple will be assured that both may present evidence at the hearing and that the agency's decision will be applicable to both. If both file a hearing request, two hearings will be registered, but they will be conducted on the same day and in the same place, either consecutively or jointly, according to the wishes of the couple. If it is their wish for only one of them to attend the hearing, this is permissible.

Time Limit For Filing A Hearing Request

The client has 30 days from the date the appropriate notice is mailed to request either a local or state hearing. This 30-day filing period may be extended if the client can show good cause for not filing within 30 days. Good cause includes, but may not be limited to, illness, failure to receive the notice, being out of state, or some other reasonable explanation. If good cause can be shown, a late hearing request may be accepted, provided the facts in the case remain the same. However, if a client's circumstances have changed or if good cause for filing a request beyond 30 days does not exist, a hearing request will not be accepted. If the client wishes to have his eligibility reconsidered, he may reapply.

Timeframe for Holding Local or State Hearings

The Division of Medicaid must take final administrative action on a hearing, whether state and/or local, within 90 days of the date of the initial request for a hearing. Although regulations allow 90 days, the agency will make every effort to hold hearings promptly and render decisions in a shorter timeframe.

Scheduling the Hearing

Upon receipt of a written request for a hearing, the request will be acknowledged in writing and the hearing scheduled. If a local hearing is requested the regional office will notify the client or representative in writing of the time and date of the local hearing. A copy of the letter scheduling the local hearing will be filed in the case record. If a state hearing is requested, the hearing officer assigned to the case will notify the appropriate person in writing of the time and date of the state hearing.

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Scheduling the Hearing (Continued)

The notice scheduling the time and date of a state or local hearing must be mailed to the client at least five (5) days before the day the hearing is scheduled. A hearing pamphlet will be included with the letter scheduling either a local or state hearing.

Attendance at the Hearing

A state or local hearing is not open to the public. All persons attending the hearing will attend for the purpose of giving information on behalf of the claimant or rendering him assistance in some other way, or for the purpose of representing the Division of Medicaid. All persons attending the hearing will be asked to give information pertinent to the issues under consideration.

Withdrawn or Abandoned Hearings

The hearing process is initiated by a written request and can be terminated only by a written statement in which the client or representative withdraws the request for a hearing. A state or local hearing request may be withdrawn at any time prior to the scheduled hearing or after the hearing is held, but before a decision is rendered. As indicated, the withdrawal must be in writing and signed by the client or representative.

A hearing request will be considered abandoned if the client or representative fails to appear or is unavailable for a scheduled hearing without good cause. If no one is available for a hearing, the appropriate office will notify the client in writing that the hearing is dismissed unless good cause is shown for not attending. Following failure to appear for a hearing, the proposed adverse action will be taken on the case if the action is not already in effect.

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Rights of the Client

The client or his representative has the following rights in connection with a local or state hearing:

- The right to examine at a reasonable time before the date of the hearing and during the hearing the contents of the applicant or recipient's case record.
- The right to have legal representation at the hearing and to bring witnesses.
- The right to produce documentary evidence and establish all pertinent facts and circumstances concerning eligibility.
- The right to present an argument without undue interference and to question or refute testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

Group Hearings

A group hearing can be held for a number of clients under the following circumstances:

- The Division of Medicaid may consolidate the cases and conduct a single group hearing when the only issue involved is one of a single law or agency policy.
- The clients may request a group hearing when there is one issue of agency policy common to all of them.

In all group hearings, whether initiated by the Division of Medicaid or by the clients, the policies governing fair hearings must be followed. Each individual client in a group hearing must be permitted to present his own case and be represented by his own lawyer or withdraw from the group hearing and have his appeal heard individually. As in individual hearings, the hearing will be conducted on the issue being appealed, and each client is expected to keep his testimony within a reasonable time as a matter of consideration to the other clients involved.

SSI

In Mississippi, persons who are eligible for SSI are automatically eligible for Medicaid. If an SSI applicant or recipient disagrees with the decision to deny or terminate SSI benefits, the individual must contact the Social Security Office which issued the adverse action. SSA handles appeals when the issue is SSI benefits and automatic Medicaid eligibility.