

MEDICAID FAIR HEARING GUIDE

Prepared by Disability Rights New Mexico, October 2013

Medicaid participants have the right to an administrative Fair Hearing any time they face a denial or reduction in services. Disability Rights New Mexico has prepared this guide to assist people who do not have legal representation in these administrative Fair Hearings. Disability Rights New Mexico has prepared a separate guide for people appealing their SIS score in the Developmental Disabilities Waiver.

REQUESTING A HEARING

Any denial or reduction notice should be provided to you in writing. The notice should include information about requesting an administrative Fair Hearing. The notice should explain the reasoning behind the denial or reduction in your service(s), and cite the specific state rule to support the denial or reduction. You have **90 days** from this notice to request the hearing. If you want your services continued, you have **13 days** from this notice to request a fair hearing – please see *Continuation of Benefit* below.

Most Medicaid programs are operated by a private company under contract with the State, and these contractors have an internal appeal process as well. You may choose to go through the contractor's internal appeal process, in addition to the hearing with the Fair Hearings Bureau with the New Mexico Human Services Department (HSD). If you do choose to go through the contractor's internal appeal process, you will probably want to do so before going through the Fair Hearing.

How to Request a Fair Hearing

To request a hearing, contact the Fair Hearings Bureau. Inform them that you want a Fair Hearing, and the issue you are appealing. Contact information for the Fair Hearings Bureau is at the end of this guide, in the "Important Contacts" section. We strongly suggest that you make any hearing request in writing, and save a copy for your records.

Continuation of Benefit

For Medicaid participants facing a reduction or denial of a service they have been receiving, you may request continuation of benefit if you request the Fair Hearing within **13 days** of the denial or reduction notice. If you want continuation of benefit, you should make clear in your request for the Fair Hearing that you are also requesting continuation of benefit. This would entitle you to continue the denied or reduced service(s) until the completion of the hearing process. However, if you lose the Fair Hearing, HSD or their contractor could try to require you to repay the cost of the denied or reduced services.

PREPARING FOR THE HEARING

After requesting a Fair Hearing, you should soon receive an "Acknowledgment" from the Fair Hearings Bureau. Shortly thereafter you should receive the hearing schedule. The schedule notice will explain how to call in to the hearing, and will inform you of the name of your administrative law judge.

The Fair Hearings Bureau conducts the hearings by telephone. If you need the hearing in person, contact the Fair Hearings Bureau as soon as possible to let them know. They should accommodate your request if you explain that the in-person hearing is necessary due to your disability. In-person hearings are conducted in Santa Fe, unless you can give a strong reason why it must be done at another location.

Pre-hearing Conference

Someone may contact you for a pre-hearing conference. The conference is not required, but is usually available if you request it. The judge does not participate. This conference may be an opportunity to discuss the issues in the hearing, but this does not affect your right to the Fair Hearing.

Documents

HSD should send you a **Summary of Evidence (SOE)**. This packet is to include all the evidence to be used by HSD or its contractor in the hearing. It should also contain the state rules for the program of your denied or reduced service(s). You should look through this SOE carefully. Current rules require that HSD complete the SOE within seven days of your request for the hearing.

You have the right to submit evidence to be considered at the Fair Hearing. You should submit your evidence before the hearing, so that HSD and contractor have a chance to review it. We suggest that you get and submit as much documentary evidence as you can compile to contradict the evidence to be used against you from the SOE. We recommend you do your best to get written statements of support, as detailed as possible in response to the evidence against you in the SOE, from your doctor(s), therapist(s), caregiver(s), etc. For many of our cases, a comprehensive letter from the Medicaid participant's doctor is the determining factor, particularly if the letter addresses the points in the SOE.

You also have the right to review your full case file from HSD and the contractor. You will have to specifically request these files if you want to see them. If you find anything supportive of your case, you should submit it to the judge before the hearing. Ask the judge how to send the information to him or her –so you know whether to send by mail, fax or e-mail and who it should be sent to. If you do not have e-mail, let the judge know you need to send it another way.

Witnesses

In addition to documents you submit before the hearing, you also have the right to bring witnesses to (call in to) the hearing. Prepare your witnesses to give the best testimony possible to support your need for the service(s) that have been denied or reduced. Their testimony should focus on your legal right to the service(s), and disproving the evidence used against you from the SOE.

Advocates

You may have someone else present your case for you at the hearing. If you do so, be sure that s/he has read the SOE and is prepared to explain your need for the denied or reduced service(s). You should be permitted to have anyone you authorize present your case at the Fair Hearing.

Postponing the Hearing

You have the right to postpone the hearing once, if you need a delay. You can request a postponement, or "continuance," by contacting your judge at the Fair Hearings Bureau. If you need an additional continuance, you may need to explain to the judge why it is necessary. If you ask for a continuance, you will probably have to give the judge permission to extend the 90-day deadline for a final decision.

Arguments

We encourage you to think through the arguments you will make at the Fair Hearing well in advance of the hearing. Review the SOE, and pay attention to the arguments made in support of the denial or

reduction. Prepare yourself to explain these arguments yourself, and with the support of your witnesses and the documents you'll submit before the hearing.

You may have procedural arguments to bring to the attention of the judge at the hearing. Examples:

- The denial or reduction notice has to explain the reasoning for the denial or reduction.
- This notice needs to cite the specific state rule supporting the denial or reduction.
- This notice must explain your appeal rights.
- For a denial or reduction of current service(s), this notice has to give you at least 13 days advance warning of the denial or reduction.
- You also have the legal right to receive proper notice of the hearing.
- HSD has to provide you with the SOE, and you should receive it within a week or two of your hearing request.
- You have the right to everything in your case file if you request it from HSD or their contractors.

You will probably want to present arguments on the substance or facts of the denial or reduction in service(s). Examples:

- The medical necessity of the denied or reduced service(s).
- The assessment used to deny or reduce your service(s) may have been flawed.
- Every Medicaid service must be “must be sufficient in amount, duration, and scope to reasonably achieve its purpose.”
- HSD or its contractor “may not arbitrarily deny or reduce the amount, duration, or scope of a required service... solely because of the diagnosis, type of illness, or condition.”
- The Americans with Disabilities Act should protect people from discrimination based on their disability in Medicaid programs.
- Show that the denial or reduction is legally wrong, based on the SOE and the rule being used as the basis for the denial or reduction.

THE HEARING

If you are able to resolve the issue you are appealing before the hearing, or don't want to proceed with the hearing for any other reason, you may contact the Fair Hearings Bureau to withdraw your hearing request. You need not explain your reasons. If you decide to go forward with the Fair Hearing, be sure to call in to the designated number at the appointed time.

The Hearing Process

The Fair Hearing itself is conducted like a trial, but formal court rules do not apply. HSD or the contractor will present its case first, and you and the judge will have the chance to ask questions of their witnesses and about their evidence. You will have the chance to present your case, and you should have broad leeway to present it however you feel is best. HSD or the contractor, and the judge, will have the opportunity to ask you and your witnesses questions about your testimony and evidence.

Making Your Arguments

Your arguments are only as effective as you communicate them to the judge. If you would like, you may ask the judge for permission to give an opening statement to briefly explain your case before the testimony. Many judges will ask if you have an opening statement, even if you don't request one.

Throughout the hearing, be sure to stay focused on the arguments that are critical to the denial or reduction in service(s). Call the judge's attention to evidence of yours or from the SOE that you want to

be sure s/he considers. Be sure that you and/or your witnesses explain any documents you have submitted and anything that might not be clear to the judge.

You can ask the judge for the chance to make a closing statement, after the testimony from both sides, to summarize the evidence. Some judges may permit, or even request, a written closing statement. Explain any and all legal and factual arguments you have.

AFTER THE HEARING

The administrative law judge, or “hearing officer,” is not a judge as you’d see in a state court. This judge does not even make the final decision; s/he makes a recommendation to the Medical Assistance Division director, and that person issues the final decision. You should receive the final decision within **90 days** of your request for the hearing, unless you have agreed to extend that deadline.

If you are dissatisfied with the final decision, you may appeal to a state district court. You will have 30 days from the final decision to file a “Notice of Appeal” in the county where the hearing took place – usually either Santa Fe County or the county where you were when you called in to the hearing. You will have to either pay the filing fee to file the appeal to district court, or get the district court to approve a free process application to waive the fee. You may want to consult with Disability Rights New Mexico or some other legal organization before proceeding with an appeal of an administrative Fair Hearing to district court.

TIMELINE

- » The notice of denied or reduced service(s) must give **13 days** advance notice for ongoing service(s).
- » For ongoing service(s), you have **13 days** to request continuation of benefit with a Fair Hearing.
- » You have **90 days** from the denial or reduction notice to request a hearing without continuation of benefit.
- » You get an “Acknowledgment” of the hearing request, usually quickly, from the Fair Hearings Bureau.
- » Then you get the scheduling notice of the hearing from the Fair Hearings Bureau.
- » HSD has **7 days** from your request of the hearing to get the SOE to the Fair Hearings Bureau.
- » HSD should mail the SOE to you when they get it to the Fair Hearings Bureau.
- » After the hearing, the judge makes a recommendation to the Medical Assistance Division director.
- » HSD has **90 days** from the date of your request for a hearing to complete the final decision.
- » If your hearing is postponed, that 90-day final decision deadline gets postponed also.
- » If the final hearing decision is not good, you have **30 days** to file an appeal with a state district court.

IMPORTANT CONTACTS

HSD Fair Hearings Bureau

P.O. Box 2348
Santa Fe, NM 87504-2348
(physical address:
37 Plaza la Prensa
Santa Fe, NM 87507)
Tel.: (505) 476-6213; or
1-800-432-6217, option 6
Fax: (505) 476-6215
Website:
www.hsd/state.nm.us/fhb/

HSD Medical Assistance Division

P.O. Box 2348
Santa Fe, NM 87504-2348
Tel.: (505) 827-3100; or
1-888-997-2583
Fax: (505) 827-3185
Website:
www.hsd.state.nm.us/mad/
E-mail:
MADInfo.HSD@state.nm.us

Disability Rights New Mexico

1720 Louisiana Blvd. NE,
Suite 204
Albuquerque, NM 87110
(Satellite offices in Las Cruces
and Las Vegas, NM.)
Tel.: (505) 256-3100; or
1-800-432-4682
Fax: (505) 256-3184
Website: www.DRNM.org
E-mail: Info@DRNM.org