

<b>DEPARTMENT OF HUMAN RESOURCES FAMILY INVESTMENT ADMINISTRATION</b>	<b>TEMPORARY DISABILITY ASSISTANCE MANUAL</b>
<b>CHAPTER VIII APPEALS &amp; HEARINGS</b>	<b>COMAR 07.03.05.14</b>
<b>SECTION 2: REQUEST FOR HEARING</b>	

## **REQUIREMENTS**

- A. An adverse action notice sent to an applicant or recipient must, in addition to the letter, contain a request for hearing form (Request for Hearing DHR/FIA 334) and a return envelope.
- B. The individual has the right to appeal any adverse decision made on an application or on an active case.
- C. The request for an appeal can be made:
  1. To any employee of the local department whose job assignment requires public contact.
  2. In writing or orally

## **PROCEDURES**

Please see **HEARING PROCEDURES, A Guide to Administrative Hearings** distributed through Information Memo 07- .

- A. The local department:
  1. Provides the customer with form DHR/FIA 334, Request for Hearing
  2. Assists the applicant or recipient with completion of the form
  3. Ensures that the form has been properly completed, dated, and signed
  4. Advises the applicant or recipient of any legal services available
  5. Advises the recipient who appeals within 10 days of the adverse action notice of the right to have benefits continue, through the certification period, pending the appeal decision. (This does not apply to an applicant).
  6. Forwards the completed DHR/FIA 334 form to the Office of Administrative Hearings (OAH) immediately.
  7. Submits a summary of the facts regarding the appeal to OAH and the customer at least 6 days before the scheduled hearing date.
  6. Attends the hearing to:
    - a) Explain how the grant or allotment was calculated.

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- b) State which program policies were used.
- B. The applicant or customer has the right to a pre-hearing agency conference prior to the scheduled date of the appeal hearing
1. The purpose of the conference is to resolve the issue before the scheduled hearing by providing the customer with:
    - a) An explanation of and a reason for the intended action
    - b) An opportunity to speak on his/her own behalf (they may be represented by a friend or legal person), to ask questions, and to present information that shows the local department's action is incorrect
    - c) An opportunity to informally resolve the dispute and eliminate the need for the fair hearing
  - 2 A pre-hearing conference does not preclude a hearing

<b>NOTE:</b> Procedures for accepting and resolving an appeal request vary by local jurisdiction.
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- C. If the pre-hearing agency conference ends favorably, have the individual sign a withdrawal statement and give them a copy.
1. Retain a copy for the local department case record and send the original copy to OAH.
 

OAH acknowledges receipt of the withdrawal in writing to the local department and to the applicant or customer.
- D. Upon receipt of an appeal request, OAH:
1. Schedules an administrative hearing date,
  2. Sends the parties involved notification of date, time, and hearing location,
  3. Assigns an Administrative Law Judge (ALJ) to hear the appeal,
  4. Has the ALJ hear and record the proceedings, and upon conclusion,
  5. Has the ALJ review all evidence and testimony and make a decision in accordance with applicable law,
  6. Sends the local department a copy of the decision, and,

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7. Sends the parties involved a copy of the decision and information on how to file an appeal in the circuit court if they disagree with the final decision.

**Note:** When a case is appealed to the OAH, the ALJ is required by law to make the final eligibility decision. If you have an appeal of a TDAP determination of disability and the customer who is appealing provides new medical evidence, do not ask the Administrative Law Judge (ALJ) to remand the case back to the local department and SRT. Instead, when necessary, ask the ALJ to postpone the hearing. New evidence may require consultation with the SRT if the appeals representative does not know how the evidence would affect the decision. If the new evidence is presented just before or at the hearing, the local department may need to ask for a postponement so that the SRT has the opportunity to consider the new medical evidence. If a postponement is granted, OAH will retain jurisdiction and the hearing will continue as the ALJ instructs.

If the ALJ does remand the case for a redetermination of disability by the SRT the LDSS representative forwards: a new DHR/FIA 707 to the SRT indicating that the “Appeal is remanded to the SRT”; the SRT’s determination of disability that the appeal was based on, including the DHR/FIA 707, DHR/FIA 736, 402B, 4204 and other supporting documentation; and, a copy of the Maryland Office of Administrative Hearings Decision to – Manager, State Review Team, Medical Assistance Operations, 311 W. Saratoga Street, 7<sup>th</sup> Floor, Baltimore, Maryland 21201

E. If the OAH decision is favorable to the local department, the local department:

1. Takes **immediate** actions to implement the decision, reducing or terminating the case, and
2. Makes a referral for an overpayment if appropriate.

F. If the decision is favorable to the applicant or customer, the local department:

1. Complies with the decision within **10 calendar days** of the decision date
2. Issues benefits to correct an underpayment, if applicable (restoring benefits for no more than 12 months)
3. Notifies OAH, **immediately**, that all required actions have been completed.