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**APPEAL PROCEDURES**  
**DEVELOPMENTAL DISABILITIES SERVICES**  
**FEBRUARY 2009**

**Terms**

**Action:** An action is any decision made by the Division of Disability and Aging Services (DDAS), a Designated Agency (DA), or a Specialized Services Agency (SSA) which has an impact on the amount or duration of services a consumer can have. This includes decisions around eligibility, type and quantity of services a consumer can have or the length of time a consumer can have a service. A decision made by statewide funding committees is considered a decision made jointly by the DA/SSA and DDAS.

**Reconsideration:** This occurs when the person or funding committee who made the original decision reviews the decision, usually after receiving new information. The identity of the specific person or funding committee that made the original decision will vary depending on the type of decision under review (eligibility or level of service) but how to direct a request for reconsideration will be clear to the individual/representative in the notice of decision. This process is not a part of the formal appeals process and thus is not subject to its timelines for resolution. However, it is recommended that, when possible, this process should be completed within 15 days of a request. Requesting a reconsideration does not extend the 90 day time limit for filing an appeal. (All time lines are in calendar days.)

**Appeal:** An appeal is a request for an internal review of a decision made by DDAS or a DA/SSA. It is the first stage of the formal appeal process. While the details of that review vary dependant on whether the appeal involves a determination of eligibility or level of service, it involves a meeting to which the individual/representative is invited to present information. When possible, the internal review should be completed within 45 days of a request. The individual/representative may request an extension of up to 14 days. DDAS or the DA/SSA may request an extension of up to 14 days if that extra time is in the best interests of the individual.

**Appeal to the Human Services Board (or fair hearing):** This is a process where the individual/representative and the DA/SSA, working with DDAS, each present their side of the situation to a professional hearing officer. A request for Human Services Board (HSB) fair

hearing must be filed no later than 30 days after the completion of an internal review or within 90 days of the original action.

**Mediation:** This is a process where an independent third party works with the DA/SSA and the individual/representative to try to reach a mutually agreeable solution. Mediation may be requested by the DA/SSA, the individual/representative or DDAS, but both the agency and the individual/representative must agree to participate. DDAS will assign and pay for a trained mediator for the case. The mediation process must be completed within 60 days of filing a request. Requests for mediation must be sent in writing to DDAS.

**Arbitration:** This is a process where both the DA/SSA and the individual/representative agree to abide by a decision made by an independent third party. DDAS will assign and pay the costs of a trained arbitrator for the case. The arbitration process must be completed within 60 days of filing a request unless both parties agree to an extension. Requests for arbitration must be sent in writing to DDAS. The decision of the arbitrator is binding on all parties unless it is contrary to law.

### **A Word on Timelines**

The timelines identified in this document for when reconsiderations and requests for internal review should be completed are only guidelines. Since the funding committees charged with hearing some reconsiderations and internal reviews meet on predetermined schedules, it may not be possible to schedule hearings within the guidelines. Hearings for reconsideration and internal reviews are generally not considered grounds to call an emergency committee meeting. These hearings, however, will be held at the earliest possible date and the timelines shall be adhered to whenever possible.

### **Notification**

When an agency issues an action that can be appealed, including a decision to deny, reduce, or terminate eligibility; or to deny, reduce, terminate, or suspend services; or when an agency fails to act within 45 days upon an application for services, the agency must notify the individual of the right to appeal. Notice must be provided as described in the Regulations Implementing the Developmental Disabilities Act of 1996 Section 5.07 or 6.07. Notice must be mailed at least 15 days prior to the planned change or the next working day if the planned change occurs on a weekend, unless the individual agrees to waive or reduce the 15 day period.

### **Filing a Request**

An individual/representative may ask for reconsideration, appeal, fair hearing, mediation or arbitration for any decision made by DDAS or a DA/SSA about eligibility, the amount or duration of services, or when a DA/SSA does not make an eligibility determination within 45 days of application for services or respond to a grievance in a timely fashion. Disputes with DA/SSAs that revolve around the quality of services or interpersonal interactions are grievances and are discussed in that section.

## **Requests for Reconsideration, Appeal, Fair Hearing, Mediation, or Arbitration:**

1. Must be filed within 90 days of the decision. The date of that decision is the date on the formal notice of decision. In the case of appeals concerning late determination of eligibility, they must be filed within 90 days of deadline date for a decision.
2. May be filed by the individual, the individual's family (in case of a minor), guardian, the person or organization who initiated the request for services or "next friend." A next friend is someone who has a close personal relationship with the individual. If the individual has a guardian, the guardian must be informed. The next friend will also inform the individual of the next friend's request. Additional limitations on the next friend are included in the Regulations Implementing the DD Act.
3. May be filed orally or in writing.
4. The request may include a request for continuation of current benefits if the request is received before the date the action in question is to take effect.
5. Requests for reconsideration, appeal, mediation, or arbitration are filed directly with the decision maker in the DA/SSA.
6. The DA/SSA will contact the appropriate DDAS agency liaison within one (1) working day of the DA/SSA's receipt of a request for appeal, mediation, or arbitration and mail acknowledgement and scheduling letters to the individual/representative.
7. Requests for fair hearing are filed directly with the Human Services Board, and a copy of the request sent to the DA/SSA and to DDAS.
8. Requests for reconsideration, appeal and fair hearing may be filed singly or concurrently. The 15 days recommended for reconsideration is included in the 45 day guideline for the resolution of appeals by internal review.
9. Requests for mediation may be filed at the same time with requests for reconsideration, appeal or fair hearing, but the acceptance of the outcome of mediation means the withdrawal of the other requests for review.
10. Requests for arbitration may only be filed alone since agreeing to arbitration presumes acceptance of the outcome by both parties.

## **The Process**

1. Whenever an individual/representative requests reconsideration, appeal, fair hearing, mediation or arbitration, the review process will begin at the DA/SSA although DDAS staff will collaborate with the DA/SSA throughout the process. The exception is when the individual/representative requests a fair hearing without requesting any of the other review options. In that case, the process is managed by the Human Services Board.

2. The DA/SSA's DS Director, or her/his designee, will contact the person requesting the reconsideration, appeal, fair hearing, mediation or arbitration and confirm in writing the form of review the individual/representative is requesting, the filing date of the appeal and related timelines.
3. Assistance to individuals/representatives with filing and processing a request for reconsideration, appeal, fair hearing, mediation or arbitration will be provided by the DA/SSA.
4. For mediation and arbitration, DDAS will appoint the mediator/arbitrator and pay their costs.
5. For reconsiderations, the individual/representative may offer new information:
  - **Reconsiderations of decisions regarding eligibility or decisions about the amount or duration of services made by the DA/SSA that did not require final approval from a statewide funding committee (Equity or Public Safety):** This new information will be offered to the individual at the Designated Agency (DA) or Specialized Service Agency (SSA) who made the original determination of eligibility or decision about amount or type of services.
  - **Reconsiderations of decisions regarding amount or duration of services that required final approval from a statewide funding committee:** This new information will be offered to the statewide funding committee (either Equity or Public Safety) that made the original funding determination.
6. For appeals/requests for internal review the DA/SSA's DS Director or the appropriate statewide funding committee will schedule a meeting where the individual/representative can present new information. This may be in person or by telephone. While the presumption is that the individual/representative will be present at the meeting, he/she may choose not to attend.
  - **Appeals of decisions regarding eligibility or decisions about the amount or duration of services made by the DA/SSA that did not require final approval from a statewide funding committee will be heard by the DA/SSA's Developmental Services (DS) Director and the designated DDAS staff.** The DS Director may recuse him/herself from the review process and request the DA/SSA executive director, if one exists, or another DS Director hear the appeal. Equally, the designated DDAS staff member may request that another DAIL staff member who is qualified in developmental disability services hear the appeal. In each of these cases, the substitute will be mutually agreed upon by the DS Director and the DDAS liaison. The DA/SSA and DDAS will render the final MCO decision. The individual has 30 days from the date of the final MCO decision to request a fair hearing.
  - **Appeals of decisions regarding the amount or duration of services that did require final approval from a statewide funding committee will be heard by the statewide funding committee not involved in the original decision.** Members of the funding committee hearing the review may also recuse themselves from the hearing. A replacement will be identified only if a sufficient number of members recuse themselves

so as to deny the committee a quorum. In that case, substitutes will be identified that are agreeable to the members of the hearing committee. The decision of the funding committee is considered the final MCO decision. The individual has 30 days from the date of the final decision to request a fair hearing.

7. Appeals to the Human Services Board (HSB) (fair hearings) will follow the procedures of the HSB and will “modify a decision of the Department or Agency only if the decision is inconsistent with the System of Care Plan and the rules and policies of the Department.”

### **Documentation**

1. The outcome of each process will be a written decision, a copy of which will be sent to the individual/representative. In the case of mediation, that decision may simply state that no agreement could be reached.
  - If the outcome of reconsideration or internal review is a modification of the original notice of decision, that outcome is subject to reconsideration, appeal, fair hearing, mediation or arbitration and the timing deadlines are based on the date of the new decision notice.
2. The Grievance and Appeals coordinator for the DA/SSA is responsible to:
  - Assure that information on all requests for appeals, fair hearings, mediation, or arbitration is entered in the MCO Grievance and Appeals database.
  - Assure that the individual/representative is kept up to date on the process via the sending of appropriate letters to the individual/representative at each step of the process as required by the regulations.

### **General Guidelines**

Confidentiality will be maintained in all dispute resolution processes, unless confidentiality is waived by the individual/representative. Retaliation by the DA/SSA or state towards anyone involved in initiating or supporting any of the above processes is prohibited. Notice of the individual’s rights to access these processes shall be posted at the DA/SSA, given to the individual/representative at the beginning of services, annually, and with any notice of decision made by the DA/SSA that affects eligibility or the amount or duration of services.