

SECTION V.6. Appeals Procedures

I. Appeals

An individual may request a Commissioner's hearing, a fair hearing before the Human Services Board, or both. An appeal may be made to the Commissioner and the Human Services Board at the same time. An appeal may also be made to the Human Services Board following a Commissioner's hearing.

A. Commissioner's Hearing

1. An **applicant or participant, or his or her legal representative**, who wishes to appeal a decision regarding clinical eligibility, financial eligibility or termination of eligibility, may request a formal review of that decision by the Commissioner of the Department.
2. The request for a Commissioner's hearing may be made orally or in writing, and shall be made within thirty (30) days of receiving written notice.
3. A request for a Commissioner's hearing shall be made by calling or writing to:

Commissioner's Office
Department of Disabilities, Aging & Independent Living
103 South Main Street
Waterbury, VT 05671-1601
802-241-2401

4. The **Commissioner** shall send written notice of the decision, with appeal rights, to the applicant or participant within thirty (30) days of the completion of the hearing.

B. Fair Hearing

An **applicant or participant, or his or her legal representative**, may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other Department action affecting his or her receipt of assistance, benefits or services; or because the individual is aggrieved by Department policy as it affects his or her situation. The Department shall respond to any clear indication (oral or written) that an applicant or participant wishes to appeal by helping that person to submit a request for a hearing.

1. An **applicant or participant, or his or her legal representative**, who wishes to appeal a decision of the Commissioner or any decision regarding clinical eligibility, financial eligibility or termination of eligibility, may request a fair hearing with the Human Services Board.

2. The request for a fair hearing must be made within ninety (90) days of receiving the written notice of determination or the written notice of the decision of the Commissioner.
3. A request for a fair hearing shall be made to:

Human Services Board
120 State Street
Montpelier, VT 05620-4301
802-828-2536

C. Continuation of Services Pending Appeal

1. Moderate Needs services shall not be provided to new applicants during the appeals process.
2. Moderate Needs services may continue to be provided to enrolled participants during the appeals process.
3. In order to continue to receive services, enrolled participants must request continued services when submitting the appeal. Choices for Care services shall be discontinued on the effective date of the decision unless the appeal is requested as of the effective date of the decision. In no event shall the effective date occur on a weekend or holiday.
4. Continuation of services does not apply when the appeal is based solely on a reduction or elimination of a benefit required by federal or state law affecting some or all beneficiaries, or when the decision does not require advance notice.

D. Adverse Action

When a **DAIL** decision will end the services an individual has been receiving, the notice of decision shall be mailed at least eleven (11) days before the decision will take effect, except when:

1. **DAIL** has facts confirming the death of the individual;
2. **DAIL** has facts confirming that the individual has moved to another state;
3. **DAIL** has facts confirming that the individual has been granted Medicaid in another State;
4. The individual has been admitted to a facility or program that renders the individual ineligible for services;

5. The Department receives a statement signed by an individual that states that he or she no longer wishes services; or
6. The individual's whereabouts are unknown and the post office returns agency mail directed to him or her indicating no forwarding address.