

DUE PROCESS POLICY

Under the Developmental Services program, the client has rights to appeal decisions under two authorities. The first is Chapter 120, Florida Statutes (FS), and the second is Chapter 42, 431.200 of the Code of Federal Regulations. Chapter 42, 431.200 of the Code of Federal Regulations provides for "fair hearings" which are used to challenge or appeal actions relating to Medicaid services. Chapter 120, FS, provides for "administrative" hearings. These are used to challenge actions related to services funded only by state general revenue money. Providers of Medicaid services may also request administrative hearings.

A fair hearing is only available when services are paid using federal Medicaid funding. The client may request a fair hearing when a request for services is denied, when the Department fails to act on a request for services within ninety days of request, or when the services the client is currently receiving are suspended, terminated or reduced. This process can be used when the client's services are provided under a Developmental Services Home and Community-Based Services waiver.

Rights to a Fair Hearing

What is a fair hearing? A fair hearing is an appeal by an individual when an agency, in this case Developmental Services, takes any action the individual thinks is not appropriate. This may include denial of assistance, delay in acting on a request for assistance, suspension, termination or reduction of services.

When may the individual request a fair hearing? The individual or authorized representative may request a fair hearing when any state agency takes an action to suspend, terminate or reduce services. A fair hearing may also be requested when an agency denies or fails to act on the individual's request for assistance.

The individual may also contact the local Developmental Services program office to see if the issue can be resolved through reconsideration. A request for reconsideration does not affect the time frame to request a fair hearing. The individual must request a fair hearing no later than ninety (90) days of the date of the notice of the Department's actions was mailed or the individual will waive the right to request a fair hearing.

How does the individual request a fair hearing? To request a fair hearing the individual must make a request, preferably in writing, to the Developmental Services Program Administrator in his district or the Office of Appeal Hearing in Tallahassee, no later than ninety (90) days of the notice of the Department's actions was mailed. No one may interfere with the individual's freedom to request a fair hearing. Developmental Services can assist the individual in making his request.

Agency action on the individual's request for a hearing. In most instances, if the individual requests a hearing, the request will be granted. If the individual's request for hearing is denied, the individual will be notified in writing of the denial. The individual may appeal to the appropriate District Court of Appeal any written denial of a request for a hearing.

What happens when the individual requests a fair hearing? If the individual makes a request for a fair hearing and the request is granted, then what occurs next depends on whether the individual has been receiving the services and supports which are at issue. If the individual has been notified that a request for services has been denied or if there has been a delay in acting on the individual's request, then the services will not be initiated unless and until the individual wins the fair hearing.

If the individual has been notified that his services are to be suspended, reduced or terminated, then if the individual timely requests a fair hearing, generally, those services will continue until the hearing process is completed. If the individual makes his request for hearing prior to the effective date of the suspension, reduction or termination of services, then the services should generally continue uninterrupted, although there may be exceptions to this rule. If the individual requests the hearing after the effective date of the action, but no later than ninety (90) days from the date the notice of the Department's actions was mailed, then the services may need to be reinstated.

If the individual prevails on his hearing request, then services will continue. If the individual does not prevail on his fair hearing (challenging the proposed suspension, reduction or termination of services), then the individual may be required to reimburse the state for the cost of services.

What are the steps in the fair hearing process? The first step in the fair hearing process is a local review of the evidence. If the issue is resolved on the district level, the individual may then request that his fair hearing request be withdrawn.

The next step is a hearing that must be conducted at a reasonable time, date, and place; after written notice: by a hearing officer from the Office of Appeal Hearing.

What happens in a fair hearing? The individual has the right to bring witnesses, establish all pertinent facts, present his side of the story without undue interference, and question or refute any testimony or evidence presented. The individual may present his own case to the hearing officer or bring an attorney, relative, friend or other spokesperson to represent him.

What is a final order? Considering the evidence presented at the hearing, the hearing officer will prepare a written final order within ninety (90) days of the request. If the hearing officer finds that the action taken was correct, the officer will order that the necessary action be taken. If the hearing officer finds the action taken was wrong, he will authorize corrective action back to the date of the incorrect action.

Rights to an Administrative Hearing

An administrative hearing is an appeal of agency action involving services funded through state general revenue dollars. The hearing may be informal or formal in nature. An informal hearing is held when the individual admits the basic facts relating to his claim. A formal hearing is held when there is a dispute about the facts relating to the individual's claim. A Hearing Officer employed by the Department of Administrative Appeal Hearings conducts a formal hearing. The Department conducts an informal hearing.

The individual may request an administrative hearing if he believes that his "substantial interests" have been affected. Generally, this would mean that the individual's request for services has been denied, or that services provided to the individual have been suspended, terminated or reduced. The individual must request an administrative hearing within 21 days after receiving notice of the Department's action. If the individual does not request an administrative hearing within 21 days of receipt of the notice, the individual will waive his rights to request an administrative hearing.

At an informal hearing the individual can present evidence to "lessen" the action of the Department. The individual may also argue that the action is not legally correct. At a formal hearing, the individual may present evidence and witnesses and cross-examine the Department's witnesses.

Generally, in the other respects, the administrative hearing process is similar to a fair hearing process. However, the final order is always issued by the agency. If a formal hearing is held, the officer issues a recommended order which is then considered by the agency in the final order process.

The individual has the right to appeal an unfavorable final order to the appropriate district court.

Additional information on the individual's rights to a fair hearing may be found in Chapter 42, 431.200 Code of Federal Regulations and Section 65-2.042 through sections 65, Florida Administrative Code.

I understand the Due Process Policy regarding a client's due process rights to a fair hearing and an administrative hearing and agree to follow this policy.

Staff Signature

Date