
TO: DDW Providers, Case Managers, Guardians
FROM: Shadee Brown, DDSL Litigation Management Bureau Chief
RE: Fair Hearings
DATE: July 19, 2016

As the Outside Review (OR) clinical review process continues to roll out, the Developmental Disabilities Supports Division (DDSD) would like to provide some general information about the Human Services Department (HSD) Fair Hearings Bureau and the DDSD Fair Hearings Unit.

Through the application of rules and clinical criteria, HSD, DDSD or their agents make decisions regarding an applicant's Medicaid services. When the application for a service is denied, this adverse decision may be appealed by the individual. In DDSD, such decisions may be made by the Intake and Eligibility Unit, the Regional Offices, or the Outside Review. Decisions related to Mi Via services are made by an agent of the Human Services Department, Qualis. While DDSD does not make the decisions related to Mi Via services, the DDSD Fair Hearing Unit does assist in the process of requesting a Fair Hearing when a Mi Via service has been denied.

All requests for a Fair Hearing must go to the HSD Fair Hearings Bureau. If you are eligible for a hearing you will receive a letter from the HSD Fair Hearings Bureau on how to proceed.

To assist individuals and families through the hearing process, DDSD created a unit to centralize matters related to waiver- related Fair Hearings. The DDSD Fair Hearings Unit receives all hearing acknowledgements from HSD Fair Hearings Bureau, compiles the Summary of Evidence (SOE) for the Parties and the Administrative Law Judge and works with all interested Parties to schedule and conduct an Agency Review Conference in the hopes of resolving issues outside of the hearing.

Frequently, Fair Hearing cases are resolved through action items discussed and acted upon via the Agency Review Conference process. The DDSD Fair Hearings Unit strives to provide excellent customer service and assistance to individuals, families, guardians, case managers and providers in order to efficiently resolve issues outside of the formal hearing. The Agency Review Conference is a valuable resource DDSD encourages you to take advantage of if you ever request a Fair Hearing.

We have put together a list of Frequently Asked Questions (FAQs) in hopes of answering some general questions you may have regarding Fair Hearings.

1. *What is a Fair Hearing?*

A fair hearing is a court or administrative hearing conducted so as to accord each party the due process rights required by applicable law.

2. *Who can request a Fair Hearing?*

An individual and/or their guardian has the right to request a Fair Hearing after an adverse decision has been rendered.

3. *How do I request a Hearing?*

You or your legal guardian can request a hearing by contacting the HSD Fair Hearings Bureau at telephone number: (505) 476-6213 or (800) 432-6217, option 6. If you are a legal guardian, you will need to provide guardianship papers to the Fair Hearings Bureau.

4. *What happens after I request a hearing?*

You will receive an acknowledgement from the HSD Fair Hearings Bureau informing you that the Bureau has received your request for a hearing. Shortly after you receive the acknowledgement, you will receive a scheduling notice which will provide you with the date and time of your hearing, the assigned Administrative Law Judge and the conference call in number.

5. *When/Why does DDS Fair Hearings Unit get involved?*

Shortly after you receive the acknowledgement for the hearing, the DDS Fair Hearings Unit will attempt to make contact with you and your Case Manager to provide you with a Summary of Evidence and offer to schedule an Agency Review Conference.

6. *What is an Agency Review Conference?*

An Agency Review Conference is an informal, telephonic meeting with the claimant, Case Manager, the individual(s) who rendered the adverse decision, and sometimes the provider associated with the service related to the decision to discuss possible actions which could result in a resolution outside of the Fair Hearing process. The DDS Fair Hearings Unit coordinates and facilitates the Agency Review Conference and provides a summary outcome letter to inform all participants what was discussed as possible action items to help resolve the issue. It is important to note that the Agency Review Conference does not replace the Fair Hearing and your hearing will still proceed unless you provide written and verbal notice of your desire to withdraw your request to the HSD Fair Hearings Bureau. You can contact the HSD Fair Hearings Bureau at telephone number: (505) 476-6213 or (800) 432-6217, option 6 and they will provide you with information about where to send your written withdrawal.

7. *What happens if I receive an approval before my hearing?*

Many times, issues are resolved via actions taken outside of the formal hearing or Agency Review Conference. If you receive a full approval prior to your hearing date and wish to withdraw follow the steps in question 5 to withdraw your request for a hearing.

8. *What happens if we are unable to reach a resolution after having an Agency Review Conference?*

The Agency Review Conference does not replace the formal hearing therefore you are still entitled to your hearing and the HSD Administrative Law Judge will hear your case and issue a recommendation. The recommendation is sent to the Director of the HSD Medical Assistance Division, where a final decision is made. You may appeal the decision of the HSD Medical Director. Directions on how to proceed with such an appeal are included in the letter that will be sent regarding the decision.

9. *If I request a hearing, will I still receive the services which have been denied?*

You may be entitled to receive your benefits/services throughout the course of the hearing. While some benefits are continued automatically, it is best to check with the HSD Bureau regarding the continuation of your benefits when you make your request for a Fair Hearing. DDSO works closely with HSD to ensure existing benefits are continued throughout the hearing process and people do not go without services during this time.

10. *If the decision of the MAD Medical Director supports the adverse decision, when will my benefits stop?*

If the HSD administrative hearing final decision upholds MAD, its UR contractor, the DDSO Outside Review or other agent's adverse decision, the claimant or the claimant's representative has the right to pursue judicial review of the HSD administrative hearing final decision and is notified of that right in the HSD administrative final decision letter. Judicial appeals for the HSD administrative hearing final decision are governed by New Mexico statutes and court rules.

The filing of a notice of appeal shall not stay the enforcement of the HSD administrative hearing final decision. The claimant or the claimant's authorized representative may seek a stay upon a motion to the court or the claimant may request the MAD director or designee to stay the HSD administrative hearing final decision while the adverse action is on appeal in a New Mexico district court. If the court orders a stay, MAD and its agents will maintain the benefit at issue in accordance with the state district court's order.

For more detailed information on HSD hearings, see Social Service Administrative hearings, 8.352.2 NMAC.

If you have any further questions please feel free to call Shadee Brown, DDSO Litigation Management Bureau Chief at (505) 841-5505 or email: Shadee.Brown@state.nm.us