

Guidance and Procedures for Individuals Applying for or Enrolled to Receive Services Through a Waiver or Requesting or Receiving Targeted Support Management Services

A. Informing the Individual of Their Rights to Appeal and Fair Hearing

The Agency must inform the Individual of their right to Appeal and have a Fair Hearing if any of the following occur:

- The Individual is determined to meet an Intermediate Care Facilities for Persons with Other Related Conditions (ICF/ORC) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/ID) level of care, is enrolled in Medical Assistance, and is not offered a chance to express a service delivery preference for either waiver-funded or ICF/ID or ICF/ORC services on the DP 457 form.
- The Individual is determined ineligible for Targeted Support Management or waiver enrollment.

The Supports Coordinator must inform the Individual of their right to Appeal and have a Fair Hearing if any of the following occur:

- A decision is made to deny the Individual's choice of a willing and qualified provider.
- A decision is made to deny a requested service.
- A decision is made to suspend, reduce, or terminate a service that is authorized on the Individual's Individual Support Plan (ISP).

The Agency must maintain documentation in the Individual's file that the DP 458 was sent to the Individual explaining the Individual's right to Appeal and have a Fair Hearing regarding any decision in the list above.

Appeals for the Participant-Directed Model of Service

Individuals have the option to self-direct services funded through the P/FDS, Community Living, and Consolidated Waivers by utilizing either the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Service (FMS) or the Agency with Choice (AWC) FMS models. Under certain circumstances, an Individual may be involuntarily terminated from a participant-directed service model and the Individual will be required to transition to provider-managed services. When this occurs, the Individual will be informed of their right to file an Appeal and have a Fair Hearing. The Individual also has the right to file an Appeal and have a Fair Hearing when denied the opportunity to enroll in either of the participant-directed service model options. The Agency will inform the Individual of this right. There are some exceptions when the Individual has been previously involuntarily terminated from self-directing services. Refer to Appendix E of the waivers for more information on Involuntary Termination of Participant Direction.

B. Actions Not Subject to Appeal and Fair Hearing

The requirements related to informing the Individual of their rights to Appeal and have a Fair Hearing only apply to decisions or actions outlined in Section A and do not apply to any of the

following:

- Changes caused solely by Federal or State law or regulations requiring an automatic change that adversely affects the Individual (42 CFR 431.220 [relating to when a hearing is required]).
- Changes solely established by a waiver amendment approved by the Centers for Medicare and Medicaid Services.
- An action taken regarding a service that is not funded through Medical Assistance.
- Determinations made as a result of a Supports Intensity Scale-Adult 2nd Edition (SIS-A 2nd Ed) assessment, or its successor.
- The involuntary removal of an Individual's surrogate in the role of Common-Law Employer or Managing Employer.
- The completion or update of the Prioritization of Urgency of Need for Services (PUNS) Form.
- Changes made to service authorizations that were requested by the Individual.

C. Written Notices of a Service Determination

In addition to the guidance provided in Section C of the Bulletin, certain Service Determinations require advanced written notice. This advanced written notice is a formal notification sent by the Agency to the Individual 10 calendar days prior to any action to terminate, suspend, or reduce services already authorized in an ISP. This notice must include instructions for the Individual on how and when to Appeal in order to continue receiving services. Please note, not all written notices will be an advanced written notice.

D. Appeal Timelines

For a written Appeal, the date used to determine when an Appeal was filed is the postmark date if the Appeal was submitted using postal mail or the date the email was received if the written Appeal was submitted via email. For an oral Appeal, the date used to determine when an Appeal was filed is the date the oral Appeal was received by the Administrative Entity or ODP. Section E of this attachment outlines how an Appeal can be made.

- If the Individual receives a written notice of the decision, the Individual has 30 calendar days to Appeal the decision.
- If the Individual receives an advanced written notice of the decision, the Individual has 10 calendar days to Appeal the decision to continue receiving the service(s) during the Fair Hearing process.
 - If the Individual does not file an Appeal within 10 calendar days from the date on the advanced written notice, the Individual may still file an Appeal within 30 calendar days but will not be able to continue receiving the service(s) during the Fair Hearing process.
- Upon receipt of the Appeal, the Agency must date stamp the Appeal.

If the Agency makes a decision on the Individual's eligibility or services and does not provide the written notice (including advanced written notice when applicable) to the Individual as required, the Individual will have 6 months from the effective date of the decision to file a written Appeal via email or postal mail. When the Appeal is filed, services will be reinstated retroactively (when applicable) to the date of discontinuance and will continue until an adverse decision is rendered after the Fair Hearing.

E. Appeal Submission Procedures

In addition to the guidance provided in Section E of the Bulletin, the following must be followed by the Agency:

a) Oral and Written Appeal Procedures

There are two ways an Individual can make an Appeal, orally or in writing. Either way, the DP 458 must be completed.

If the DP 458 is not completed the Agency will give the DP 458 form to the Individual to complete. If necessary, the Agency will assist the Individual with completing the DP 458. The Individual is responsible for returning the completed and signed form to the Agency **within 3 business days**, as required by 55 Pa. Code § 275.4(a)(2)(iv).

The Agency must provide a copy of the Appeal, DP 458, and BHA cover sheet to the BHA, the appropriate ODP regional office, and the ODP Central Office **within three business days from the date the Appeal was received and date stamped**. If an Individual attempts to make an Appeal directly to the BHA instead of to the Agency, the BHA will direct the Individual to the appropriate Agency.

b) Internal Review of Individual's Appeal

Prior to sending the appropriate forms to BHA, the Agency is responsible for reviewing the Appeal internally to ensure that the decision subject to Appeal is in accordance with DHS regulations and policies. If the Agency finds the decision does not comply with regulations and policies, the Agency must take action to correct and resolve the issue being appealed and notify the Individual and the Supports Coordinator in writing of the action taken to resolve the Appeal. The Agency must keep this notification in the Individual's file and document within a service note with the date of the notification, or within the appropriate eligibility screens of HCSIS or its successor.

If the Individual is satisfied with the corrective action or adjustment and wants to withdraw their request for a Fair Hearing, the Individual should submit a written request to the Agency to withdraw the Appeal. The Agency which receives the written request will forward it to the BHA and notify the Individual of this action. The Individual should contact the Agency if assistance is needed to withdraw the Appeal.

The ODP Regional Office must be sent a copy of the Appeal if it has not been withdrawn and the internal review decision. The ODP Regional Office is then responsible for reviewing the Appeal to ensure that the appealed action is in compliance

with regulations, the waivers, the State Medicaid Plan, and applicable Bulletins. Please refer to Bulletin 00-06-13,¹ “*Service Review Protocol for Individuals in the Consolidated and Person Family Directed Support Waivers*” for more information on the service review process.

F. Fair Hearing Process

In addition to the guidance provided in Section F of the Bulletin the following apply to the Fair Hearing process:

a) Conference Prior to the Hearing

The Agency is responsible for offering the Individual the opportunity for a conference with the Agency to resolve, if possible, the Appeal (See 55 Pa. Code § 275.4(a)(3)(ii) [relating to Procedures]). The optional conference can give both parties the opportunity to discuss and attempt to resolve the matter prior to the Fair Hearing. However, neither party is required to change their position, and the conference will not replace or delay the Fair Hearing process. The Agency must document the date of the conference and notes of the discussion.

b) Requesting an Expedited Fair Hearing

The Individual has the right to request an expedited Fair Hearing if the Individual believes that the normal time frame for deciding an Appeal would jeopardize their health, welfare or independence as defined in the ISP. If BHA agrees with the Individual it will grant the request for an expedited Fair Hearing. Supporting documentation must be included with the Appeal to support the Individual’s request for an expedited Fair Hearing. Supporting documentation must be easy to read and clearly support the request.

c) Scheduling the Fair Hearing

BHA is responsible for scheduling and holding the Fair Hearing (Hearings are scheduled as soon as possible after BHA receives the Appeal, allowing at least 10 calendar days’ notice to be given to the Individual.

Postponement of the hearing may be requested by the Individual or the Agency. The Individual or the Agency must contact the BHA and the Administrative Law Judge and provide a reason for the postponement request. The BHA Administrative Law Judge may approve or deny the request for postponement. If postponed, the hearing will be rescheduled as soon as possible.

d) Hearing Evidence

The Agency must collect and submit any of its own documentation that is pertinent to the issue appealed and send their exhibits to the Individual and the BHA Administrative

¹ This bulletin also covers service reviews for the Community Living Waiver.

Law Judge prior to the hearing. See 55 Pa. Code § 275.3 for additional requirements. It is also recommended that any pertinent evidence the Individual wishes to use is provided to the Agency and BHA prior to the hearing. The BHA Administrative Law Judge may permit the parties to submit exhibits during the hearing or after the hearing, but it is at the BHA Administrative Law Judge's discretion. See 55 Pa. Code § 275.4 for additional procedures.

e) The Fair Hearing

The hearing is held before a BHA Administrative Law Judge. The BHA Administrative Law Judge will obtain testimony from the Individual, witnesses, and the Agency pertaining to the issues in question. Each party will present its view and may submit additional information to support its position on the issue. The hearing decision will be based solely on the information presented at the hearing.

The following are situations that may affect the hearing process:

- The Individual or the Individual's Representative fails to appear at the scheduled hearing without good cause as determined by the BHA Administrative Law Judge. The Appeal will be dismissed.
- The Agency fails to appear at the hearing without good cause as determined by the BHA Administrative Law Judge. The Appeal will be sustained by the Administrative Law Judge. The Agency will be notified of the BHA Administrative Law Judge's written decision.
- If neither the Individual nor the Agency appears at the hearing, the hearing will be rescheduled.

f) Appeal Decision

The Director of the BHA will issue a decision based on the recommendation of the BHA Administrative Law Judge. A copy of the decision will be sent to the Individual and the Agency. Hearing decisions are binding on the Individual as well as on the Agency. However, each side has the right to appeal the BHA Administrative Law Judge's decision by requesting Reconsideration of the decision by the Secretary of DHS. The Individual may also appeal the decision to Commonwealth Court.

The notice of decision will specify the reasons for the decision and identify the supporting evidence. The decision will also specify the eligibility of the Individual and specify the services for which the Individual is eligible, if relevant. It will inform the Individual of the right to petition the Commonwealth Court or request Reconsideration by the Secretary of DHS if the Individual is dissatisfied with the adverse hearing decision. The Agency is required to implement the hearing decision immediately, or as otherwise indicated in the BHA decision.

g) Initial Appeal to Commonwealth Court

When an adverse decision to the Individual is rendered by the Director of the BHA, the

Individual has 30 calendar days to file an initial appeal with Commonwealth Court.

h) Reconsideration of the Appeal Decision by the Secretary of Human Services

When the BHA renders a decision on the Appeal, the Agency and the Individual have the right to request Reconsideration of the decision by the Secretary of Human Services. The Request for Reconsideration must be filed within 15 calendar days of the date of the BHA's decision (55 Pa. Code § 275.4(h)(4)(ii) [relating to Procedures]). The Reconsideration request must be made in writing and include the reason for the reconsideration and detailed reasons why the Agency or the Individual disagrees with the Fair Hearing decision. Requests for Reconsideration filed by the Individual that are timely received by the Department will halt any proposed action outlined in the written decision. All requests for Reconsideration should be addressed to the Secretary of Human Services but mailed to the Director of the BHA.

The Secretary may affirm, amend, or reverse the decision of the Director of the BHA, or remand the case to the BHA for further findings of fact. Further information regarding the Reconsideration process may be found in 55 Pa. Code § 275.4(h)(4) (relating to Procedures).

i) Final Appeal to Commonwealth Court

If the Individual disagrees with the Reconsideration decision rendered by the Secretary of Human Services, an appeal may be filed with the Commonwealth Court. The Individual must file this appeal within 30 calendar days of the date of the Secretary's written decision (55 Pa. Code § 275.4(h)(4)(iv) [relating to Procedures]).

j) Implementing the Final Decision from the Fair Hearing

The Agency must implement the hearing decision. The Fair Hearing decisions are specific to the circumstances or needs of the Individual at the time of the Fair Hearing. These decisions must be reviewed at a minimum at the Annual ISP Review Meeting. If, at any time, it is determined by the Individual and the ISP team that the service(s) that were included in the ISP as a result of a Fair Hearing decision are not needed, the ISP should be revised to reflect the current needs of the Individual.

k) Contacting the Bureau of Hearing and Appeals

Any further questions regarding the Appeal process (see 55 Pa. Code § 275.4 [relating to Procedures]) must be directed to the BHA Site Administrator at the appropriate BHA regional location:

- **Central Region:** Adams, Berks, Centre, Cumberland, Dauphin, Franklin, Fulton, Huntington, Juniata, Lancaster, Lebanon, Lehigh, Lycoming, Mifflin, Montour, Northampton, Northumberland, Perry, Schuylkill, Snyder, Union, York
 - Address: Bureau of Hearings and Appeals 2330 Vartan Way, 2nd Floor Harrisburg, PA 17110

- Phone: (717) 783-3950
- Fax: (717) 772-2769
- **Northeast Region:** Bradford, Carbon, Clinton, Columbia, Lackawanna, Luzerne, Monroe, Pike, Tioga, Sullivan, Susquehanna, Wayne, Wyoming
 - Address: Federal Hearings and Appeals 117 West Main Street Plymouth, PA 18651
 - Phone: (800) 664-7177
 - Fax: (570) 719-0306
- **Southeast Region:** Bucks, Chester, Delaware, Montgomery, Philadelphia
 - Address: Bureau of Hearings and Appeals, 801 Market Street, Suite 5005, Philadelphia, PA 19107
 - Phone: (215) 560-2145
 - Fax: (215) 560-2378
- **Western Region:** Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, Westmoreland
 - Address: Bureau of Hearings and Appeals Two Gateway Center, Suite 1125 603 Stanwix Street Pittsburgh, PA 15222
 - Phone: (412) 565-5213
 - Fax: (412) 565-5514

I) **Appeal Codes in Electronic Case Management (ECM)**

Agencies should refer to the table below for the correct codes to use when submitting an Appeal made by an Individual applying for, or enrolled in, the Consolidated, Community Living, P/FDS or Adult Autism Waivers.

Issue Code	Appeal Type	Description
M-816	Recipient	ICF/ID Level of Care Issue
M-867	Recipient	Adult Autism Program Waiver
M-869	Recipient	Community Living Waiver – All Actions
M-870	Recipient	OBRA/Nursing Home Reform – Intellectual Disabilities (ID) - ODP – ineligible for Nursing Home Level of Care
M-871	Recipient	Consolidated Waiver (2176) - all actions
M-876	Recipient	Person/Family Directed Support Waiver – all actions