



COMBINED MEDICAID 1505-1

Fair Hearings, Administrative Reviews, and Appeals

Supersedes: FMA 1506-1 and MA 1506-1 (01/01/08), FMA and MA 1506-2, 1506-3 & 1506-4 (01/01/07)

Reference: ARM 37.5.101; 103; 301; .304; .305; .307; .313; .316; .318; .322; .325; .328; .331; .334; .337; .503; .505; ARM 37.82.101; 42 CFR 431.200 through .246

Overview: All clients have the right to due process and to request a hearing; staff may assist the claimant in submitting and processing a hearing request. Department staff will not interfere with these rights. Centralized Fair Hearing Unit staff conduct hearings. A fair hearing (FH) is granted to any client who requests a hearing because:

1. Their application is denied or not processed timely;
2. They do not agree with any action to reduce or terminate their benefits; establish an over issuance or impose specific conditions to receive benefits; or
3. Their request for an additional level of coverage is denied or changed.

A hearing request is the client's/authorized representative's clear communication that they want to present their case to an authority above the OPA. State law grants any 'real party in interest' (e.g., medical providers) the right to request a fair hearing and/or appeal a hearing decision. Fair hearing rights as well as information on continuing benefits pending the hearing decision and repayment requirements (if the decision supports the Department) are listed on the back of all adverse action notices.

ADMINISTRATIVE REVIEWS:

An Administrative Review (AR) is a meeting between the client (claimant)/their representative and HCSD Fair Hearing Unit staff. The AR is a chance to review and potentially resolve a dispute on the Department's action, or to lessen any confusion at the hearing. An AR:

1. Identifies issues related to the adverse action; and
2. If possible, resolves, to the claimant's satisfaction, any questions or issues related to the adverse action.

An AR does not diminish, delay or void a client's right to a fair hearing.

- When the disputed issue is not resolved to the claimant's satisfaction at the AR, the Hearing Officer must proceed with the hearing.

- The claimant (and/or representative) has the right to waive an AR and continue to the fair hearing.
- The claimant must withdraw their hearing request in writing. **NOTE:** When a client contests transfer or discharge by a nursing facility, the Department is not a party to the hearing, but instead must provide a forum.

Rescheduling the AR: The claimant is allowed a reasonable opportunity to reschedule the AR; an additional opportunity is allowed when good cause exists.

Representation at AR: The claimant may be represented by:

1. Him/herself; or
2. An authorized representative, such as legal counsel, a relative, friend or other spokesperson.

Fair Hearing Unit staff represents the Department. When the disputed issue is complex, has legal ramification or the claimant is represented by an attorney, Fair Hearing Unit staff will request Office of Legal Affairs (OLA) assistance.

OLA will prepare any briefs the Hearing Officer requests.

NOTE: The eligibility staff member who processed the case may attend the AR, but cannot act as the OPA representative.

If warranted, an adverse action may be reversed or modified during an AR. When this occurs the hearing is not held unless the claimant objects to the modified action and requests to proceed to the hearing. If satisfied with the reversed/modified determination, the claimant must sign the appeal withdrawal form.

When the claimant (or representative) fails to appear for an AR, the Hearing Officer will proceed with the hearing schedule and notify the claimant.

A group AR may be held when the:

1. Claimants agree to participate in a group rather than as individuals; and
2. Cases involve related issues of state and/or federal law, regulations or policies.

Claimants (or representatives) involved must each be allotted time to present his/her case.

FAIR HEARING REQUEST & APPEAL TIME LIMITS:

Clients must file requests for hearing and/or appeals as follows:

- Hearing request: The hearing request must be in writing and the Department must receive it within 90 days of the date the adverse action notice is mailed; the claimant's signature is not required. **EXCEPTION:** A hearing request regarding a department determination of ability to pay for cost of institutional care must be received in writing, within 30 days of notice mailing.

- Board of Public Assistance Appeal: The appeal request must be received within 15 days of date the decision notice is mailed. The hearing officer's decision becomes final when an appeal request is not received within the 15-day period, unless good cause is shown. When good cause exists, the 15-day period is extended to no more than 45 days.
- District Court/Judicial Review: Any party to an appeal (claimant/authorized representative, real party of interest, Department) may appeal the Board's final decision to district court. The appeal must be filed within 30 days of the Board's final decision.

EXPEDITED HEARING:

Households who file a hearing request, but who will leave the state before a decision is made under normal time frames may be granted an expedited hearing.

CONTINUED BENEFITS:

Unless the claimant specifically states they do not want continued benefits, benefits are automatically continued at the same benefit level (reinstated) until the hearing decision when the hearing request is filed between the date the adverse action notice is mailed and the adverse action effective date.

EXCEPTION: When timely notice of adverse action is not sent, benefits are only continued (reinstated) when the claimant files the hearing request within 10 days of receiving the notice. The notice is assumed to be received 5 days after it is mailed, unless the claimant proves they didn't receive the notice within 5 days.

The claimant may claim good cause for not requesting continued benefits timely. When appropriate, benefits are continued through the end of the month in which a hearing decision in the department's favor is received. If the claimant requests a Board appeal, benefits are continued through the month in which the Board decision is received. Unless court ordered, benefits are not continued during an appeal to district court. Benefits cannot be continued if the hearing officer determines the issue is one of State or Federal law or policy. The claimant's responsibility to repay continued benefits if the hearing decision is in the Department's favor must clearly and thoroughly be explained.

REDUCING CONTINUED BENEFITS:

Continued/reinstated benefits are not reduced or terminated prior to the official hearing decision unless:

1. Eligibility ends due to time-limits or failure to meet another eligibility requirement;
2. While the hearing decision is pending, a change affecting the claimant's eligibility occurs and a subsequent hearing request is not filed;
3. The Hearing Officer makes a written preliminary determination at the hearing that the sole issue is one of State or Federal law or policy and there has been no improper benefit calculation, misapplication or misinterpretation of State or Federal law or policy; or
4. A mass change affecting the claimant's eligibility or benefit level occurs while the hearing decision is pending.

MASS CHANGE CONTINUATION:

When benefits are reduced or terminated due to a mass change, benefits continue at the prior amount only if the contested issue is that:

1. Eligibility or benefits were improperly computed; or
2. Federal law or regulation was misapplied or misinterpreted.

DURATION OF CONTINUED BENEFITS:

If all financial and nonfinancial requirements, other than the disputed issue, are met, benefits will continue until:

1. A hearing decision is rendered, **OR**
2. The claimant exhausts the available administrative remedies including appeal to the Board of Public Assistance, **OR**
3. The time allowed to appeal to the Board has passed and neither the claimant nor the Department has made such an appeal.

HEARING REQUEST DENIAL OR DISMISSAL:

A hearing may be denied or dismissed when:

1. The claimant (or representative acting on his/her behalf) withdraws hearing request in writing;
2. The claimant (or representative) fails to appear at the hearing without good cause;
3. The Department receives the hearing request more than 90 days after the adverse action notice was mailed;
4. Either federal or state law requires automatic benefit changes (unless the issue is incorrect benefit adjustments); or
5. The Hearing Officer does not have jurisdiction over the subject matter or the appeal procedure.

NOTE: The above list is not all inclusive.

SCHEDULING A HEARING:

The Office of Fair Hearings notifies all parties to a hearing of the hearing date, time and place.

POSTPONING A HEARING:

Both the claimant and the Department are entitled to postpone a scheduled hearing. The hearing cannot be postponed more than 30 days unless both parties agree.

MATERIAL PRESENTED:

The Department can only introduce documents, records, papers and materials that the claimant/representative had the opportunity to review; any documents not previously available to the claimant/representative cannot be introduced at the hearing or be used to influence the hearing

officer's decision. Copies of all hearing exhibits the Department will enter into record must be made available to the claimant/representative and Fair Hearing Officer no less than 5 days prior to the hearing.

HEARING RECORD AND TRANSCRIPTION:

Fair Hearing Unit staff record all hearing proceedings. If the case is appealed to the Board of Public Assistance (Board), the recording must be transcribed.

RIGHTS AND ROLES:

The claimant/authorized representative has the right to examine their case file at any reasonable time prior to or during the hearing. When the claimant/representative requests copies of materials necessary to prepare for the AR and/or hearing, they are provided at no charge. The claimant/representative cannot view any information in their case file that:

1. Federal regulation prohibits the claimant from viewing;
2. A medical professional has stated the claimant cannot view;
3. Contains confidential information about a person other than the claimant; or
4. Certain information contained in case notes cannot be shared due to specific data source agreement.

The claimant/representative may:

1. Review the department's exhibits;
2. Present his/her case to establish all pertinent facts and circumstances;
3. Bring witnesses and/or legal representation;
4. Present their issues without unreasonable or unnecessary interference;
5. Submit evidence to support their claim at least 5 days prior to the hearing (although evidence presented at the hearing must be considered even though not previously submitted); and
6. Question or dispute testimony or evidence, including cross-examining witnesses.

The Department's representative may:

1. Review, question and/or refute the claimant's exhibits;
2. Present its own evidence;
3. Bring witnesses to testify on the Department's behalf;
4. Question or refute testimony of the claimant/authorized representative and his/her witnesses; and
5. Challenge and cross-examine the claimant/authorized representative and his/her witnesses.

The Hearing Officer may require:

1. Witnesses;
2. Compliance with reasonable and appropriate orders or requests necessary to:

- a. assure orderly conduction of pre-hearing and hearing procedures; and
- b. avoid unnecessary proceedings or expense.
3. Depositions upon oral examination, or written questions;
4. Written interrogatories; and,
5. Other materials as necessary for the hearing.

NOTE: Upon request, the Hearing Officer may issue witness subpoenas or subpoenas duces tecum.

The Hearing Officer has the right to:

1. File an affidavit disqualifying himself due to personal bias or other reasons;
2. Require all parties to attend a pre-hearing to define and simplify the hearing issues or other matters;
3. Allow a third party to act as the claimant's authorized representative when good cause is shown for the authorization not being in writing.
4. Take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public; and,
5. Grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure.

APPEALS TO BOARD OF PUBLIC ASSISTANCE:

All parties to a hearing have the right to appeal the hearing officer's decision to the Board of Public Assistance (Board). The Board's final decision can be appealed to district court. The claimant/authorized representative may file exceptions, present briefs and present oral arguments.

When the Department appeals the Board's decision, Office of Legal Affairs represents the Department, and will file exceptions, present briefs and present oral arguments. Before providing a decision, the Board considers:

1. The Fair Hearing Officer's Proposed Decision;
2. Exceptions filed;
3. Briefs received;
4. Oral arguments; and
5. The hearing record.

The Board must make its decision within 90 days of the original fair hearing request.

NOTICE OF DECISION:

The Fair Hearing Officer/Board notifies the claimant, Fair Hearing Unit and other interested parties of its decision, and of their right to appeal the decision.

IMPLEMENTING DECISION:

Within 10 days of the Fair Hearing Officer or Board’s decision, Fair Hearing Unit staff must, depending on whether the decision is in favor of the claimant or Department, either correct any under issuance, or take action to collect any over issuance. **NOTE:** If the claimant appeals the Board’s decision, over issuance collection is suspended until the appeal is complete and a decision is rendered.

HEARING RECORD:

A record of the hearing proceedings is compiled. The hearing record contains:

1. Hearing Officer's/Board’s decision;
2. Verbatim transcript (if requested) or recording of testimony and exhibits; and
3. All exhibits, papers, and requests filed in the proceeding.

The record is available to the:

1. Claimant to review/copy at a reasonable time and location acceptable to all parties;
2. Public to review/copy. All identifying information (e.g., name, address, etc.) must remain confidential.

Fair Hearing and Appeal Chart:

	Timeframe to submit appeal request	Must be in writing?	Continued benefits?	How long are benefits continued?	When must decision be implemented?
Fair Hearing	90 days from date adverse action notice is mailed EXCEPTION: A hearing request regarding ability to pay for cost of care in an institution must be received within 30 days of notice mailing	Yes	Yes – if FH requested before effective date OR within 10 days of adverse action notice (when timely notice not sent)	Through month FH decision is received	Within 10 days of receiving decision
Board Appeal	15 days after Fair Hearing decision is mailed	Yes	Yes – if benefits were continued through FH decision	Through month Board decision is received	Within 10 days of receiving decision
District Court	30 days after Board’s final decision	Yes	No – unless court ordered		Within 10 days of receiving decision

Effective Date: July 01, 2016