

Department of Public Health
and Human Services

Section:
CASE MANAGEMENT

FAMILY RELATED MEDICAID

Subject:
Administrative Reviews

Supersedes: TANF (01/01/06), FMA and MA 1506-2 (05/01/01)
Bulletins FMA-36 and MA-B-61

► References: ARM 37.5.101; 103; 303; .304; .305; .307; .313; .316; .318; .322; .325;
.328; .331; .334; .337; .503; .505; ARM 37.82.101; ARM 37.78.102;
42 CFR 431.200 through .246; 45 CFR 205.10

GENERAL RULE--An Administrative Review is a meeting between an OPA representative and the applicant/recipient (claimant) and/or his/her representative, for the purpose of resolving a dispute on the Department's action, to possibly avoid an unnecessary hearing, or diminish confusion at the hearing. An Administrative Review will:

1. Identify the issues related to the adverse action; and
2. If possible, resolve questions and issues relating to the adverse action to the claimant's satisfaction.

► NOTE: Central Office completes all Administrative Reviews for TANF extended benefits denials or closures related to the household failing to meet extension criterion.

REVIEW TIME FRAME An Administrative Review must be held, completed, and a report submitted to the Hearing Officer within twenty (20) calendar days from the date the Hearing Officer mails the Review Request to the OPA authority or Central Office, unless an expedited review is requested.

► NOTE: The Administrative or Expedited Review will be held at the OPA maintaining the claimant's case or at any other location accessible and agreeable to all parties.

► NOTE: An Administrative Review may also be conducted by phone. This is an exception to routine procedure and is used only if the individual or his/her representative is unable to come into the OPA for an in-person meeting or if Central Office is conducting the review.

► FORM DPHHS-LS-007 The Office of Fair Hearings sends form DPHHS-LS-007, "Administrative Review Report" to the OPA or Central Office as notification of the hearing request. Upon receipt of this form, the reviewer must schedule the Administrative Review. Once the Review is completed, waived, or

withdrawn, the reviewer completes the bottom portion of the form and returns it to the Office of Fair Hearings within 20 days of the date the original DPHHS-LS-007 was mailed from the Hearings Office.

- **NOTE:** Obtaining a verbal request for a fair hearing withdrawal is not to be used as a substitute for conducting an in-person Administrative Review, unless the individual or his/her representative is unable to come to the OPA. The OPA must make an attempt to meet with the claimant to present an opportunity to share information and to fully respond to concerns regarding the adverse action taken.

- **EXPEDITED REVIEWS** The OPA representative shall offer an expedited Administrative Review to claimants who contest a denial of Emergency Assistance.

- The Administrative Review for the Emergency Assistance denial must be held within five (5) calendar days from the date of the hearing request.

- **NOTE:** To meet the time limits, the review may be conducted by telephone in those areas that require substantial travel to conduct an in-person review. The Office of Fair Hearings must be informed of any delay in completing the review.

- GROUP REVIEWS** An Administrative Review may be held for a group when the:

1. Claimants agree to participate in a group rather than as individuals;
2. Cases involve related issues of state and/or federal law, regulations or policies; and
3. Claimants (or representatives) involved must each be allotted time to present his/her case.

- **RESCHEDULING ADMINISTRATIVE REVIEW** The claimant is given a reasonable opportunity to reschedule the Administrative Review. An additional opportunity is given for good cause. An Administrative Review will not be rescheduled if the claimant fails to appear without good cause. (TANF 1509-1)

- CLAIMANT REPRESENTATION** The claimant may be represented by:

1. Him/herself; or
2. An authorized representative, such as:
 - a. Legal counsel; or

- b. A relative, friend, or other spokesperson.

**► COUNTY/DEPT.
REPRESENTATION**

The OPA/Department is represented by an OPA staff member such as the County Director (or designee) and/or Regional or Central Office Policy Specialist. When the issue in dispute is complex and/or appears to have legal ramifications, the County Director/Designee shall contact the appropriate Regional Policy Specialist. The RPS, or after consultation, a Central Office Policy Specialist, will request assistance from the Department's Office of Legal Affairs. For example, issues related to funds placed in trusts or resource accessibility, or if the claimant has indicated his/her legal counsel wishes to address state or federal law.

If the Hearing Officer requests a legal brief from all parties, the County Representative shall contact the Office of Legal Affairs and request them to prepare the brief.

NOTE: The eligibility case manager who processed the case may attend the Administrative Review, but cannot act as the OPA representative.

**► REVERSAL/
MODIFIED
ACTION**

At any time during an Administrative Review, an adverse action may be reversed or modified by the local OPA if circumstances warrant such action. In that case, a hearing will not be held unless the claimant protests the modified adverse action and requests that the hearing be held. If the claimant is satisfied with the modified/reversed determination, the claimant's signature (or verbal agreement for TANF) on a withdrawal of the appeal is necessary.

**EFFECT ON
HEARING RIGHTS**

An Administrative Review does not diminish, delay or void the claimant's right to a fair hearing. When the Administrative Review does not resolve questions and issues relating to the adverse action to the claimant's satisfaction, the Hearing Officer must proceed with the hearing.

**► TELEPHONE
ADMINISTRATIVE
REVIEW**

If the Administrative Review is held by telephone, the OPA mails form DPHHS-LS-007 to the claimant to obtain the withdrawal signature and indication of whether the individual wishes to withdraw or proceed to the fair hearing.

Request the claimant to return the form to OPA or the Office of Fair Hearing within five (5) calendar days.

If form DPHHS-LS-007 is not returned within five (5) days:

- 1. **TANF**
The OPA contacts the Office of Fair Hearings, indicating that the attempt to obtain the claimant's signature was unsuccessful. If a verbal withdrawal was given at the telephone Administrative Review, provide this information to the Office of Fair Hearings. If the issue was not resolved at the telephone Administrative Review, indicate such and a hearing date will be set.
- 2. **Medicaid**
A verbal withdrawal is not allowed. The fair hearing must be held if the claimant does not sign the form DPHHS-LS-007 or provide a signed written statement of withdrawal.
- **FAILURE TO APPEAR**
When the claimant (or representative) fails to appear for an Administrative Review, the OPA will:
1. Complete form DPHHS-LS-007, "Administrative Review Report", and
 2. Distribute it according to the instructions on the bottom of the form.
- The Hearing Officer will proceed with the hearing schedule and notify the claimant.
- **CLAIMANT WAIVES ADMINISTRATIVE REVIEW**
The claimant (and/or representative) has the right to waive an Administrative Review. When the claimant chooses to do so, all exhibits and other pertinent items including a signed form DPHHS-LS-007, "Administrative Review Report," are forwarded to the Office of Fair Hearings, Helena. For TANF, a signed form is not necessary if a verbal request to waive the Administrative Review has been made.
- PROCEDURE**
Responsibility ACTION
- Hearing Officer:
1. Upon receipt of the claimant's hearing request, complete the top portion of form DPHHS-LS-007, "Administrative Review Report" and send to the OPA.
 2. Notify the claimant that an Administrative Review will be scheduled with the local OPA representative(s) within 20 calendar days.
- OPA/Central Office
3. Upon receiving form DPHHS-LS-007:
 - a. Schedule the review within the appropriate time lines;

NOTE: If either the claimant or the county has good cause to delay the Administrative Review, the Fair Hearings Office must be informed.

- b. Notify the claimant;
 - c. Confer with the eligibility case manager who processed (or is processing) the case;
 - d. Gather exhibits (documents, etc.) substantiating the adverse action; and
 - e. Research and collect pertinent legal cites (e.g., ARMs, CFRs, etc.) and, if necessary, review the action with the Regional and/or Central Office Policy Specialist.
- Department Representative:
- 4. Open the Administrative Review by:
 - a. Stating its purpose and scope;
 - b. Reminding the claimant the review has no effect on the right to a fair hearing;
 - c. Explaining the claimant's:
 - i) Right to continued benefits pending the Fair Hearing decision, if applicable; and
 - ii) Responsibility to repay continued benefits if the adverse action is upheld.
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- Claimant/ Representative:
- 5. Explain why a hearing was requested.
- Department Representative:
- 6. Explain why the adverse action was taken.
 - 7. Provide documentation in support of the adverse action.
 - 8. Provide clarification of state policies and regulations that may not be entirely understood.
 - 9. Explain the laws and regulations under which the agency operates.
- All Participants:
- 10. Reach a mutually acceptable solution within 20 days or proceed to the hearing.

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- Department Representative: 11. Upon completion of the review, complete, sign and date "Reviewer's Narrative" section of form DPHHS-LS-007.
- The narrative must include a brief summary of both the Department's and the claimant's positions.
- If the review is conducted by telephone, send a completed DPHHS-LS-007 to the claimant with instructions to sign and return it to the OPA or the Office of Fair Hearings.
- Claimant/ Representative: 12. Complete, sign and date the "Results of Administrative Review" section of form DPHHS-LS-007 indicating whether the individual wishes to withdraw or proceed to hearing.
- Department Representative: 13. If the resolution:
- a. Is favorable to the claimant, take action within ten (10) days correct any benefits which were underissued/underpaid and forward the DPHHS-LS-007 to the hearing office; or
 - b. Sustains the adverse action, forward DPHHS-LS-007 to the hearing office and continue benefits, if appropriate. Inform the Hearing Office of any scheduling conflicts.
- Hearing Officer: 14. If the issues were not resolved:
- a. Set the time and place for a Fair Hearing; and
 - b. Notify the claimant and OPA/Central Office.
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DB/KQ/NC/CC

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