

Department of Public Health  
and Human Services

Section:  
Complaints

HEALTHY MONTANA KIDS

Subject:  
Fair Hearing

**Supersedes:**            **New to HMK Manual**

**General Rule** -- A fair hearing is the second phase of the hearing process. The Department of Public Health and Human Services (DPHHS) is responsible to assure an HMK applicant's right to due process. If the applicant's complaint is not resolved at the administrative review phase, the individual may request a fair hearing.

The hearing officer sends a timely notice to the applicant/representative by certified mail of the time, date and place of the hearing.

#### **FAIR HEARING DENIED OR DISMISSED**

A fair hearing request may be denied or dismissed when:

1. the fair hearing request is withdrawn in writing by the applicant or designated representative; or
2. the applicant fails to appear at the fair hearing without good cause.

**NOTE:** "Good cause" for failure to appear is any circumstance beyond the applicant's control.

The hearing officer may reschedule the fair hearing if the applicant shows "good cause" for failure to appear. A hearing cannot be dismissed when an applicant does not appear for an administrative review.

When a hearing request is determined abandoned because the applicant failed to appear or the applicant asks to reschedule the hearing, a notice of dismissal or denial (in which the applicant is offered the opportunity to explain his failure to appear), is sent to the applicant by the hearing officer.

A fair hearing request may be denied or dismissed when:

1. either federal or state law requires certain benefit changes; or
2. the hearing officer does not have jurisdiction over the subject matter or the appeal procedure.

#### **POSTPONEMENT**

An applicant may request and is entitled to receive a postponement of a scheduled fair hearing. The postponement cannot exceed 30 days, unless agreed to by both parties.

**HEARING  
OFFICIAL**

Fair hearings are conducted by an impartial official of DPHHS who was not directly involved in the initial determination of the action in question. The hearing officer:

1. may require:
  - a. witnesses;
  - b. a party to comply with reasonable and appropriate orders or requests not in conflict with the rules and necessary to assure the orderly conduct of pre-hearing and hearing procedures or to avoid unnecessary proceedings or expense;
  - c. depositions upon oral examination, or written questions;
  - d. written interrogatories; and
  - e. other material as necessary for the hearing.

NOTE: The hearing officer may, upon request of any party to the hearing, issue subpoenas for witnesses or subpoenas duces tecum (i.e., a court summons to appear and produce tangible evidence for use at a fair hearing).

2. has the right to:
  - a. disqualify himself or herself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;
  - b. direct the parties to appear and confer in a pre-hearing conference to consider definition and simplification of the issues or other matters to aid in the orderly and efficient conduct of the hearing;
  - c. allow, for good cause shown, a third party to represent an applicant as an authorized representative in those instances where written authorization of the applicant is not obtainable;
  - d. take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public; and
  - e. grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure.

3. will:
  - a. administer required oaths or affirmations;
  - b. consider all relevant issues;
  - c. request, receive and make part of the record, all evidence presented;
  - d. regulate the conduct of the fair hearing consistent with due process to ensure an orderly hearing; and
  - e. render a decision in the name of DPHHS consisting of findings of fact, conclusions of law, and a recommended order deciding the case based on the evidence and testimony in the fair hearing record.

**HEARING  
SITE**

All parties to the hearing congregate at one location. The hearing may be conducted by either a:

1. Telephone conference call with the hearing officer in the Office of Fair Hearings;
2. Face-to-face hearing, if a request for one is made by the applicant, in which case:
  - a. all parties to the hearing and the hearing officer are at the same location; and
  - b. the hearing officer will conduct the hearing in-person.

NOTE: Unless all parties agree to a different location, hearings are held in the applicant's local Office of Public Assistance.

**APPLICANT'S  
RESPONSI-  
BILITIES**

The applicant may represent himself or herself at the fair hearing or designate a representative. The applicant or designated representative has the right to examine the contents of his or her file at any reasonable time prior to the fair hearing as well as during the hearing.

NOTE: HMK is required to provide copies of all exhibits, which will be entered into the record, to the applicant and hearing officer at least five (5) days prior to the hearing.

The applicant or designated representative may:

1. present his/her case to establish all pertinent facts and circumstances;
2. bring witnesses;
3. advance arguments without undue interference; and
4. question or refute any testimony or evidence, including confronting and cross-examining adverse witnesses.

### **HMK'S RESPONSI- BILITIES**

An HMK representative attends the fair hearing and presents HMK's case. The representative is responsible to arrange for recording the hearing. In addition, other authorized DPHHS representatives may attend and present information or participate in the hearing. DPHHS' representative may:

1. bring witnesses to testify on DPHHS' behalf;
2. question or refute testimony of the applicant or designated representative and his/her witnesses; and
3. cross-examine the applicant or designated representative and his/her witnesses.

### **MATERIALS PRESENTED**

HMK will only introduce documents, records, papers and materials which were previously available for examination by the applicant or designated representative. Documents or records which the household has not had an opportunity to contest or challenge, are not introduced at the fair hearing or affect the hearing officer's decision.

EXCEPTION: The hearing officer may request a document, etc., to be made part of the record during the fair hearing. The applicant is then given time to review such evidence, generally during a brief hearing recess.

NOTE: Hearsay evidence (e.g., letters from doctors, neighbors or family members when the letter writer is not present at the hearing) may or may not be allowed. Whenever possible, it is preferable the individual attends the hearing. Notarized affidavits are preferable to letters because the hearing officer will give more weight to a notarized affidavit.

### **HEARING**

Section: Complaints

Subject: Fair Hearing

**DECISION**

The hearing officer makes a decision within 90 days of the fair hearing's conclusion. The decision becomes final unless the applicant or HMK appeals the decision within 15 days of the fair hearing decision being mailed.

NOTE: No action is taken on the case until the 15 day limit for appeal has passed.

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