

OVERVIEW - BEST BEGINNINGS CHILD CARE SCHOLARSHIPS

CHILD CARE 1-11

Fair Hearing Process

Supersedes: Child Care 1-6 (2/1/11)

References: Sections 45-6-301(4), 52-2-713, and 52-2-726, 53-4-611, MCA;
Sections 11.2.201 – 220, 37.5.103, 37.5.307 ARM;
45 CFR 98.50 and .66

General Rule

Actions taken by a Child Care Resource and Referral [CCR&R] agency must conform to applicable laws, regulations and policies. Parents and providers who are subject to any adverse action, [as defined in section 1-3 of this manual], by the CCR&R agency are entitled to a fair hearing. However, there is no right to a fair hearing if denial or termination of benefits is based solely on depletion of Child Care and Development Fund [CCDF] funding.

Parents have ninety calendar days [90] from the mailing date of a notice informing them of an adverse action to request a fair hearing. Providers have thirty calendar days [30] from the mailing date of a notice informing them of an adverse action to request a fair hearing.

Request for Fair Hearing

A request for a fair hearing is any clear, written statement to the Department of Public Health and Human Services [DPHHS], or its agent, by the person denied a benefit stating that they want to present their claim to a higher authority.

The request must be made within the time limits stated below, following the mailing date of the notice of the Department's adverse action:

- ❑ 90 calendar days – Parent, whose benefits are reduced or terminated
- ❑ 30 calendar days – Provider, who has been notified of overpayment

Assisting the Claimant

The right to request a fair hearing must not be limited or interfered with in any way. Upon request, DPHHS shall assist the claimant in submitting the request for a fair hearing. The hearing officer shall provide information necessary for the claimant to prepare for a fair hearing.

If a CCR&R staff member receives a written request for a fair hearing, they should forward it as soon as possible to the following address:

DPHHS – Office of Fair Hearings
P.O. Box 202953
Helena, MT 59620-2953
(406) 444-2470 Office
(406) 444-3980 FAX

Administrative Review

The first step in the Fair Hearing Process is an Administrative Review. When the DPHHS Office of Fair Hearings receives a request for a hearing, the hearings officer notifies the Early Childhood Services Bureau [ECSB] that such a request has been made. The ECSB will schedule a time for an administrative review with the aggrieved party within 20 calendar days of the notification.

The ECSB Child Care designated staff will conduct a telephone interview with the parent or provider in order to hear their side of the story. The parent or provider may have an attorney present at this time but it is not necessary. The ECSB designated staff will also review the case in the Child Care Under the Big Sky [CCUBS] system and interview the CCR&R eligibility specialist or supervisor involved in the case.

The ECSB designated staff will make a determination either in favor of the claimant or the Department/CCR&R agency based upon the circumstances revealed during the administrative review and issue a written report citing applicable rule, policy and findings. The Administrative review report is sent to the parent or provider. It includes form *Administrative Review Report*, that is to be signed and returned to the Office of Fair Hearings indicating that the issue has either been resolved or that they would like to proceed to the Fair Hearing.

A copy of the Administrative Review narrative is sent to the CCR&R agency. If the administrative review was in favor of the claimant, the narrative will include instructions to the CCR&R agency regarding the appropriate adjustments and/or payments needed to resolve the issue.

If the ECSB designated staff determines that the Department/CCR&R agency acted in accordance with the appropriate rules and policies, the claimant may request a more formal Fair Hearing.

Fair Hearing

If the parent or provider wishes to proceed with a Fair Hearing, or if they do not respond to the administrative review report, the Office of Fair Hearings will set a telephone hearing date and notify the ECSB, the CCR&R agency and the Claimant. Generally, the Claimant will be instructed to go to the CCR&R office to participate in the telephone hearing.

Once a hearing date has been set, the ECSB Child Care designated staff and the CCR&R agency will meet via telephone to review the facts; determine what evidence will be submitted as exhibits into the record; and determine who will testify during the Fair Hearing.

The parent or provider shall have adequate opportunity to examine the contents of his case file [except for those portions that the Claimant is precluded from examining by state or federal law], and all documents and records to be used by the department at the hearing at a reasonable time prior to the hearing, as well as during the hearing.

The CCR&R agency is responsible for assembling and mailing a packet containing this information, to the Claimant, the hearings officer and the ECSB Child Care designated staff [if needed] before the time scheduled for the hearing.

The ECSB Child Care designated staff or the Department's Attorney will present the Department/CCR&R's case during the hearing process. The CCR&R caseworker and/or supervisor are to attend the hearing via telephone and provide testimony.

The Fair Hearing is presided over by a "Hearings Officer" who is responsible for:

- Conducting the hearing

Montana Department of Public Health & Human Services

- Listening to the department's case and entering evidence into the record
- Listening to the Claimant's case and entering evidence into the record;
- Reviewing the testimony and physical record and issuing findings based on the law, rules and policies governing the child care program in question.