

**ND Department of Human Services
Bismarck, North Dakota
May 30, 2018**

PI-18-13

TO: DD Licensed Service Providers
DD Program Administrators
DD Program Managers
Bruce Murry

FROM: Tina Bay, Director
Developmental Disabilities Division, DHS

DATE: April 1, 2018

SUBJECT: Client Rights to Medicaid Appeal and Fair Hearing

Persons with intellectual or related disabilities, applying for or receiving services that are authorized by the Developmental Disabilities (DD) Division and funded through Medicaid, have the right to request an appeal when the Department of Human Services (DHS) issues an adverse decision, such as a denial, reduction, suspension, or termination of services. The right to appeal an adverse decision or action is based in the federal laws, state laws, state administrative code, and the policies that interpret these laws.

A notification of appeal rights is provided at enrollment, during the annual plan team meeting, and when a denial, reduction, suspension, or termination of services occurs. The DD Program Managers are responsible for notifying an applicant or recipient in advance of the proposed action to deny, reduce, suspend, or terminate services. The written notice will include the proposed action; the reason for the proposed action; how to request a fair hearing; the specific law that applies to the action; and under which circumstances services are continued, if a hearing is requested. Medicaid requires that notice be given at least 10 days prior to the date of the proposed action; however, DD Program Managers will make every effort to provide a written notice 30 days prior to the date of the proposed action.

A person or their authorized representative has the right to disagree with and appeal adverse decisions. The DD Program Managers will offer to assist the person in filing the appeal. The person may represent themselves or be represented by legal counsel, a relative, a friend, or another spokesperson at the fair hearing.

A request may be submitted by telephone, mail, in person, email, or fax. A request for a fair hearing must be postmarked or received by the Appeals Supervisor within 30 calendar days of the date of the adverse decision notice.

Contact Information:

Appeals Supervisor
North Dakota Department of Human Services
600 East Blvd. Ave. - Dept. 325
Bismarck, ND 58505-0250
Phone: (701) 328-2311
Toll Free: (800) 472-2622
ND Relay TTY: (800) 366-6888
Fax: (701) 328-2173
dhslau@nd.gov

If a fair hearing is granted, the person or authorized representative will receive written notice of the scheduled time, date, and place of the hearing. A fair hearing is a formal meeting, which includes the person or authorized representative, an impartial administrative hearing officer, representative(s) from DHS and may include legal representation from the Attorney General's Office to represent DHS. At this hearing, the parties' present evidence and arguments to the administrative law judge assigned to conduct the hearing. The administrative law judge will then issue a written recommended decision based on the facts of the case, federal and state law and regulations. DHS may accept or reject the administrative law judge's recommended decision. DHS's final decision will be mailed to the person who appealed the matter.

The person or authorized representative has the right to bring witnesses, their own attorney, or some other advisor/friend to the hearing. DHS cannot pay for a lawyer to represent the person, but the DD Program Manager may suggest the person contact Legal Services of North Dakota or the Protection and Advocacy Project as these entities may be a possible resource during the appeal process.

The person has the right to see written materials about the case before the hearing and during the hearing. The person or authorized representative have the right to question anyone who testifies against them at the fair hearing, and to present their own arguments and written materials.

If the fair hearing decision is in the person's favor, no action will be taken and the benefits will be reinstated, if they were terminated. If the fair hearing decision is not in the person's favor, DHS's action will stand. If the person does not agree with the fair hearing decision, they can appeal to the District Court and the North Dakota Supreme Court.

If the request for a hearing is postmarked or received within 10 calendar days of the date of the notice, services will not terminate or be reduced until a decision is rendered after the hearing, or the person withdraws the request for a hearing, fails to appear at the hearing without good cause, or it is decided that the only issue in the appeal is one of federal or state law requiring an automatic change adversely affecting some or all recipients.

If benefits are continued, and the hearing decision is not in the person's favor, they may be required to re-pay cost of services received and covered by Medicaid during the appeals process.

A person, who is dissatisfied with DHS's decision regarding a denial, reduction, suspension, or termination in services, as an alternative or in conjunction with an appeal request, may request an informal conference in an attempt to resolve the matter. The request for informal conference must be postmarked or received by DHS DD Division within ten (10) calendar days of the date of the adverse decision notice. DD Program Managers may be contacted for assistance in how to file an informal conference request.

A person is not required to participate in an informal conference and may proceed directly to fair hearing. The use of the informal conference option will not preclude or delay the person's right to a fair hearing. The request for an informal hearing will not suspend the time requirements to request an appeal within 30 days of the date of the adverse decision notice.