

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C., §512)

PROPOSED

PUBLIC NOTICE

DSSM: Fair Hearing Practices and Procedures

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding *Fair Hearing Practices and Procedures*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2011.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend administrative policies in the Division of Social Services Manual (DSSM) regarding *Fair Hearing Practices and Procedures*.

Statutory Authority

- 7 CFR §273.15, *Fair Hearings*
- 7 CFR §271.7, *Allotment reduction procedures*
- 42 CFR §431.206, *Informing applicants and recipients*
- 42 CFR §431.213, *Exceptions from advance notice*
- 42 CFR §431.220, *When a hearing is required*
- 42 CFR §431.221, *Request for a hearing*
- 42 CFR §431.223, *Denial or dismissal of request for hearing*
- 42 CFR §431.230, *Basis and purpose*
- 42 CFR §431.241, *Matters to be considered at hearing*
- 42 CFR §431.242, *Procedural rights of the applicant or recipient*
- 42 CFR §431.243, *Parties in cases involving an eligibility determination*
- 42 CFR §431.244, *Hearing decisions*
- 42 CFR §431.245, *Notifying the applicant or recipient of a State agency decision*
- 42 CFR §438.408, *Resolution and notification: Grievances and appeals*
- 45 CFR §205.10, *Hearings*

Summary of Proposed Changes

These rule changes are being made to simplify language and re-order content for clarity and ease of use. Specifically, the following policy sections are reformatted and reworded for clarity with no change in content:

- DSSM 5001**, *Fair Hearing General Practices*
- DSSM 5100**, *Legal Base*
- DSSM 5200**, *Statewide Fair Hearings*
- DSSM 5300**, *Notices*
- DSSM 5301**, *Adequate and Timely Notice to Recipients*
- DSSM 5302**, *Exemptions: TANF, GA, Medicaid, EA, Child Care*
- DSSM 5303**, *Mass Review Actions*
- DSSM 5304**, *Jurisdiction*

DSSM 5304.1, *Jurisdiction for PASARR Hearings*
DSSM 5304.3, *Jurisdiction for Medicaid Managed Care Cases*
DSSM 5304.4, *Energy Assistance Program Hearings*
DSSM 5304.5, *Jurisdiction for Hearings over Medicaid Program Services*
DSSM 5305, *Time Limits*
DSSM 5307, *Dismissal of Requests*
DSSM 5308, *Prohibition Against Termination*
DSSM 5309, *Timely Action on Food Stamp Benefit Hearings*
DSSM 5310, *Clarification Conference*
DSSM 5311, *Notification of Time and Place of Hearing*
DSSM 5312, *Responses to Hearing Requests*
DSSM 5400, *Fair Hearing Requirements*
DSSM 5401, *Hearing on Actions*
DSSM 5402, *Hearing on Decisions*
DSSM 5403, *Availability of Documents and Records*
DSSM 5404, *Appellant's Opportunities at a Hearing*
DSSM 5405, *Fair Hearing Procedures*
DSSM 5406, *Powers and Duties*
DSSM 5407, *Presenter's Role*; and,
DSSM 5500, *Decisions by the Final Hearing Authority*.

In addition:

- 1) DSSM 5100, *Legal Base*: citations were added to specific sections so the section on *Legal Base* is no longer needed.
- 2) DSSM 5301, *Adequate and Timely Notice to Recipients*: combined with section DSSM 5300, *Notices*.
- 3) DSSM 5303, *Mass Review Actions*: combined with section DSSM 5302, *Exemptions: TANF, GA, Medicaid, EA, Child Care*; where out dated information about monthly reporting was removed from DSSM 5302.
- 4) DSSM 5405, *Fair Hearing Procedures* and DSSM 5407, *Presenter's Role*: removed and will be re-issued in a separate document that will be posted on the agency web page.

DSS PROPOSED REGULATION #10-53 REVISIONS:

5001 Fair Hearings: General Purpose Providing an Opportunity for a Fair Hearing

7 CFR 273.15(f), 42 CFR 431.206, 45 CFR 205.10

~~An opportunity for a fair hearing will be provided, subject to the provisions of this section, to any individual requesting a hearing who is dissatisfied with a decision of the Division of Social Services, (i.e., suspension, reduction, overpayment, sanctions, delays, termination, etc.).~~

~~The purpose of a fair hearing is:~~

- ~~1. To afford all applicants and recipients an opportunity for an impartial, objective review of decisions, actions and/or delays in actions in programs administered by the Division;~~
- ~~2. To settle the issue(s) raised by the client in requesting the hearing;~~
- ~~3. To contribute to uniformity in the application of Departmental regulations;~~
- ~~4. To reveal aspects of Departmental procedures that are deficient or inequitable.~~

Note

~~The agency shall promptly inform a claimant in writing if assistance is to be discontinued under any circumstance pending a hearing decision. If the adverse notice period ends on a weekend or on a holiday and if a request is received the day after the weekend or holiday, the request will be considered as received on a timely basis.~~

This policy applies to all applicants and recipients of DSS and DMMA services.

1. Staff Offer Clients an Opportunity to be Heard

An opportunity for a fair hearing will be provided, subject to the provisions of this section, to any individual requesting a hearing who is dissatisfied with a decision of the Division of Social Services or the Division of Medicaid and Medical Assistance.

The agency will promptly inform a claimant in writing if assistance is to be discontinued under any circumstance pending a hearing decision.

2. Staff Inform Clients in Writing of Their Hearing Rights

Every applicant and recipient will be informed in writing of their right to a fair hearing as provided under this section:

- A. At the time of application
- B. At the time of any action affecting the applicant's or recipient's claim
- C. At the time a skilled nursing facility or a nursing facility notifies a resident that he or she is to be transferred or discharged
- D. At the time an individual receives an adverse determination by the State with regard to the preadmission screening and annual resident review requirements (PASARR)

(Break in Continuity of Sections)

5100 Legal Base RESERVED

~~Public Assistance benefits are authorized under the various categorical programs established under Title 31 of the Delaware Code, under the Food Stamp Act, as amended, and under Titles XIX, XX and XXI of the Social Security Act and under regulations, not inconsistent with these laws promulgated by the State or federal governments.~~

5200 Statewide Fair Hearings Informing Clients of Their Right to a Fair Hearing

7 CFR 273.15(f), 45 CFR 205.10

~~Every applicant and recipient under any public assistance program administered by the Division will be informed in writing at the time of application and at the time of any action affecting their claim of their right to a fair hearing as provided under this section. Any notification conforming to the provisions of §5301 may be employed in giving this notice.~~

~~A summary fair hearing pamphlet is available to each applicant and each recipient, and will be displayed in each agency office. The policies and procedures for hearings contained herein are available to the public at each public and law library in the State and to other interested persons and agencies.~~

This policy applies to every applicant and recipient under any public assistance program administered by the Division of Social Services or the Division of Medicaid and Medical Assistance.

Staff provide applicants and recipients with written information about their right to a fair hearing as provided under this section. This information is provided at the time of application and at the time of any action affecting their claim.

5300 Notices Providing Adequate and Timely Notices

45 CFR 205.10, 7 CFR 273.15(f)

~~Written notice of an agency action to applicants and recipients, in addition to meeting the requirements of §5301 where applicable, will contain:~~

- ~~1. A statement of the client's right to a fair hearing as provided under this section.~~
- ~~2. The method by which (s)he may request a fair hearing.~~
- ~~3. A statement that (s)he may represent him/herself or that (s)he may be represented by counsel or by another person.~~

This policy applies to every applicant and recipient under any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. DSS and DMMA Provide Written Notice of Agency Actions

Written notice of an agency action will contain:

- A. A statement of the client's right to a fair hearing as provided under this section.
- B. The method by which he or she may request a fair hearing.
- C. A statement that he or she may represent him/herself or that he or she may be represented by counsel or by another person.

2. DSS and DMMA Take Action Only Under Certain Conditions

No action may be taken unless the following conditions are met:

A. Written notice is provided to the client that is "adequate."

An adequate notice is a written notice that includes

- 1. A statement of what action the agency intends to take
- 2. The reasons for the intended agency action
- 3. The specific regulations supporting such action
- 4. Explanation of the individual's right to request a State agency hearing
- 5. The circumstances under which assistance is continued if a hearing is requested
- 6. If the agency action is upheld, that such assistance must be repaid

B. Written notice is provided to the client that is "timely."

A timely notice is one that is mailed at least 10 days before the date of action.

Exception: For TANF, notice is timely if mailed at least 5 days before the action would become effective when DSS learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources.

C. Each recipient is advised of his or her liability for repayment of benefits received while awaiting a fair hearing if the agency's decision is upheld.

Continue benefits if the hearing request form is unclear as to whether the recipient wants continued benefits or not. Provide continued benefits within 5 working days of the date the agency received the household's request.

Exception: Food Supplement Program households do not have a right to a continuation of benefits while waiting for the fair hearing when the recipient is disputing a reduction, suspension or cancellation of benefits as a result of an order issued by FNS.

During the fair hearing period, the agency will adjust allotments to take into account reported changes except for the factor(s) on which the hearing is based.

D. Each notice contains information needed for the claimant to determine from the notice alone, the accuracy of the Division's action or intended action.

All notices will:

Indicate the action or proposed action to be taken (i.e., approval, denial, reduction, or termination of assistance):

- a. Provide citation(s) to the regulation(s) supporting the action being taken;
- b. Provide a detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the claimant:
 - i. An explanation of why the action is being taken, and

- ii. An explanation of what the claimant was required by the regulation to do and why his or her actions fail to meet this standard (if the action is being taken because of the claimant's failure to perform an act required by a regulation)
- c. Provide:
 - i. explanations of what income and/or resources the agency considers available to the claimant
 - ii. the source or identity of these funds,
 - iii. the calculations used by the agency,
 - iv. the relevant eligibility limits and maximum benefit payment levels for a family or assistance unit of the claimant's size.

5301 Adequate and Timely Notice to Recipients RESERVED

In cases involving an agency's proposed or intended action to discontinue, terminate, suspend or reduce assistance described in these rules, or to change the manner or form of payment, no action may be taken unless the following conditions are met:

1. Written notice must be provided to the client that is "adequate." Adequate means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

2. The written notice must be "timely." It must be mailed no later than ten (10) days before the date of action; that is, at least ten (10) days before the intended change would be effective. However, in the TANF program, when the Division of Social Services learns of facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five (5) days before the action would become effective.

3. Each recipient shall be advised of his/her liability for repayment of benefits received while awaiting a fair hearing if the agency's decision is upheld. Monthly reporting households receiving benefits while awaiting a hearing will continue to report monthly until the end of the certification period or the resolution of the fair hearing, whichever is first. However, if DSS did not receive a monthly report form from the household by the extended filing date and the household admits that it did not submit such a monthly report, benefits will not be continued. If the fair hearing concerns termination for non-receipt of the monthly report by DSS, then a new complete monthly report for the month in question must be submitted by the household before benefits are continued. If the hearing request form is unclear whether the recipient wants continued benefits, they should be given.

If a recipient receives notice of termination due to his or her failure to submit a completed monthly report but subsequently submits one within the timely notice period, benefits will be provided based upon the information indicated on the report. If the information submitted on the monthly report results in a change in benefit amount or eligibility, another notice indicating the change and meeting the definition of an adequate notice must be provided. If a fair hearing is requested based upon this second notice, benefits must be continued at the level issued just prior to the notice of change.

The agency will provide continued benefits not later than five (5) working days from the day it received the household's request.

During the fair hearing period, the agency will adjust allotments to take into account reported changes except for the factor(s) on which the hearing is based.

4. Notices, including computer generated notices, must contain information needed for the claimant to determine from the notice alone the accuracy of the Division's action or intended action. At a minimum all notices will:

- a. Indicate the action or proposed action to be taken (i.e., denial, reduction, or termination of assistance);
- b. Provide citation(s) to the regulation(s) supporting the action being taken;
- c. Provide a detailed individualized explanation of the reasons(s) for the action being taken which includes, in terms comprehensible to the claimant, an explanation of why the action is being taken and, if the action is being taken because of the claimant's failure to perform an act required by a regulation, an explanation of what the claimant was required by the regulation to do and why his or her actions fail to meet this standard; and

d. ~~If calculations of income or resources are involved, set forth the calculations used by the agency, including any disregards or deductions used in the calculations, explanations of what income and/or resources the agency considers available to the claimant and the source or identity of these funds, and the relevant eligibility limits and maximum benefit payment levels for a family or assistance unit of the claimant's size.~~

5302 Exceptions: TANF, GA, Medicaid, EA, Child Care Making Exceptions to Timely Notice Rules

42 CFR 431.213

This policy applies to every applicant and recipient under any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

The agency may dispense with timely notice but will send adequate notice not later than the date of action when:

- 1) A. The agency has factual information confirming the death of the recipient or of the TANF payee when there is no relative available to serve as the new payee.
- 2) B. The recipient provides a clear written statement that assistance is no longer desired.
- 3) C. The recipient provides information which requires termination or reduction of assistance and the recipient has indicated in writing that (s)he understands that the action is a consequence of supplying the information.
- 4) D. The recipient has been admitted or committed to an institution where he is ineligible for services (See §3010.9).
- 5) E. The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.
- 6) F. The appellant's whereabouts are unknown and agency mail directed to him/her has been returned by the post office indicating no known forwarding address. If his/her whereabouts become known during the payment period, the client's check will be made available.
- 7) G. The recipient's case has been accepted for assistance in another state or territory or for another category of assistance including SSI, and, that fact has been established by the Department.
- 8) H. When a child is no longer in the home, including when a child is removed from a home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.
- 9) I. A change in the level of medical care is prescribed by the recipient's physician.
- 10) ~~The recipient files a timely completed monthly report; notices to reduce or terminate assistance must be mailed to arrive no later than the resulting payment or in lieu of the payment.~~
- 11) ~~The recipient files a completed monthly report that is not timely (i.e., is not received by the DCIS processing deadline); the recipient must be notified promptly of any reduction in or termination of the amount of assistance.~~
- 12) J. In the Emergency Assistance Program, a special allowance has been granted for a specific period of time and the allowance has terminated or expired. and This applies if the individual has been notified in writing at the time of initiation that the allowance shall will automatically terminate at the end of the specified period.
- K. When changes in either state or federal laws (e.g., Social Security increases) require automatic adjustments for classes of recipients.

These mass change notices will be timely and adequate. An adequate notice must include a statement of the:

1. Intended action
2. Reasons for such intended action
3. Specific change in law
4. Circumstances under which a hearing may be obtained and assistance continued

The notices will also include:

1. The specific change in the individual's benefits
2. A name and telephone number of a person to call for additional information

3. The liability a food stamp household will incur for any overissued food benefits if a fair hearing decision is adverse to the household

5303 Mass Review Actions RESERVED

~~When changes in either State or federal laws (i.e., Social Security increases) require automatic adjustments of classes for recipients, timely notice of such adjustments will be given which will be "adequate". To be adequate, notices must include a statement of the intended action, the reasons for such intended action, a statement of the specific change in law, and a statement of the circumstances under which a hearing may be obtained and assistance continued.~~

~~Mass change notices will also include:~~

~~The specific change in the individual's benefits;~~

~~A name and telephone number of a person to call for additional information;~~

~~The liability a food stamp household will incur for any overissued food stamp benefits if a fair hearing decision is adverse to the household.~~

5304 Jurisdiction Presiding Over Fair Hearings

7 CFR 273.15, 42 CFR 431.241, 45 CFR 205.10

~~An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for economic or medical assistance or food stamp assistance is denied or is not acted upon with reasonable promptness and to any recipient who is aggrieved by any action of the Division of Social Services such as actions to reduce benefits or to assign Food Stamp Program recipients to a specific employment and training component. To be considered, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority.~~

~~Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.~~

~~Appellants of actions taken in the Food Stamp Program may request a fair hearing orally, and, if so, will be informed that it is advisable to perfect the request by reducing it to writing. The staff member receiving an oral request will initiate procedures to begin the hearing process.~~

~~The freedom to make a request for a hearing will not be limited or interfered with in any way. The Division may provide assistance to appellants such as providing translators or a non-English explanation of the hearing process when required by federal regulations.~~

~~Except in the Food Stamp Program, a hearing need not be granted when either State or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.~~

~~This policy applies to applicants and recipients for any public assistance program administered by the Division of Social Services or the Division of Medicaid and Medical Assistance. It also applies to programs administered by other agencies over which DSS has authority. Staff may not limit or interfere in any way with an appellant's freedom to make a request for a hearing.~~

1. DSS Hearing Officers Preside Over Fair Hearings

The Division of Social Services is authorized to preside over and render decisions in the following types of hearings:

A. PASARR Hearings

B. Medicaid Managed Care Cases

C. Emergency Assistance Services Hearings

D. Jurisdiction for Hearings over Medicaid Program Services

2. Hearing Office Determines if Hearing Request is Valid

A request for a hearing must be a clear, written expression to the effect that the appellant wants the opportunity to present his or her case to a higher authority. The request must be signed by the appellant or his or her representative.

Exception: Appellants of actions taken in the Food Supplement Program may request a fair hearing orally. If an oral request is made, inform the appellant that it is advisable to finalize the request by putting it in writing. The staff member receiving an oral request will take steps to begin the hearing process.

3. Hearing Officer Limits Issues Presented at the Hearing

The Hearing Officer has the authority to restrict the issues raised at the hearing. The following issues may be raised at the hearing.

- A. Issues described in the notice of action sent to the appellant
- B. Issues fairly presented in the appellant's request for a hearing
- C. Issues fairly presented in the Division's response in its hearing summary.

5304.1 Jurisdiction for Presiding Over PASARR Hearings

42 CFR 431.243

An individual who has been adversely affected by any determination made by either the Division of Mental Health (DMH) or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening or an annual resident review (PASARR) of any applicant for or recipient of residential nursing services may appeal the determination decision under these rules. The hearing will be conducted by the Division of Social Services and the hearing decision is binding on the Department of Health and Social Services. For hearings on PASARR determinations which have a specific affect on Medicaid Program eligibility, DSS will appear as a witness for DDDS or DMH if requested by a party to the hearing. For appeals initiated by non-Medicaid claimants or appellants, the State's case will be presented by DDDS or by DMH as appropriate.

This policy applies to applicants for and recipients of residential nursing services.

Individuals adversely affected by determinations made by the Division of Substance Abuse and Mental Health (DSAMH) or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening or an annual resident review (PASARR) may appeal the decision to the Division of Social Services (DSS). The hearing is conducted by DSS and the decision is binding on the Department of Health and Social Services.

For hearings on PASARR determinations which have a specific affect on Medicaid Program eligibility, DMMA will appear as a witness for DDDS or DSAMH if requested by a party to the hearing.

For appeals initiated by non-Medicaid claimants or appellants, the State's case is presented by DDDS or by DSAMH as appropriate.

(Break in Continuity of Sections)

5304.3 Jurisdiction for Presiding Over Medicaid Managed Care Hearings Cases

42 CFR 438.408(f)

Recipients of medical services from the Division of Social Services may appeal an adverse decision of a Managed Care Organization (MCO) to the Division.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case and is subject to the rules, practices, and procedures enumerated herein.

The decision of the DSS hearing officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

Nothing in these rules may operate to preclude an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

This policy applies to recipients enrolled in a managed care organization.

Recipients of medical services from the Division of Medicaid and Medical Assistance may appeal an adverse decision of a Managed Care Organization (MCO) to the Division. The decision of the DSS

Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the MCO.

The MCO is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The MCO is subject to the rules, practices, and procedures detailed herein.

These rules do not prevent an MCO from offering conciliation services or a grievance hearing prior to the fair hearing conducted by DSS.

5304.4 Presiding Over Emergency Assistance Program Services Hearings

45 CFR 205.10(a)(1)

~~Jurisdiction for hearings on decisions by the Division of State Services Centers on eligibility for emergency assistance under §6000 et seq. of these rules is with the Division of Social Services.~~

This policy applies to applicants for and recipients of Emergency Assistance Services.

The Division of Social Services (DSS) is the appointed authority for Emergency Assistance Services (EAS). The program is administered by a contracted vendor. Requests for hearings on EAS eligibility decisions made by the contracted vendor are heard by DSS.

5304.5 Jurisdiction for Hearings over Medicaid Program Services Presiding Over HCBS Hearings

~~The Delaware Medicaid Program operates Medicaid waiver projects offering home and community-based services (HCBS). These projects include waivers for persons with mental retardation, for the elderly and disabled, for persons with acquired immune deficiency syndrome and other HIV-related diseases, for persons with acquired brain injuries, for residential services under an Assisted Living waiver, and for other types of conditions that require special services. (See DSSM 20700 et seq.)~~

~~The Division of Social Services ("DSS") has jurisdiction for hearings over disputes involving these services. The delivery of these services is managed by other Divisions within the Department of Health and Social Services ("DHSS") including the Division of Services for Aging and Adults with Physical Disabilities ("DSAAPD"), the Division of Developmental Disabilities Services ("DDDS") and the Division of Medicaid and Medical Assistance ("DMMA"). For these hearings, the Division taking the action in dispute will prepare the §5312 hearing summary and defend the action at the hearing.~~

This policy applies to applicants and recipients of home and community-based services provided under Delaware Medicaid Program waiver projects and managed by other Divisions within the Department of Health and Social Services.

1. DSS Has Jurisdiction For Hearings Over Disputes Involving HCBS Services

The Division taking the action in dispute is responsible for the preparation of the hearing summary under §5312 of these rules and the presentation of its case. The Division is subject to the rules, practices, and procedures detailed herein. The decision of the DSS Hearing Officer is a final decision of the Department of Health and Social Services and is binding on the Division.

5305 Time Limits Limiting the Amount of Time to Request A Hearing

7 CFR 273.15 (g), 42 CFR 431.221, 45 CFR 205.10

Hearings are subject to the following time limits:

1. Time limit for requesting a hearing prior to action.

~~If a request for a hearing is filed within the timely notice period (the period between the date a notice is mailed and the effective date of the action), benefits will not be reduced or terminated pending a decision on the appeal.~~

2. Time limit for requesting a hearing after action.

~~If the client fails to reply within the time limit for a hearing prior to action, as required, the proposed action shall take effect. If (s)he requests a hearing after the action, a hearing shall be granted provided the request is received within 90 days from the effective date of action.~~

~~When a request for a hearing is not filed within 90 days of the date notice of an action is given, the hearing officer is without jurisdiction to hear an appeal and the time for taking an appeal will not be enlarged.~~

- ~~3. At any time within a certification period, a food stamp household may request a hearing to dispute its current level of benefits.~~
- ~~4. Under Delaware law and procedure, an appeal is filed when it is received and filed in the Division's hearing office, not at the moment it is placed in the mail.~~

This policy applies any time an applicant or recipient of any program managed or administered by DSS or DMMA requests a fair hearing.

1. Hearing Office Staff Determine Timely Requests

An appeal (hearing request) is filed when it is received and filed in the Division's hearing office, not at the moment it is placed in the mail. Timely requests are determined based on four time periods:

- A. Within the timely notice period
- B. Within 90 days from the effective date of action
- C. More than 90 days from the effective date of action
- D. For Food Supplement Program households, at any time within a certification period,

1. Timely Notice Period

Requests made during the timely notice period are timely. The timely notice period is the ten (10) day period between the dates a notice is mailed to the date a proposed action is to take effect. It is also called Advance Notice Period.

Staff will not reduce or terminate benefits pending a decision on the appeal if a request for a hearing is filed within the timely notice period.

Exception: Benefits may be reduced or terminated if the conditions in DSSM 5308 are met.

2. Ninety Days from the Effective Date of Action

A hearing is granted if the request is received within 90 days from the effective date of action. If the request is not received during the timely notice period, the proposed action must take effect.

3. More than Ninety Days from the Effective Date of Action

The hearing officer does not have authority to hear an appeal that is filed more than 90 days from the effective date of action. The hearing officer does not have authority to extend the time period beyond 90 days of the effective date of action.

4. Food Supplement Program Households

At any time within a certification period, a Food Supplement Program household may request a hearing to dispute its current level of benefits.

(Break in Continuity of Sections)

5307 Dismissal of Requests Dismissing A Hearing Request

7 CFR 273.15 (j), 42 CFR 431.223, 45 CFR 205.10 (a)(5)(v)

The hearing officer of the Division shall dismiss or deny a request for a Fair Hearing:

- ~~1. Where it has been withdrawn by the appellant in writing; or~~
- ~~2. Where the sole issue is one of State or federal law requiring automatic benefit adjustments for classes of TANF, GA, Child Care or Medicaid/Medical Assistance recipients (unless the reason for an individual appeal is incorrect grant computation); or~~
- ~~3. Where the appellant has abandoned his/her request by failing without good cause, to appear by him/herself or by an authorized representative at a scheduled hearing.~~
 - ~~a. Good cause for failure to appear at a hearing may include, but is not limited to the following:~~

1. Death in the family;
 2. Personal injury or illness;
 3. Sudden and unexpected emergencies;
 4. Failure to receive the hearing notice
4. The request is not received within the specified 90 day time period.
The hearing officer will notify both the appellant and the agency if a request for a hearing is dismissed.
This policy applies any time a request for a hearing is filed over which the DSS Hearing Office has jurisdiction.
The hearing officer of the Division will dismiss or deny a request for a fair hearing where:
- A. It has been withdrawn by the appellant in writing;
 - B. The sole issue is one of State or federal law requiring automatic benefit adjustments for classes of TANF, GA, Child Care or Medicaid/Medical Assistance recipients (unless the reason for an individual appeal is incorrect grant computation);
 - C. The appellant has abandoned his or her request by failing without good cause, to appear by him/herself or by an authorized representative at a scheduled hearing.
 1. Good cause for failure to appear at a hearing may include, but is not limited to the following:
 - i. Death in the family;
 - ii. Personal injury or illness;
 - iii. Sudden and unexpected emergencies;
 - iv. Failure to receive the hearing notice.
 2. The request is not received within the specified 90 day time period.
The hearing officer will notify both the appellant and the agency if a request for a hearing is dismissed.

5308 Prohibition Against Termination Reducing or Terminating Benefits

42 CFR 431.230, 45 CFR 205.10(a)(6)

If the recipient requests a hearing within the timely notice period, assistance will not be suspended, reduced, discontinued, or terminated (but is subject to recovery by the agency if its action is sustained on appeal) until a decision is reached after a fair hearing, unless the recipient specifically requests reduction or discontinuance, or:

1. The certification period of a food stamp household is expired; or
2. A determination is made by a hearing officer at a hearing and the food stamp household is promptly informed in writing that the sole issue is one of State or federal law or regulation and that a household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;
3. A change affecting a food stamp household's eligibility or benefit amount occurs while the hearing decision is pending and the recipient fails to request a hearing after the subsequent notice of adverse action;
4. A change affecting the individual's TANF or other grant occurs while the hearing decision is pending and the individual fails to request a hearing after notice of the change;
5. A mass change affecting a food stamp household's eligibility or basis of issuance occurs while the hearing decision is pending; or
6. A food stamp household specifically waives a continuation of benefits.

NOTE

This policy applies any time a recipient requests a fair hearing and it is received within the timely notice period.

1. Staff Will Not Change Benefit Levels Until a Hearing Decision is Made

DSS and DMMA staff will not suspend, reduce, discontinue, or terminate assistance until a decision is reached after a fair hearing, if the request is received within the timely notice period.

Benefits are subject to recovery by the agency if its action is upheld by the hearing officer.

2. Staff May Adjust Benefit Levels Under Some Circumstances

DSS and DMMA staff will suspend, reduce, discontinue, or terminate assistance before a decision is reached after a fair hearing if:

- A. The recipient specifically requests reduction or discontinuance.

- B. The certification period of a Food Supplement Program household is expired;
- C. A determination is made by a hearing officer at a hearing and the Food Supplement Program household is promptly informed in writing that the sole issue is one of State or federal law or regulation and that a household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;
- D. A change affecting a Food Supplement Program household's eligibility or benefit amount occurs while the hearing decision is pending and the recipient fails to request a hearing after the subsequent notice of adverse action;
- E. A change affecting the individual's TANF or other grant occurs while the hearing decision is pending and the individual fails to request a hearing after notice of the change;
- F. A mass change affecting a Food Supplement Program household's eligibility or basis of issuance occurs while the hearing decision is pending;
- G. A Food Supplement Program household specifically waives a continuation of benefits.

5309 Taking Timely Action on Food Stamp Benefit Hearings

7 CFR 273.15(c)

~~1. State Level Hearings – Within sixty (60) days of receipt of a request for a fair hearing, the agency will conduct the hearing, reach a decision, and notify the household of the decision. Decisions which result in an increase in household benefits will be reflected in the food stamp allotment within ten (10) days of the receipt of the hearing decision even if the Division must provide supplementary food stamp benefits or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the Division may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle, provided that issuance will occur within sixty (60) days from the date of the household's request for the hearing. Decisions which result in a decrease in household benefits will be reflected in the next scheduled issuance following receipt of the hearing decision.~~

~~2. Household Requests for Postponement – The household may request and receive a postponement or continuance of the scheduled hearing. The postponement may not exceed thirty (30) days and, in such a case, the time limit for action on the decision is extended for as many days as the hearing is postponed. For example, if a hearing is postponed by the household for ten (10) days, notification of the hearing decision will be required within seventy (70) days from the date of the original request for a hearing.~~

~~3. Agency Requests for Postponement – The agency may request that a hearing be rescheduled. Such requests may be granted in the discretion of the hearing officer. The requests should be made to the hearing officer as soon as the agency decides that a rescheduling is desirable. However, unless the hearing officer advises the agency and household to the contrary, such postponement shall not affect the time within which the decisions shall be made and the household notified. In the Food Stamp Program, there will be no extension of the sixty (60) day timeframe due to rescheduling of the hearing by the agency.~~

This policy applies any time an applicant or recipient requests a hearing involving food benefits.

1. Staff Take Timely Action on Hearing Requests

Within 60 days of receipt of a request for a fair hearing, the agency will conduct the hearing, reach a decision, and notify the household of the decision.

A. Decisions which result in an increase in household benefits

Staff will provide the additional benefits within 10 days of the receipt of the hearing decision.

However, the Division may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle. That issuance must occur within 60 days from the date of the household's request for the hearing.

B. Decisions which result in a decrease in household benefits

Staff will decrease benefits effective with the next scheduled issuance following receipt of the hearing decision.

2. Households May Ask to Postpone the Hearing

The household may request and receive a postponement or continuance of the scheduled hearing. The hearing may not be postponed more than 30 days.

When a hearing is postponed the time limit for action on the decision is extended for as many days as the hearing is postponed. For example, if a hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the original request for a hearing.

3. The State Agency May Ask to Postpone the Hearing

The agency may request that a hearing be rescheduled. The postponement is at the discretion of the hearing officer.

Any agency initiated postponement will not affect the time within which the decisions must be made and the household notified unless the hearing officer advises the agency and household to the contrary.

Unlike postponements initiated by the household, there is no extension of the 60 day timeframe when the rescheduling is at the request of the agency.

5310 Offering Applicants and Recipients A Clarification Conference

7 CFR 273.15(d)

~~If a food stamp household wants to contest a denial of expedited service under DSSM 9041, the agency must offer the household an agency conference. A conference may also be offered to a recipient of any program who is adversely affected by an agency action. In appropriate cases the hearing officer may direct the parties to participate in one or more conferences to address any matter that may aid in the disposition of the proceedings. A conference may be conducted in person or by telephone and may be presided over by the hearing officer or by another person designated by the hearing officer for that purpose. As a result of a conference the hearing officer may enter an order controlling the course of the proceedings or implementing any settlement agreement. A conference may not delay or be used as a substitute for a hearing.~~

~~A State agency conference may include the eligibility worker or staff person responsible for an action or decision and will include an eligibility supervisor and the appellant and/or a representative. An agency conference for households contesting a denial of Food Stamp Program expedited services must be scheduled within two (2) working days unless the household requests that it be scheduled later or states that it does not wish to have a conference.~~

This policy applies to any applicant who is denied expedited food benefits. It may also apply to recipients of other programs who are adversely affected by an agency action.

1. Staff Must Offer a Clarification Conference for Expedited Households

The agency must offer the Food Supplement Program household an agency conference if the household wants to contest a denial of expedited service under DSSM 9041.

A conference may not delay or be used as a substitute for a hearing.

2. Staff May Offer a Clarification Conference for Other Households

A conference may be offered to a recipient of any program who is adversely affected by an agency action.

A conference may not delay or be used as a substitute for a hearing.

3. Staff Will Quickly Schedule a Clarification Conference

An agency conference for households contesting a denial of Food Supplement Program expedited services must be scheduled within 2 working days unless the household:

- A. Requests that the conference be scheduled later, or
- B. States that it does not wish to have a conference.

4. Hearing Officer Presides Over Clarification Conference

A conference may be presided over by the hearing officer or by another person designated by the hearing officer for that purpose. The conference may be conducted in person or by telephone. As a result of a conference, the hearing officer may enter an order controlling the course of the proceedings or implementing any settlement agreement.

5. State Staff are Required at Clarification Conference

An eligibility supervisor and the appellant and/or a representative are required participants at the conference. The eligibility worker or staff person responsible for the action or decision are optional participants.

5311 Notification of Time and Place of Hearing Notifying Appellants and Others of Hearings

45 CFR 205.10(a)(8), (a)(13)(i)

The time, date, and place of the hearing will be arranged so that the hearing is accessible to the appellant. At least twelve (12) days before the hearing, advance written notice will be provided by mailing the notice to all parties involved to permit adequate preparation of the case. An appellant may request less notice in order to expedite the scheduling of the hearing. Notices to appellants are sent by certified mail. The notice will:

1. Advise the appellant or representative of the name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing;
2. Stipulate that the hearing request will be dismissed if the appellant or his/her representative fails to appear for the hearing without good cause (i.e., death in family, personal illness, unexpected emergency);
3. Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the household's case and will include fair hearing summary and documents filed for the hearing;
4. Explain that the appellant has the right to bring an attorney or other representative to his/her hearing;
5. Explain that the appellant may present any information that (s)he desires at the hearing;
6. Explain that the appellant or representative may examine the record prior to the hearing.

This policy applies to applicants and recipients of any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. Hearings Are Made Accessible to the Appellant

The Hearing Office will arrange the time, date, and place of the hearing so that it is accessible to the appellant.

2. Hearing Office Provides Advance Notice

The Hearing Office will mail written notice to all parties involved at least 12 days before the hearing.

Exception: An appellant may request less notice in order to speed up the scheduling of the hearing

3. Hearing Notice is Specific

The hearing notice will:

1. Inform the appellant or representative of the name, address, and phone number of the person to notify if it is not possible for the appellant to attend the scheduled hearing;
2. Stipulate that the hearing request will be dismissed if the appellant or his or her representative fails to appear for the hearing without good cause (i.e., death in family, personal illness, unexpected emergency);
3. Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the household's case. It will also include the fair hearing summary and documents filed for the hearing;
4. Explain that the appellant has the right to bring an attorney or other representative to his or her hearing;
5. Explain that the appellant may present any information that he or she desires at the hearing;
6. Explain that the appellant or representative may examine the record prior to or during the hearing.

5312 Responses Responding to Fair Hearing Requests

45 CFR 205.10

1. Upon receipt of a request for a hearing, either orally in the Food Stamp Program or in writing, a fair hearing summary will be prepared in response to the request. The presenter (§5407) is expected to write and sign the Hearing Summary.

2. A fair hearing summary is a document prepared by the agency stating the factual and legal reason(s) for the action under appeal.

3. The purpose of the hearing summary is to state the position of the proponent of the action in order to provide the appellant with the necessary information to prepare his/her case.

4. Preparation of hearing summary—On receipt of a request for a fair hearing, the agency shall prepare and submit a hearing summary to the Hearing Office within five (5) working days. The document must be easily read and understood (abbreviations should be avoided). Actions in the matter being appealed should be explained in concise statements and include citations to the policy upon which the action is based. The names and addresses of persons that the agency expects to call to testify will be included in the hearing summary.

5. Format of the hearing summary—The fair hearing summary shall be labeled at the top and signed and dated at the bottom. It shall contain the following:

- a. Identifying information—Give the client's name, the client's address, and the DCIS identification number.
- b. Client's reason for appeal—This section shows the basis of the client's appeal (rejection, reduction, closure, amount of benefits etc...)
- c. Action taken—This section is used to describe the specific action taken by the agency as well as the factual basis for its decision.
- d. Has assistance continued?—This section identifies whether or not the appellant's assistance has been restored because the appellant filed a request for a hearing within the timely notice period.
- e. Cite policy basis—This purpose of this section is to cite the specific State rules supporting the action taken.
- f. Persons expected to testify—This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

If completed by DSS, the worker will submit the case to his/her supervisor. The supervisor will:

Provide an adequate case review;

Correct any errors;

Forward request/summary together with any documents to be offered for admission at the hearing to the agency or DSS hearing office.

NOTE: If a section is not applicable, the designation "N/A" may be used.

As soon as the request/summary is received, it is recorded in an appeal calendar and immediately forwarded to the hearing officer. Upon review, the hearing officer will:

- a. Set a prompt date for the hearing;
- b. Send a notice conforming to the requirements of §5311. The notice will include the hearing summary.
- c. Notify all parties, including witnesses, of the date, time, and place of the hearing.

This policy applies anytime anyone requests a fair hearing due to a decision made by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA) for a program administered by DSS or DMMA.

1. The State Agency Prepares a Hearing Summary

Within 5 working days of receipt of a request for a fair hearing, the agency will prepare a hearing summary and submit the summary to the Hearing Office.

2. Staff Ensure the Summary Contains Pertinent Information

The hearing summary will contain enough information for the appellant to prepare his or her case. The summary must contain:

- A. Identifying information - Give the client's name, the client's address, and the DCIS identification number.

- B. Action taken – Indicate the basis of the client's appeal (rejection, reduction, closure, amount of benefits, etc.)
- C. Reason for action - Describe the specific action taken by the agency, as well as the factual basis for its decision.
- D. Has assistance continued? - Indicate whether or not the appellant's assistance was restored because the appellant filed a request for a hearing within the timely notice period.
- E. Policy basis - Cite the specific State rules supporting the action taken.
- F. Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

3. The Hearing Office Notifies the Appellant

Upon receipt of the hearing summary, the Hearing Office will:

- A. Set a prompt date for the hearing.
- B. Send a notice conforming to the requirements of §5311. The notice will include the hearing summary.
- C. Notify all parties, including witnesses, of the date, time, and place of the hearing.

5400 Establishing Fair Hearing Requirements

Each fair hearing will be held under the following conditions:

- A. The hearing will be held at a reasonable time, date, and place;
- B. The hearing officer will be an impartial official and may not have been previously involved with the matters raised at the hearing outside his duties as hearing officer. This section will not prevent the hearing officer from rehearing a matter which has been remanded or hearing a case which may be related to prior cases with which he had contact in his capacity as hearing officer;
- C. If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision may be obtained at agency expense and may be made part of the record at the discretion of the hearing officer;
- D. The hearing will be conducted in an orderly manner in order to assure that an adequate record of the proceedings is maintained;
- E. Witnesses for the State or agency shall be prepared to present the reason for the action and the applicable rules in an orderly and concise manner;
- F. When records are used as evidence, originals and legible copies of all documentation shall be provided for the hearing officer's record;
- G. Only evidence presented at the hearing shall be considered by the hearing officer in reaching his decision;
- H. A complete and exact record of the proceedings shall be made by electronic means; (When required, DSS will provide a transcript of the proceedings.)
- I. The hearing clerk shall have custody of the records and papers of the hearing. The clerk shall not permit any original record or paper to be taken unless authorized to do so by the hearing officer. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the person or agency from which they were received. The clerk shall preserve copies of hearing records consistent with any State rule of records management.

This policy applies to State/Agency staff and Hearing Officers any time a fair hearing is held.

1. DSS Assures the Fair Hearing Requirements are Met

Each fair hearing will be held under the following conditions:

- A. The hearing will be held at a reasonable time, date, and place;
- B. The hearing officer will be an impartial official and may not have been previously involved with the matters raised at the hearing outside his duties as hearing officer. This section will not prevent the hearing officer from rehearing a matter which has been remanded or hearing a case which may be related to prior cases with which he had contact in his capacity as hearing officer;

- C. If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision may be obtained at agency expense and may be made part of the record at the discretion of the hearing officer;
- D. The hearing will be conducted in an orderly manner in order to assure that an adequate record of the proceedings is maintained;
- E. Witnesses for the State or agency shall be prepared to present the reason for the action and the applicable rules in an orderly and concise manner;
- F. When records are used as evidence, originals and legible copies of all documentation shall be provided for the hearing officer's record;
- G. Only evidence presented at the hearing shall be considered by the hearing officer in reaching his decision;
- H. A complete and exact record of the proceedings shall be made by electronic means. (When required, DSS will provide a transcript of the proceedings.)
- I. The hearing clerk shall have custody of the records and papers of the hearing. The clerk shall not permit any original record or paper to be taken unless authorized to do so by the hearing officer. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the person or agency from which they were received. The clerk shall preserve copies of hearing records consistent with any State rule of records management.

5401 Conducting Hearings on State Actions

7 CFR 7 CFR 271.7 (f) 7 CFR 273.15 (a), 42 CFR 431.220, 45 CFR 205.10 (a)(5)

Upon request, a hearing shall be held regarding a State agency action, or failure to act with reasonable promptness, claims for financial, medical, or other assistance. The issues considered may include: undue delays in reaching decisions on eligibility or in issuing a benefit; refusal to consider a request for or undue delays in making an adjustment in a benefit; discontinuance, termination, suspension or reduction in assistance.

This policy applies to DSS hearing officers any time an appellant/claimant requests a hearing due to an agency action.

1. Hearing Officers Conduct Hearings on Agency Actions

A. Food Supplement Program Hearings

DSS will provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.

<u>Exception: DSS is not required to hold fair hearings unless the request for a fair hearing is based on a household's belief that:</u>
--

- | |
|---|
| <ul style="list-style-type: none"> A. <u>Its benefit level was computed incorrectly</u> B. <u>The rules were misapplied or misinterpreted</u> |
|---|

<u>Exception: DSS may deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered as a result of an order issued by the Food and Nutrition Service.</u>

B. Cash Assistance and Child Care Hearings

Upon request, a hearing will be held when:

- 1. An applicant's claim for services is denied or is not acted upon with reasonable promptness.
- 2. An applicant's claim for financial assistance is denied.
- 3. A recipient is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance.

4. A recipient is aggrieved by any agency action resulting in a determination that a protective, vendor, or two-party payment should be made or continued

Exception: The agency does not have to grant a hearing when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation

C. Medical Assistance Hearings

The State agency must grant an opportunity for a hearing when:

1. An applicant's claim for services is denied or is not acted upon with reasonable promptness.
2. A recipient believes the agency has taken an action erroneously.
3. A resident believes a nursing facility has erroneously determined that he or she must be transferred or discharged.
4. An individual believes the State has made an erroneous PASARR determination.
5. Received from any prepaid ambulatory health plan (PAHP) enrollee who is entitled to a hearing under 42 CFR 431 subpart E.
6. Received from any managed care organization (MCO) or prepaid inpatient health plan (PIHP) enrollee who is entitled to a hearing under 42 CFR 438 subpart F.
7. Received from any enrollee who is entitled to a hearing under 42 CFR 438 subpart B.

Exception: The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

5402 Conducting Hearings on Agency Decisions

7 CFR 273.15(g), 42 CFR 431.220, 45 CFR 205.10(a)(5)

A hearing may encompass decisions concerning:

1. Eligibility for financial or medical assistance in both initial and subsequent determinations;
2. The amount of economic or medical assistance or a change in the amount of the benefits;
3. The manner or form of the benefit including restricted or protective benefits;
4. A denial of a request for restoration of food stamp benefits lost more than ninety (90) days but less than one year prior to the request;
5. A decision of an MCO or other contractor that a medical service, treatment or test is not medically or otherwise necessary.

In addition,

1. At any time within a certification period, a household may dispute its current level of food stamp benefits; and
2. Food Stamp Program households may appeal decisions concerning expedited service.

This policy applies to DSS hearing officers any time an appellant/claimant requests a hearing due to an agency decision.

1. DSS Hearing Officers Conduct Hearings Regarding Agency Decisions

The Hearing Officer will conduct hearings regarding decisions on:

- A. Eligibility for financial or medical assistance
- B. The amount of financial or medical assistance

Exception: A Food Supplement household may dispute its current level of food benefits at any time

- C. The manner or form of the benefit

- D. A decision of a MCO or other contractor that a medical service, treatment or test is not medically or otherwise necessary
- E. A denial of a request for restoration of food benefits lost more than 90 days but less than one year prior to the request
- F. Food Supplement Program households may appeal decisions concerning expedited service

5403 Availability of Documents and Records Providing Documents to Appellants

45 CFR 205.10(13), 7 CFR 273.15(p)(1), 42 CFR 431.242

~~Prior to the hearing, the appellant and his/her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing and to examine the claimant's case records. Requests by the appellant or his/her authorized representative for records and documents between the request for a hearing and the hearing should be directed to the office that maintains the records. If the office does not produce the records within five working days, the requestor may ask the hearing officer to order the production of the records. There is no charge for copies of records and documents requested for a fair hearing. Documents relating to the case will be provided to a claimant or a household provided that confidential information is protected from release.~~

This policy applies anytime an appellant or his or her representative requests a fair hearing.

1. Appellants May Examine Case Records and Documents

Prior to the hearing, the appellant and his or her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing. He or she may also examine his or her case records.

2. Staff Must Provide Case Records in a Timely Manner

Staff must make case records available to the appellant within 5 working days of the request. If copies of documents are requested for the hearing, they will be provided at no cost.

Exception: Staff must not release confidential information, such as

1. the names of individuals who have disclosed information about the household without its knowledge
2. the nature or status of pending criminal prosecutions

5404 Appellant's Opportunities at a Hearing Providing Options to Appellants at Hearings

7 CFR 273.15(p), 42 CFR 431.242, 45 CFR 205.10(10)

This policy applies to appellants or his or her representative during a fair hearing.

At the hearing the appellant or his or her representative will have the opportunity to:

1. A. Examine the case records and documents;
2. B. Present his or her case by him/herself or with the aid of a representative or counsel;
3. C. Bring witnesses;
4. D. Submit evidence to establish all pertinent facts and circumstances;
5. E. Advance any argument without interference;
6. F. Question or refute any testimony or evidence including the opportunity to confront and cross-examine adverse witnesses;
7. G. Be provided with interpreters or mechanical facilities to overcome language or other communication handicaps;
8. H. Withdraw his or her request for a hearing at any time.

5405 Fair Hearing Procedures RESERVED

1) Hearing Officer's Introduction

~~The hearing officer will open the hearing, will identify the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant or claimant of his right to be heard. In addition, the hearing officer~~

will administer an oath to all witnesses and parties expected to present testimony at the hearing. The hearing officer may, in his discretion, deal with any preliminary matters prior to beginning the case.

2) Manner of Proceeding

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the appellant or claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulations. Parties will be courteous to each other and the hearing officer at all times and will obey the orders and rulings of the hearing officer.

3) Order of Presentation

a) Opening Remarks.

At the discretion of the hearing officer, the Department and the appellant or claimant will each be given an opportunity to make brief opening statements. An opening statement shall advise the hearing officer of the issues a party contends are a part of the case and shall briefly summarize how the party's case will be proven. The hearing officer may, terminate or limit any opening statement which is unduly lengthy, repetitive or irrelevant.

b) The moving party will present its case first. The burden of proof is on the moving party. The moving party is the party to the hearing seeking a change in the status quo ante. The Department is the moving party for actions to discontinue, terminate, suspend, or reduce assistance. The appellant or claimant is the moving party for actions relating to initial ineligibility determinations, the initial denials of claims or the failure to act upon a claim with reasonable promptness. Each party's case shall include the presentation of witnesses to give testimony and documents and other evidence offered to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing. Witnesses may be sequestered by or with the approval of the hearing officer.

c) Each party may present witnesses to give testimony and other evidence which is admissible to support its case. However, the non-moving party need not present any evidence, but may rely upon the moving party's failure to prove an essential element of its case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross-examine witnesses at the appropriate time during the proceeding.

d) If the non-moving party has presented evidence, the moving party may, in the discretion of the hearing officer, present rebuttal evidence.

e) Closing Remarks.

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal argument for the adoption of one position against the adoption of the other. However, the hearing officer may limit or terminate unduly lengthy, repetitive, or irrelevant closing remarks.

4) Role of Hearing Officer

The hearing officer is in charge of running the hearing. The hearing officer shall make all rulings on the admissibility of evidence as to how the proceedings are conducted. The hearing officer may question witnesses or direct the parties to produce evidence which the hearing officer determines is necessary for a decision in the case. However, other than ensuring that the hearing is conducted fairly, the hearing officer is not permitted to assist either party in the presentation of the case.

5) Decisions of the Hearing Officer

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. The decision of the hearing officer will be issued not more than 90 days from the date the request for a fair hearing is filed or more than 30 days from the date the hearing is conducted. The decision of the hearing officer is the final decision of the agency. Judicial review, pursuant to 31 Del.C. §520, may be taken directly from the hearing officer's decision, within thirty (30) days of the decision.

5406 Powers and Duties of Hearing Officers

7 CFR 273.15(M)(2)

This policy applies to all Hearing Officers in the conduct of their duties for the Department of Health and Social Services.

The hearing officer will:

- 1- A. Notify the parties of the date, time, and place of the hearing;
- 2- B. Take measures to avoid delays;

3. C. Ensure a fair and impartial proceeding;
4. D. Explain the hearing procedures;
5. E. Administer an oath or affirmation to all witnesses;
6. F. Ensure that all relevant issues are considered;
7. G. Maintain order and decorum;
8. H. Request, receive, and make part of the record all evidence determined to be necessary to decide the issues raised for the hearing;
9. I. Examine witnesses when necessary to develop the hearing record;
10. J. Regulate the conduct and course of the hearing to ensure an orderly hearing in a fashion consistent with due process;
11. K. Order, where relevant and useful, an independent medical assessment from a source mutually satisfactory to the appellant and to the agency;
12. L. Make a record of the hearing;
13. M. Provide a final hearing decision to the parties.

(Break in Continuity of Sections)

5407 ~~Presenter's Role~~ RESERVED

~~The person presenting the case for the State or otherwise presenting the case as a proponent of or advocate for the action under appeal will:~~

- ~~1. Describe the action taken;~~
- ~~2. Conduct an examination of the witnesses;~~
- ~~3. Offer evidence which supports the action taken;~~
- ~~4. Respond to motions or requests from the opposing party and questions from the hearing officer;~~
- ~~5. Ensure that the claimant/appellant's case record is available if needed;~~
- ~~6. Question or refute testimony/evidence presented by the opposing party;~~
- ~~7. Make arrangements when necessary for translators for the deaf or for persons in need of translation services.~~

5500 ~~Decisions by the Final Hearing Authority~~ Issuing Fair Hearing Decisions

7 CFR 273.15(c), (g); 42 CFR 431.244, 431.245; 45 CFR 205.10(16)

~~Prompt, definitive, and final administrative action shall be taken within ninety (90) days from the date the appeal is filed, or, in the case of the Food Stamp Program, within sixty (60) days from the date the appeal is filed. The decision of the hearing officer is binding on the Department of Health and Social Services.~~

~~The decision of the hearing officer shall be in writing and shall be sent to the appellant as soon as it is made. The written decision will identify supporting evidence and, for food stamp cases, will state whether benefits will be issued or terminated.~~

~~The decision of the hearing authority will comply with State and federal laws and regulations and will be based on the hearing record.~~

~~The written decision will contain at a minimum: a statement of the appellant's right to judicial review; the identity of the individual; a summary of evidence; findings of fact; a discussion or analysis of facts and arguments presented at the hearing and a discussion of how the applicable rules apply to the facts in the case and the conclusions derived therefrom; and the hearing officer's decision and/or order. The decision will cite applicable rules involved in reaching the decision. The writing will enable a reader to discern the path of the decision.~~

This policy applies to applicants and recipients of any public assistance program administered by the Division of Social Services (DSS) or the Division of Medicaid and Medical Assistance (DMMA).

1. Hearing Decisions Are Made Promptly

The Hearing Officer has sole authority to make hearing decisions. The Hearing Officer must take prompt, definitive, and final administrative action within ninety (90) days from the date the appeal is filed. The decision must be in writing and must be sent to the appellant as soon as it is made.

Exception: Food Supplement Program decisions must be made within 60 days from the date the appeal is filed

2. Decisions Are Binding on the Department of Health and Social Services

3. Decisions Comply with Laws and Regulations

The Hearing Officer's decision will comply with State and federal laws and regulations and are based on the hearing record.

4. Decisions Must Contain Specific Information

The written decision will contain, at a minimum, the following information.

- A. Information to enable a reader to understand how the decision was reached.
- B. Supporting evidence
- C. Food Supplement Program cases will state whether benefits will be issued or terminated.

The decision contains:

- A. A statement of the appellant's right to judicial review
- B. The identity of the individual
- C. A summary of evidence
- D. Findings of fact
- E. A discussion or analysis of facts and arguments presented at the hearing
- F. A discussion of how the applicable rules apply to the facts in the case
- G. The resulting conclusions
- H. The hearing officer's decision and/or order
- I. Applicable rules involved in reaching the decision

14 DE Reg. 618 (01/01/11)