DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Division of Social Services

5000 Fair Hearing Practice and Procedures

5000 Definitions

42 CFR 438.400

Abandonment	When the claimant fails without good cause, to appear (by himself or by authorized representative) at his or her scheduled hearing.
Adequate Notice	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. An 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 under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.
Advance Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Timely Notice Period.)
Adverse Benefit Determination	For recipients enrolled in a MCO, the denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the State; the failure of the MCO to act within timeframes regarding the standard resolution of grievances and appeals; and the denial of a recipient's request to dispute a financial liability, including cost sharing, copayments, and other recipient financial liabilities.
Appellant	Anyone who requests a hearing. (Also called Claimant.)
Benefits	Any kind of assistance, payments or benefits made by TANF, GA, Medicaid, Delaware Healthy Children Program (DHCP), Chronic Renal Disease Program (CRDP), Child Care, Refugee, Emergency Assistance or Food Supplement programs.
Claimant	Anyone who requests a hearing. (Also called Appellant.)
DHSS	The Department of Health and Social Services, including: 1. The Division of Social Services (DSS), in connection with economic, medical, vocational or child care subsidy assistance 2. The Division of Medicaid and Medical Assistance (DMMA) or a managed care organization (MCO) under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance 3. The Division of State Service Centers (DSSC) in connection with the Emergency Assistance Program 4. The Division of Developmental Disabilities Services (DDDS) in connection with Medicaid Program services 5. The Division of Public Health in connection with Medicaid Program services 6. The Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD) in connection with Medicaid Program services
DSS	The Division of Social Services (or "the Division.")

Expedited Fair Hearing An administrative hearing for Medicaid and DHCP which provides for a decision to be issued within 3 working days from the receipt of the request for an appeal of a decision to terminate, reduce, or suspend previously authorized services or a decision to deny or limit a new service request where the standard decision time frame of 45 days could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function.

Fair Hearing An administrative hearing held in accordance with the principles of due process which include:

1. Timely and adequate notice
2. The right to confront and cross-examine adverse witnesses
3. The opportunity to be heard orally
4. The right to an impartial decision maker
5. The opportunity to obtain counsel, represent him or herself, or use any other person of his or her choice.

Fair Hearing Summary A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.

Good Cause 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

Group Hearing A series of individual requests for a hearing consolidated into a single group hearing. A group hearing is appropriate when the sole issue involved is one of State or federal law, regulation, or policy. The policies governing hearings will be followed In all group hearings. The individual appellant in a group hearing is permitted to present his or her case or be represented by an authorized representative.

Hearing Decision The decision in a case appealed to the State hearing officer. The decision includes:

1. The substance of what transpired at the hearing
2. A summary of the case facts
3. Supporting evidence
4. Pertinent State or federal regulations
5. The reason for the decision

In Food Supplement Program disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.

EXAMPLE: At a Food Supplement Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.

Hearing Officer The individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.

Hearing Record A verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.

Hearing Summary A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.

Hearsay Evidence Testimony about a statement made by a third party that is offered as fact without personal knowledge

Individual Hearing	A hearing in which an individual client disagrees with the action taken by the Department on the facts of his or her case.
MCO	A Managed Care Organization under contract with DHSS to administer the delivery of medical services to recipients of Medicaid and CHIP through a network of participating providers.
Party	A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.
Privilege	Appellants may decline to present testimony or evidence at a fair hearing under claim of privilege. Privilege may include the privilege against self- incrimination or communication to an attorney, a religious advisor, a physician, etc.
Request for a Fair Hearing	Any clear expression (oral or written) by the appellant or his authorized agent that the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the Food Supplement Program.
Relevance	Refers to evidence. Evidence is relevant if an average person believes that the evidence makes a significant fact more probable.
Remand	To send back for further action.
Rule of Residuum	Findings of fact must be supported by at least some evidence which is admissible in a court of law.
Timely Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Advance Notice Period.)

11 DE Reg. 1482 (05/01/08)
15 DE Reg. 1343 (03/01/12)
16 DE Reg. 419 (10/01/12)
21 DE Reg. 568 (01/01/18)

5001 Providing an Opportunity for a Fair Hearing

7 CFR 273.15(f), 42 CFR 431.206, 45 CFR 205.10, 42 CFR 438.402, 42 CFR 457.1120

This policy applies to all applicants and recipients of DSS and DMMA for services provided directly by the Agencies or through agreements with other State or contracted entities where the applicant or recipient claims that he/she has been adversely impacted by a specific action taken by DSS or DMMA. This policy does not create any new right of appeal outside DSS or DMMA, nor does it restrict an existing right to any other fair hearing process to which the applicant or recipient may be entitled.

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 his or her 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 DSS or DMMA of a Medicaid applicant's or recipient's potential transfer or discharge, which may adversely affect the applicant's or recipient's Medicaid eligibility.

D. At the time an individual receives an adverse determination by the State with regard to the preadmission screening resident review PASRR requirements.

15 DE Reg. 86 (07/01/11)
16 DE Reg. 419 (10/01/12)

5100 Reserved

15 DE Reg. 86 (07/01/11)

5200 Informing Clients of Their Right to a Fair Hearing

7 CFR 273.15(f), 45 CFR 205.10

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 provides 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.

15 DE Reg. 86 (07/01/11)

5300 Providing Adequate and Timely Notices

7 CFR 273.15(f), 42 CFR 431.210, 42 CFR 438.404, 42 CFR 457.340, 45 CFR 205.10

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
   i. Must be repaid under Title IV-A
   ii. Must be repaid under Titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments
   iii. May be repaid under Title XIX

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 potential 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.

15 DE Reg. 86 (07/01/11)

16 DE Reg. 419 (10/01/12)

5301 RESERVED

15 DE Reg. 86 (07/01/11)

5302 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:

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.

B. The recipient provides a clear written statement that assistance is no longer desired.

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.

D. The recipient has been admitted or committed to an institution where he is ineligible for services (See §3010.9).

E. The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

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.

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.

H. 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.

I. A change in the level of medical care is prescribed by the recipient's physician.

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. This applies if the individual was notified in writing at the time of initiation that the allowance 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

10 DE Reg. 1703 (05/01/07)
15 DE Reg. 86 (07/01/11)

5303 Reserved

15 DE Reg. 86 (07/01/11)

5304 Presiding Over Fair Hearings

7 CFR 273.15, 42 CFR 431.241, 45 CFR 205.10

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. PASRR 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. This includes an offer, at the time of the request, to assist the appellant by putting the request in writing.

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.

15 DE Reg. 86 (07/01/11)

5304.1 Presiding Over PASRR Hearings

42 CFR 431.243

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 resident review PASRR 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 PASRR determinations which have a specific effect on Medicaid Program eligibility, DMMA will appear as a witness for DDDS or DSAMH if requested by a party to the hearing. Final PASRR determinations will be issued by DMMA.

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

15 DE Reg. 86 (07/01/11)

5304.2 Reserved

12 DE Reg. 242 (08/01/08)

5304.3 Presiding Over DMMA Managed Care Hearings

42 CFR 438.408(f), 42 CFR 438.410

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

Recipients of medical services from the Division of Medicaid and Medical Assistance may request a hearing from the Division after receiving an MCO's notice of appeal resolution upholding an adverse benefit determination or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408. 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 one level of appeal prior to the fair hearing conducted by DSS.

1. Recipients Are Entitled to an Expedited Resolution in Cases of Emergency

   The MCO is responsible for establishing and maintaining an expedited review process for appeals when the MCO determines or the provider indicates that taking the time for standard resolution could seriously jeopardize the claimant's life, physical or mental health or ability to attain, maintain, or regain maximum function. The expedited review can be requested by the claimant or the provider on the claimant's behalf.

   The MCO must provide for prompt access to MCO case records as specified in DSSM 5403. The MCO must also issue an expedited resolution within 72 hours after receiving the appeal. Expedited appeals must otherwise follow all other standard appeal requirements.

   If the MCO denies a request for an expedited resolution of an appeal, it must:

   i. resolve the appeal within the standard time frame of 30 days.

   ii. make reasonable efforts to provide prompt oral notice of the denial and provide written notice of the denial to the claimant within 2 calendar days and inform the recipient of the right to file a grievance if he or she disagrees with that decision.

15 DE Reg. 86 (07/01/11)

16 DE Reg. 419 (10/01/12)

21 DE Reg. 879 (05/01/18)

5304.4 Presiding Over Emergency Assistance Services Hearings

45 CFR 205.10(a)(1)

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.

15 DE Reg. 86 (07/01/11)

5304.5 Presiding Over HCBS Hearings

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.

12 DE Reg. 242 (08/01/08)

15 DE Reg. 86 (07/01/11)

5305 Limiting the Amount of Time to Request a Hearing

7 CFR 273.15 (g), 42 CFR 431.221, 45 CFR 205.10, 42 CFR 438.408(f)

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. Staff taking oral requests will assure the appeal is filed within the time frames in this section. 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,

E. For recipients enrolled in a MCO, 120 days from the date of the MCO's notice of resolution of the appeal or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408.

A. 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.

B. 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.

C. 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.

D. 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.

E. Recipients enrolled in a MCO

A hearing is granted if the request is received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination. If the request is not received during the timely notice period, the adverse benefit determination is to take effect. If the MCO fails to adhere to the notice and timing requirements in 42 CFR 438.408, the recipient is deemed to have exhausted the MCO's appeals process and may initiate a State fair hearing within 120 calendar days.

15 DE Reg. 86 (07/01/11)

21 DE Reg. 568 (01/01/18)

5306 Types of Hearings

1) Group hearings - A series of individual requests for a hearing may be consolidated into a single group hearing when the sole issue involved is one of State of federal law, regulation, or policy. In all group hearings the policies governing hearings will be followed. The individual appellant in a group hearing will be permitted to present his/her case or be represented by an authorized representative.

2) Individual hearing - The majority of hearings will be of this type in which an individual client disagrees with the action taken by the Department on the facts of his/her case.

5307 Dismissing a Hearing Request

7 CFR 273.15 (j), 42 CFR 431.223, 45 CFR 205.10 (a)(5)(v), 42 CFR 438.408(f)

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.
3. For recipients enrolled in a MCO the request is not received within 120 calendar days from the date of the MCO's notice of an appeal resolution upholding an adverse benefit determination or the MCO's failure to adhere to the notice and timing requirements in 42 CFR 438.408.

The hearing officer will notify both the appellant and the agency if a request for a hearing is dismissed.

10 DE Reg. 1703 (05/01/07)
15 DE Reg. 86 (07/01/11)
21 DE Reg. 568 (01/01/18)

5308 Reducing or Terminating Benefits

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

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.

15 DE Reg. 86 (07/01/11)

5309 Taking Timely Action on Food Benefit Hearings

7 CFR 273.15(c)

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.

15 DE Reg. 86 (07/01/11)

5310 Offering Applicants and Recipients A Clarification Conference

7 CFR 273.15(d)

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.

15 DE Reg. 86 (07/01/11)

5311 Notifying Appellants and Others of Hearings

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

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:

A. 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;

B. 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 (e.g., death in family, personal illness, unexpected emergency);

C. 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;

D. Explain that the appellant has the right to bring an attorney or other representative to his or her hearing;

E. Explain that the appellant may present any information that he or she desires at the hearing;

F. Explain that the appellant or representative may examine the agency and/or MCO case record prior to or during the hearing.

8 DE Reg. 351 (8/1/04)

15 DE Reg. 86 (07/01/11)

15 DE Reg. 1339 (03/01/12)

5312 Responding to Fair Hearing Requests

45 CFR 205.10

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 Agency Prepares a Hearing Summary

Within 5 working days of receipt of a request for a fair hearing, the agency (or MCO or other Contractor) will prepare a hearing summary and submit the summary to the Hearing Office.

Exception: For expedited hearings see DSSM 5304.3.

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 and federal 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.

15 DE Reg. 86 (07/01/11)
15 DE Reg. 1339 (03/01/12)
16 DE Reg. 419 (10/01/12)

5400 Establishing Fair Hearing Requirements

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.

15 DE Reg. 86 (07/01/11)

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)

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.

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

A. Its benefit level was computed incorrectly

B. The rules were misapplied or misinterpreted

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.

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 PASRR determination.

5. A hearing request is received from any prepaid ambulatory health plan (PAHP) enrollee who is entitled to a hearing under 42 CFR 431 subpart E.

6. A hearing request is 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. A hearing request is 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.

15 DE Reg. 86 (07/01/11)

5402 Conducting Hearings on Agency Decisions

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

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. Expedited service in the Food Supplement Program.

15 DE Reg. 86 (07/01/11)

5403 Providing Documents to Appellants

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

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. For expedited resolution requests, case records must be made available within 1 working day of the receipt of the appeal.

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

15 DE Reg. 86 (07/01/11)

16 DE Reg. 419 (10/01/12)

5404 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/her representative will have the opportunity to:

A. Examine the case records and documents;

B. Present his or her case by him/herself or with the aid of a representative or counsel;

C. Bring witnesses;

D. Submit evidence to establish all pertinent facts and circumstances;

E. Advance any argument without interference;

F. Question or refute any testimony or evidence including the opportunity to confront and cross-examine adverse witnesses;

G. Be provided with interpreters or mechanical facilities to overcome language or other communication limitations;

H. Withdraw his or her request for a hearing at any time.

15 DE Reg. 86 (07/01/11)

5405 RESERVED

11 DE Reg. 1482 (05/01/08)

15 DE Reg. 86 (07/01/11

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:

A. Notify the parties of the date, time, and place of the hearing;

B. Take measures to avoid delays;

C. Ensure a fair and impartial proceeding;

D. Explain the hearing procedures;

E. Administer an oath or affirmation to all witnesses;

F. Ensure that all relevant issues are considered;

G. Maintain order and decorum;

H. Request, receive, and make part of the record all evidence determined to be necessary to decide the issues raised for the hearing;

I. Examine witnesses when necessary to develop the hearing record;

J. Regulate the conduct and course of the hearing to ensure an orderly hearing in a fashion consistent with due process;

K. Order, where relevant and useful, an independent medical assessment from a source mutually satisfactory to the appellant and to the agency;

L. Make a record of the hearing;

M. Provide a final hearing decision to the parties.

15 DE Reg. 86 (07/01/11)

5406.1 Authority of Hearing Officer

1) The hearing officer shall apply the State rules except to the extent they are in conflict with applicable federal regulations. The hearing officer shall be bound by rules regarding the date of implementation or effect of changes in federal statutes. The hearing officer shall be bound by applicable precedent of the following courts in the following order: U.S. Supreme Court, 3rd Circuit Court of Appeals, District Court for the District of Delaware, Delaware Supreme Court, Delaware Chancery Court, Superior Court. The hearing officer may consider decisions of other jurisdictions on questions that are not otherwise decided under State or federal rules.

2) The hearing officer must accept a decision made by another administrative agency including when such determination is a prerequisite for eligibility for a public benefit under a program administered by the State, i.e., if the Social Security Appeals Council has decided that a client is not eligible for SSI benefits, the hearing officer must abide by such decision. However, if the decision of the other agency is not final, the hearing officer shall have latitude to reserve the right to reconsider his decision in the event the other agency's decision is altered or reversed by a higher authority.

5407 RESERVED

15 DE Reg. 86 (07/01/11)

5500 Issuing Fair Hearing Decisions

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

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 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

Exception: Expedited hearing decisions for medical assistance must be made within 3 working days from receipt of the appeal which meets the criteria for an expedited appeal process. See Section 5304.3

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:

1. A statement of the appellant's right to judicial review
2. The identity of the individual
3. A summary of evidence
4. Findings of fact
5. A discussion or analysis of facts and arguments presented at the hearing
6. A discussion of how the applicable rules apply to the facts in the case
7. The resulting conclusions
8. The hearing officer's decision and/or order
9. Applicable rules involved in reaching the decision

14 DE Reg. 618 (01/01/11)
15 DE Reg. 86 (07/01/11)
16 DE Reg. 419 (10/01/12)

5501 Making Corrective Payments or Actions

7 CFR 273.15(s), 42 CFR 431.246, 45 CFR 205.10(a)(16)

This policy applies any time a hearing decision requires an adjustment in benefits. It also applies when an error that favors the appellant/claimant is discovered by the Division of Social Services (DSS) or the Division of Medicaid & Medical Assistance (DMMA).

1. The State Agency Initiates Corrective Actions

Staff will take corrective action (retroactive to the date an incorrect action was taken) when:

A. A hearing decision is favorable to the appellant

B. The agency decides in favor of the appellant prior to the hearing

Staff will take action to initiate the corrective payments or other remedy within 5 business days of the date of the hearing decision.

DSS or DMMA staff will restore benefits to food benefit households that are leaving the State before the household's departure, whenever possible.

NOTE: For food benefits and cash assistance, staff must always prepare a claim against the household for any over-issuance when the hearing decision upholds the agency's action.

15 DE Reg. 1343 (03/01/12)

5502 Providing Public Access to Hearing Decisions

7 CFR 272.1(c), 7 CFR 273.15(q)(5), 42 CFR 431.244(g), 45 CFR 205.10(19), 45 CFR 205.50, 31 **Del.C.** §1101

This policy applies to all hearing decisions made by the Division of Social Services (DSS) or the Division of Medicaid & Medical Assistance (DMMA).

1. Hearing Decisions are Available to The Public

Hearing decisions are available to the public on the Division of Social Services and Division of Medicaid & Medical Assistance websites.

DSS: (http://www.dhss.delaware.gov/dhss/dss/redactedfairhearings.html)

DMMA: (http://www.dhss.delaware.gov/dhss/dmma/fairhearings.html).

2. DSS and DMMA Take Steps to Keep Identities Confidential

DSS and DMMA remove information that might identify the appellant/claimant before the decision is made available.

No information concerning applicants or recipients of public assistance is revealed except for the purposes directly connected with the administration of the program.

15 DE Reg. 1343 (03/01/12)

5600 Admitting Hearsay Evidence

Federal Rule of Evidence 803, Delaware Uniform Rules of Evidence

This policy applies to applicants and recipients for any public assistance program administered by the Division of Social Services or the Division of Medicaid & Medical Assistance.

1. The Hearing Officer Decides if Hearsay Evidence is Admissible

Admissible hearsay evidence includes:

A. Statements where the claimant has had an opportunity to cross examine the witness at a prior proceeding

B. Statements of agency staff who could be available as witnesses upon a claimant's request

C. Evidence which falls within recognized hearing exceptions where cross-examination of the witness would not be meaningful

D. Official records of the Department of Health and Social Services and other official records when authenticated by a custodian of the record

E. Evidence recognized by official notice as an exception to the hearsay rule (see DSSM 5603)

Exception: Recognized exceptions to the hearsay rule include: 1. Statements for purposes of medical diagnosis 2. Records of regularly conducted activity (such as Employment and Training logs) 3. Records of vital statistics 4. Records of religious organizations 5. Records of or statements in documents affecting an interest in property See Delaware Uniform Rules of Evidence §803 for more exceptions.

2. Hearsay Evidence is Not Admissible if There is an Objection

If a party to the hearing objects to the use of hearsay evidence, the evidence will not be admitted.

Exception: Hearsay evidence is admissible, regardless of objections, if it meets one of the exceptions to the hearsay rule listed in the Delaware Uniform Rules of Evidence.

15 DE Reg. 1343 (03/01/12)

5600.1 Admitting Evidence

45 CFR 205.10(14)

This policy applies to applicants and recipients for any public assistance program administered by the Division of Social Services or the Division of Medicaid & Medical Assistance.

1. Hearing Officer Determines if Evidence is Admissible

Evidence must meet the following minimum criteria to be admissible.

A. Relevance - In order for evidence to be admissible in a fair hearing it must be relevant. Evidence is relevant if an average person believes that the evidence makes a significant fact more probable.

B. Reliability - In order for evidence to be admissible in a fair hearing it must be reliable.

C. Competence - In addition to relevance and reliability, evidence admitted at a hearing must be competent.

D. Privilege - Appellants may decline to present testimony or evidence at a fair hearing under claim of privilege.

Privilege may include the privilege against self-incrimination or communication to an attorney, a religious advisor, or doctor.

Exception: Privilege may not be disclosed without the consent of the person who sought the professional assistance unless:
1. It has been waived
2. The person attempting to claim it has put the subject of the privilege at issue in the fair hearing

1. Claimants or Witnesses May Waive Privilege

Privileges are waived by a claimant or witness if he or she testifies to some part of the privileged matter.

EXAMPLE: A person who makes his or her medical condition an issue may not use Doctor/ Patient privileges to exclude any information relating to his or her condition.

2. Hearing Officer Limits Admissible Evidence

Only evidence relating to the issue under appeal is admissible at the hearing. Issues under appeal include those offered by:

A. The appellant at the time of his or her appeal

B. The State as a basis for the action or inaction under appeal

C. Another party as a basis for the action or inaction under appeal

3. Hearing Officer May Admit Other Evidence

Information concerning matters of common knowledge and generally accepted as true may be relied on in a fair hearing whether or not it is introduced by evidence or testimony.

The behavior of a party to a hearing may be taken by a hearing officer into evidence only when the behavior has been noted in the hearing record.

15 DE Reg. 1343 (03/01/12)

5601 Reserved

15 DE Reg. 1343 (03/01/12)

5602 Reserved

15 DE Reg. 1343 (03/01/12)

5603 Reserved

15 DE Reg. 1343 (03/01/12)

5604 Discussing the Case

This policy applies to all parties involved with a hearing for any public assistance program administered by the Division of Social Services or the Division of Medicaid & Medical Assistance.

1. Discussions About the Case Are Prohibited

A. Before the Hearing:

A party to the hearing may not discuss the merits of the case with the hearing officer.

B. After the Hearing

Agency employees may not discuss the merits of the case with the hearing officer after the hearing is adjourned.

15 DE Reg. 1343 (03/01/12)

5605 Requesting a Continuance

7 CFR 273.15(c)(4)

This policy applies to every appellant, appellant's authorized agent, and agency staff involved in the hearing. It applies to any public assistance program administered by the Division of Social Services or the Division of Medicaid & Medical Assistance.

1. Either Party To A Hearing May Request A Continuance

Either party to a hearing may request that the hearing officer continue the hearing on a different date.

Exception: A witness or party in interest to the hearing may not request a continuance.

2. Requests For A Continuance Meet Specific Requirements

A request for a continuance must:

A. Should be made at least 24 hours in advance of the hearing so that the other party may be notified

B. Must specify the reason that a continuance is needed

Examples of requests for which a continuance should be granted, include, but are not limited to:

1. Illness of a party or witness
2. Extreme inclement weather
3. Request for additional time to prepare for the hearing

3. Hearing Officer Responds to Requests

The hearing officer will respond to the request not later than 10 days after the request is received.

No continuance will be granted to the State or its agent if the continuance would result in the State exceeding the time limits specified in DSSM 5305 and DSSM 5309 or any statutory time limit.

15 DE Reg. 1343 (03/01/12)

5606 Disqualifying a Hearing Officer

7 CFR 273.15(m), 42 CFR 431.240(a)(3), 45 CFR 205.10(a)(9)

This policy applies to every hearing officer, appellant, appellant's authorized agent, and agency staff involved in the hearing. It applies to any public assistance program administered by the Division of Social Services or the Division of Medicaid & Medical Assistance.

1. Hearing Officer Is Impartial

The hearing officer must be impartial with no personal stake or involvement in the case. The hearing officer is prohibited from having any involvement in the initial determination of the action in question.

2. Hearing Officer May Disqualify Himself

3. Either Party May Ask to Disqualify a Hearing Officer

The appellant, the appellant's authorized agent, or the agency employee may ask the hearing office to disqualify himself or herself from the hearing. This could happen if they believe the hearing officer has an interest in or prejudice against an issue of the hearing.

4. Hearing Officer Gives Notice of Disqualification

If a hearing officer is disqualified, the officer will immediately notify the Director of the Division of Social Services. The Director will promptly appoint a new hearing officer.

15 DE Reg. 1343 (03/01/12)

5607 Reserved

15 DE Reg. 1343 (03/01/12)