

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

PROPOSED

Fair Hearings

**DSSM 5311 - Notifying Appellants and Others of Hearings;
DSSM 5312 - Responding to Fair Hearing Requests**

PUBLIC NOTICE

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 policies in the Division of Social Services Manual (DSSM) regarding Fair Hearings, specifically, *Notifying Appellants and Others of Hearings and Responding to Fair Hearing Requests*.

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, 2012.

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 PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Fair Hearings, specifically, *Notifying Appellants and Others of Hearings and Responding to Fair Hearing Requests*.

Statutory Authority

45 CFR §205.10, *Hearings*

Summary of Proposed Changes

DSSM 5311, *Notifying Applicants and Others of Hearings*: Text was modified to clarify that the word "record" refers to the "case record". Case record is meant to include the totality of all files and records on the client. This clarification was made to ensure that clients can access their full case record and not just the materials that were submitted with the fair hearing summary.

DSSM 5312, *Responding to Fair Hearing Requests*: Text was modified to include reference to the Managed Care Organization (MCO) or other Contractor. This change clarifies that MCOs prepare fair hearing summaries where there are appeals of MCO actions.

Other proposed changes include minor formatting and punctuation changes.

DSS PROPOSED REGULATION #11-52

REVISIONS:

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:

- ~~4.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.
- ~~2.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 (~~i.e.~~, e.g., death in family, personal illness, unexpected emergency).
- ~~3.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.
- ~~4.D.~~ Explain that the appellant has the right to bring an attorney or other representative to his or her hearing.
- ~~5.E.~~ Explain that the appellant may present any information that he or she desires at the hearing.
- ~~6.F.~~ Explain that the appellant or representative may examine the case record prior to or during the hearing.

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 State 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.

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. 971 (01/01/12) (Prop.)