

## 2900 FAIR HEARINGS AND APPEALS

Section 1902(a)(3) of the Social Security Act requires that States "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness." Regulations implementing this section of law are found at 42 CFR 431 Subpart E. In addition, certain court decisions further amplify and modify the law and regulations governing the provision of notices and hearings to Medicaid applicants and recipients. Where appropriate, those decisions are cited .

2900.1 Basic Responsibility (42 CFR 431.200 and 431.205).--Establish policies and procedures for assuring a system of fair hearings that meet all the requirements of the regulations and instructions.

Notify and make available to the applicant or recipient the hearing procedures required by regulations and these instructions, if any of the following events occur:

- o denial of eligibility,
- o the claim is not acted upon with reasonable promptness,
- o termination of eligibility or covered services,
- o suspension of eligibility or covered services, or
- o reduction of eligibility or covered service

2900.2 Publication And Distribution Of Hearing Procedures (42 CFR 431.206(a)). --Issue and publicize your hearing procedures. The publication and wide distribution of hearing procedures in the form of rules and regulations or a clearly stated pamphlet to appellants, recipients, and other interested groups and individuals helps to emphasize the purposes and importance of the procedure and to inform aggrieved individuals about the existence and use of this procedure. It not only contributes to the fairness and orderliness of the hearing, but also emphasizes the principles of equity and due process throughout the administration of medical assistance.

2. Reinstate services if:

- o You take action without the advance notice required;
  - o The recipient's whereabouts are unknown (agency mail is returned as undeliverable) but during the time the recipient is eligible for services the recipient's whereabouts become known, or
  - o The recipient requests a hearing within 10 days of mailing the notice of action;
- and
- o You determine that the action results from other than the application of Federal or State law or policy.

B. Optional Reinstatement.--You may reinstate services if the recipient requests a hearing not more than 10 days after the date of action.

C. When Maintained for Reinstated Services May be Stopped.--You must continue to provide services maintained or reinstated after an appeal until a hearing decision is rendered unless the hearing officer, at the hearing, determines that the sole issue is one of Federal or State law or policy. When the hearing officer determines the appeal is one of law or policy, you may discontinue services but only after promptly informing the recipient in writing that services will be discontinued pending the hearing decision.

2902.3 Dismissal of A Hearing Request.--

A. Dismissal.--You may dismiss a request for a hearing when:

- o The claimant or his representative requests in writing that the request for hearing be withdrawn; or
- o The claimant abandons his right to a hearing as described in subsection B.

B. Abandonment.--The hearing request may be considered abandoned when neither the claimant nor his representative appears at scheduled hearing, and if within a reasonable time (of not less than 10 days) after the mailing of an inquiry as to whether he wishes any further action on his request for a hearing no reply is received.

2902.4 Nature Of The Issue.--Determine whether the appeal involves issues of law or policy, or issues of fact or judgement. The decision will affect whether a hearing is granted and whether Medicaid will be continued pending the hearing decision. The distinction between issues of fact or judgment and issues of State law or agency policy will not usually be difficult to make. Issues of fact or judgement include issues of the application of State law or policy to the facts of the individual situation.

A. Issues of Law or Policy.--An example of an issue involving application of agency policy to the individual situation may arise from the use of spenddown. If there is a question whether the formula for computing spenddown was correctly applied in an individual case, it is an issue of fact or judgment and assistance must be continued. If the individual challenges the use of spenddown, he is questioning the policy itself, and assistance would not need to be continued during the fair hearing process.