

2. HEW, Handbook of Public Assistance Administration, Supp. D, § D-6500 (1966).

D-6520-p.3

Handbook of Public Assistance Administration
Supplement D
Medical Assistance Programs

D-6500 Fair Hearings 5/17/66

D-6530. Criteria for the Administration of the Plan

1. The State agency administering the medical assistance program establishes policies and procedures that carry out the purpose and provisions of this policy and that assure equity of treatment in relation to the laws and standards pertaining to medical assistance.

The State agency takes the necessary steps to see that there is uniformity in the application of agency policy in similar situations.

2. The claimant's opportunity for a fair hearing includes:
(a) consideration of any action, or failure to act with reasonable promptness, on his claim for medical assistance, the agency's interpretation of the law, and the reasonableness and equitableness of the policies promulgated under the law, if he is aggrieved by their application to his situation; (b) provision for reasonable time in which to appeal an agency action; (c) provision that the agency does not deny or dismiss a request for a hearing except where it has been withdrawn by the claimant in writing or abandoned.

A request for a hearing is considered abandoned only if neither the claimant nor his representative appears at the time and place agreed upon for the hearing, and if within a reasonable time after the mailing of an inquiry as to whether he wishes any further action on his request for a hearing, no reply is received by either the local or State agency.

D-6530. Criteria for the Administration of the Plan (Continued)

3. The hearing authority is responsible for a final administrative decision in the name of the State agency on all issues that have been the subject of a hearing and for seeing that the final decision is effectuated. This authority may be the highest executive officer of the State agency, a panel of agency officials, or a hearing officer appointed for that purpose, but no person who participated in the local decision being appealed will participate in a final administrative decision on such case.
4. The impartial official (or officials) of the State agency who is responsible for conducting the hearing has not been involved in any way with the action in question.
5. The issuance of hearing procedures is in the form of rules and regulations, or in some other form in which they will be publicized.
6. Written notification and an oral explanation of the right to and procedure for requesting a fair hearing are given at the time of application. Written notice, and oral explanation as necessary, are given at time of any agency action affecting the claim for medical assistance.
7. The convenience of the claimant is considered in setting the date, time, and place for the hearing and notice is given in writing with adequate preliminary information about the hearing procedure necessary for his preparation for the hearing and effective presentation of his case, including the use of witnesses and legal counsel, as well as any procedure or financial provisions for obtaining legal representation, including availability of fees for legal counsel from the agency.
8. When an assessment by a medical authority other than the one involved in the decision under question is requested by the claimant, it is obtained, at agency expense, from a medical source satisfactory to the claimant. The hearing officer can also consider the physician's report in the record or can request additional evidence. The assessment of such medical authorities will be reported in writing or by personal testimony as an expert witness for the hearing record.
9. A definitive over-all time limit - preferably within 45 days, but not to exceed 90 days - between the date of the request for the hearing and the date of the agency's decision is established by the State agency.

10. The claimant or his representative has an opportunity to examine material that will be introduced as evidence prior to the hearing as well as during the hearing, to give all of the evidence on points at issue he believes necessary without undue interference, to ask for substantiation of any statements made by others, and to present evidence in rebuttal.
11. Non-record or confidential information which the claimant does not have an opportunity to hear or see is not made a part of the hearing record or used in a decision on the appeal.
12. The agency determining eligibility participates in the hearing when the appeal has been taken on the basis of action or inaction in connection with eligibility determination. The responsibility of each agency in regard to fair hearings is included in the operating agreement between the agencies.

D-6540. Interpretation

A request for a hearing is defined as any clear expression (oral or written, by letter or on special form) by the claimant (or person acting for him such as his legal representative, relative, or friend) to the effect that he wants an opportunity to present his case to a higher authority.

Fair hearing procedures including the conduct of the hearing are designed to assure the right of every claimant to demand and obtain a fair hearing. The claimant's freedom to request a hearing, whenever he believes that proper consideration has not been given to all the circumstances surrounding his claim, is a fundamental right and is not to be limited or interfered with in any way.

Since under the Federal act and the State plan, every aggrieved claimant is entitled to the opportunity for a hearing, only the claimant may withdraw his request for a hearing and this is to be in the form of a written withdrawal.

Effective complaint and adjustment procedures, whereby corrective action may be easily requested and readily taken without the need for a hearing, are necessary, when indicated, but the State and local agency adjustment procedures cannot be allowed to interfere with the hearing process.

D-6540. Interpretation (Continued)

The hearing is conducted in an informal rather than formal court-type procedure in order to serve the best interests of the claimant; however, the hearing is to be subject to the requirements of due process.

Notice to claimant as to the hearing being scheduled in his behalf includes information about the fair hearing as an informal administrative procedure, in which a dissatisfied claimant or his representative may present his grievance with the help of witnesses or legal representation to show why action or inaction in his case should be corrected by the State agency.

The agency has not discharged its responsibility for a hearing, unless it has taken all steps necessary to enable a claimant who requested a hearing to attend the hearing in person or to be represented by a person of his own choosing. If the hearing is to be held at a considerable distance from the locality of the claimant's residence, it may be necessary to provide for the transportation of the claimant and his witnesses to the place of the hearing.

The claimant's right to a hearing includes the privilege of presenting his case in any way he desires. Some will wish to tell their story in their own way, some will desire to have a relative or a friend present the evidence for them, and still others will want to be represented by legal counsel. Furthermore, the claimant may bring any witnesses he desires to help him establish pertinent facts and to explain his circumstances.

A basic concept of the fair hearing is that the person seeking the hearing has the opportunity to examine all evidence used by the agency, in making a decision on his claim. For example, where the agency action at issue is based on medical information, such information would need to be available at the hearing. The claimant or his representative may examine material that will be introduced as evidence prior to the hearing, as well as during the hearing itself.

The requirement for prompt, definitive, and final administrative action means that all requests for a hearing are to receive immediate attention and will be carried through all the steps necessary to completion.

D-6540. Interpretation (Continued)

The person or panel making the final decision in behalf of the agency shall not have been directly connected with the agency action about which the claimant is appealing. For example, a State board member who has participated as a county board member or in another capacity in the local action on a case would disqualify himself from rendering a final decision on the particular case.

The person conducting the hearing shall not have been connected in any way with previous actions or decisions on which the appeal is made. For example, a field supervisor who has advised the local agency in the handling of a case would be disqualified from acting as the hearing officer. This does not preclude the State director or administrative board from signing the decision in the name of the State agency, even though previously involved in the case.

The deciding authority is responsible for rendering a conclusive decision. When the decision making authority is different from the hearing officer, such authority may adopt the recommendations of the hearing officer, or reject them and reach different conclusions on the basis of the evidence at hand, or refer the matter back to the hearing officer for a continuation of the hearing, because the materials submitted are insufficient to serve as the basis for a decision.

The State agency is responsible for assuring that the decision is carried out. Various methods, such as a report by the local unit to the State agency of action taken to carry out the hearing decision or follow up by the State office staff may be used. Remanding the case to the local unit for further consideration is not a substitute for "definitive and final administrative action".

The publication of hearing procedures in the form of rules and regulations or a clearly stated pamphlet helps to emphasize the importance of the procedure. This material is useful to applicants and recipients or to others interested in their behalf.

The written notification of his right to a hearing may be on the application form and other forms routinely used by the agency which go to applicants and recipients, or by use of an explanatory pamphlet distributed by the agency. Oral explanations should also be given regarding the policy on hearings at intake and at times of a change in eligibility.

D-6540. Interpretation (Continued)

The over-all time limit between the date of the request for the hearing and the date of the decision, as established by the State agency, will serve as one of the safeguards of prompt, administrative action. Detailed controls for individual steps in the hearing process, such as: time limits for accepting, forwarding, and acknowledging a request for a hearing, notice to the claimant, and date of the hearing will facilitate proper administration of the hearing process.

In some States, the right of judicial review may be prescribed by statute specifically authorizing review of the agency decision on the basis of the record of administrative proceedings. In other States, even in the absence of statutory provisions, a claimant may be able to invoke the remedy of judicial review on the showing that the agency action was "unreasonable, arbitrary, or capricious." The content of the notice of decision, as regards judicial review, would depend upon the kind of remedy available in the State.

The record of the proceedings at the hearing, which constitutes the official record, is to be made available to the claimant or his representative to examine, if he desires. If any additional material is made a part of the hearing record, this, too, would be made available.

D-6550. Federal Financial Participation

Federal financial participation is available in:

1. Payments made to carry out hearing decisions, or to take corrective action after a request for a hearing but prior to the hearing itself, provided the amounts paid are shown to have been improperly withheld or denied by administrative action.
2. Administrative costs necessary for:
 - a. Carrying out the hearing procedures,
 - b. Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing,
 - c. Fees for legal counsel, and
 - d. Other costs, expenditures, and fees reasonably related to the hearing, including expenses involved in obtaining an additional medical assessment.