

2903. HEARING DECISION

2903.1 Basis for Hearing Officer Recommendation, Decision, And Opportunity to Examine Official Record (42 CFR 431.244).--The hearing officer's recommendation or decision shall be based only on the evidence and testimony introduced at the hearing. The record of the proceedings, which consists of the transcript or recording of the hearing testimony, any exhibits, papers or requests filed in the appeal, including the documents and reasons upon which the determination being appealed is based, and the hearing officer's written recommendation or decision shall be available to the claimant or his representative at a convenient time and at a place accessible to him or his representative, to examine upon request. If any additional material is made part of the hearing record it too shall be made available.

2903.2 Hearing Decision And Notification to Claimant (42 CFR 431.232, 233, 244(b)and(d) and 431.245).--

A. General.--A conclusive decision in the name of the State agency shall be made by the hearing authority. That authority may be the highest executive officer of the State agency, a panel of agency officials, or an official appointed for the purpose. No person who has previously participated at any level in the determination upon which the final decision is based may participate in the decision. For example, a person who participated in the original determination being appealed may not participate in the appeal; nor may a person who participated in a local hearing participate in the agency hearing.

The officially designated hearing authority may adopt the recommendations of the hearing officer, or reject them and reach a different conclusion on the basis of the evidence, or refer the matter back to the hearing officer for a resumption of the hearing if the materials submitted are insufficient to serve as basis for a decision except where the appeal involves the issue of disability and SSA has issued a disability determination which is binding on the program. Remanding the case to the local unit for further consideration is not a substitute for "definitive and final administrative action."

B. Hearing Records.--All hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing. The record must consist only of:

- o The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing; and
- o All papers and requests filed during the appeal; and
- o The recommendation or decision of the hearing officer.

C. Local Evidentiary Hearing.--Where you provide a local evidentiary hearing, include the following information in the decision and take the action described.

- o Inform the applicant or recipient of the decision;
- o Inform the applicant or recipient that he has the right to appeal the decision to the State agency within 15 days of mailing the decision;
- o Inform the applicant or recipient of his right to request that the appeal be a de novo hearing, subject to the limit set forth in paragraph A;

o The decision shall state the specific reasons for the decision, identify the supporting data, and be issued promptly to the claimant in writing; and

5. The State shall discontinue services after the decision if it is adverse to the recipient.

D. State Agency Hearing.--

o Unless the claimant specifically requests a de novo hearing, the hearing may consist of a review of the local evidentiary hearing, by the agency hearing officer to determine whether the local hearing decision was supported by substantial evidence.

o A person who participated in the local decision may not participate in the State agency hearing.

o In the final decision give the specific reasons for the decision, identify the supporting data, and issue it promptly to the claimant in writing.

o In the notice of decision advise the claimant of the right of judicial review if it is prescribed by State statute specifically authorizing review of agency decisions on the basis of the record of administrative proceedings, or if there is other provision for judicial review under State law.

2903.3 State Agency Responsibility In Carrying Out The Hearing Decision (42 CFR 431.244(f)).--

A. General.--The hearing authority's decision is binding upon the State and Local agencies. You are responsible for assuring that the decision is carried out promptly. Various methods, such as report by the local agency on action taken, or follow-up by State office staff, may be used.

B. Final Administrative Action.--Section 431.244(f) requires that you take final administrative action within 90 days of the request for hearing. In implementing this regulation it is reasonable to allow additional time to meet this standard when a delay beyond 90 days is due to claimant requests or untimely receipt by the hearing authority of documentation needed to render a decision which had been requested timely. Any delay can not exceed 30 days.

C. Corrective Action.--If the hearing decision is favorable to the claimant, or if the agency decides in favor of the claimant prior to a hearing, promptly take action to reinstate Medicaid eligibility and process any unpaid providers claims within the standard set forth in B.

2903.4 Accessibility Of Hearing Decisions To Local Agencies And The Public (42 CFR 431.244(g)).--Select a method for informing all local public welfare agencies of all hearing decisions and of making such decisions available to all interested members of the general public. The method may provide for a summary presentation. Where several decisions centered around the same question, it is permissible to treat one decision with some detail, and then indicate in a much more abbreviated fashion for each of the subsequent decision that it raises the same question and follows the precedent of the initial case. Such information must be preserved in a manner consistent with requirements for safeguarding information concerning applicants and recipients in 42 CFR 431 Subpart F.