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## Fact Sheet

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### MEDICAID FAIR HEARING

#### What is a Fair Hearing?

If you think the South Carolina Department of Health and Human Services (DHHS) has made a wrong decision about your eligibility for Medicaid benefits or level of benefits, you can ask for a Fair Hearing. A Fair Hearing may be your only chance to explain your side of the case. At the hearing, DHHS will explain why the Medicaid service was denied, reduced, delayed, or stopped. A DHHS hearing officer will act like a judge and listen to both sides of the case. The hearing officer will make a decision and mail it to you in writing after the hearing. The decision is based on the legal merits of the case, so it is important that you talk with a lawyer before the hearing. If possible, bring a lawyer with you to the hearing. Fair Hearings are held at the DHHS office in Columbia, unless the hearing officer decides there is a good reason to have it at a different location. All hearings that involve an adult not meeting the disability criteria will be held in the DHHS Community Long Term Care office<sup>1</sup> that is closest to where that person lives.

#### How do I know that DHHS is denying, reducing, delaying, or stopping my benefits?

DHHS must send you a letter, called a “notice,” before DHHS takes any “action” against you.<sup>2</sup> An action means DHHS denied, reduced, delayed, or stopped your benefits.<sup>3</sup> DHHS must mail you the letter at least 10 days before the “action” date.<sup>4</sup> The letter you get from DHHS should tell you:

- What “action” DHHS will take.

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<sup>1</sup> For locations, contact DHHS at 803-898-2590 or see Community Long Term Care section of the DHHS website: <http://www.dhhs.state.sc.us/dhhsnew/insidedhhs/bureaus/BureauofLongTermCareServices/how%20do%20i%20apply.asp>

<sup>2</sup> 42 C.F.R. § 431.210. This is the section of the Code of Federal Regulations (“C.F.R.”), where you can find the rules that apply to Medicaid agencies. The South Carolina Code of Regulations (“S.C. Code Ann. Regs.”) also apply to the South Carolina Medicaid agency, DHHS. There is a section at the end of this fact sheet that explains where to find those rules.

<sup>3</sup> 42 C.F.R. § 431.201.

<sup>4</sup> 42 C.F.R. § 431.211.

- When the “action” will start, also called the “date of action;”
- Reasons for the action;
- What federal regulation supports the action or what change in law requires the action;
- What your rights for an appeal are; and
- How you can keep getting benefits during the appeal process, if you choose to appeal.

If you were told your services are going to change, but you did not get a written notice, you should immediately ask for a letter explaining the changes from your case manager, if you have one. If you do not have a case manager, call DHHS at 1-888-549-0820.

### When should I ask for a Fair Hearing?

You can ask for a Fair Hearing if your Medicaid benefits have been reduced, delayed, or stopped.<sup>5</sup> You can also ask for a Fair Hearing if your application for benefits has been denied or if you are found eligible but are not getting benefits within a reasonable time.<sup>6</sup> A reasonable time generally means your benefits will start within 90 days from the date DHHS found you were eligible. If you are a nursing home resident and you believe you are being wrongly discharged or transferred, you can ask for a Fair Hearing.<sup>7</sup>

### How do I ask for a Fair Hearing?

You must ask for your Fair Hearing by **sending a letter** to DHHS **within 30 days** after getting your letter from DHHS that said your benefits would be stopped, reduced, or delayed, or denying your application for benefits.<sup>8</sup> A sample letter is attached to this Fact Sheet.

**If you want to keep your benefits while you wait for a hearing, you may have to send your letter sooner (see the section below titled “How do I keep my benefits while I wait for a hearing?”).**

Send the **letter asking for a Fair Hearing with a copy of the DHHS notice letter** by **certified mail** to prove you sent it on time. Keep a copy of the letter you sent and the DHHS notice letter for your records.

### What if I am in a Managed Care Plan?

If your services are provided through a Managed Care Organization (MCO), you must follow the procedures within the MCO’s own appeal process before filing a request for a Fair Hearing. First, check with your MCO about what you need to do to file an appeal with the MCO. If you have followed all of the steps the MCO requires and are still not satisfied with the outcome, then you can file a request for a Fair Hearing.

### What should I include in my letter asking for a Fair Hearing?

- Start by saying you are asking for a Fair Hearing;

<sup>5</sup> 42 C.F.R. § 431.200(b).

<sup>6</sup> 42 C.F.R. § 431.200(a).

<sup>7</sup> 42 C.F.R. § 431.200(c).

<sup>8</sup> 42 C.F.R. § 431.221; 27 S.C. Code Ann. Regs. 126-152 (1976 and Supp.2010)

- Ask for any accommodation you may need for the hearing such as: an interpreter, change in location due to health reasons, wheelchair accessibility, etc.;
- Tell DHHS what services were denied, reduced, delayed, or stopped;
- Explain why you think the denial, reduction, delay, or stop of your benefits was wrong;
- List each and every issue that you want the hearing officer to consider;
- Explain why you disagree with the DHHS notice (such as your services are medically necessary, you are eligible for benefits, or you meet a level of care);
- If you want to keep services during the appeal, ask for them to continue; you must ask to keep your services within 10 calendar days from the date DHHS sent the notice letter;
- Ask for DHHS to mail you a copy of your complete case file and copies of any other documents that DHHS will use at the hearing; and
- Include a copy of the letter from DHHS that said your benefits were denied, stopped, reduced, or delayed. Keep the original letter for your records.
- If you are a nursing home resident and you believe you are being wrongfully discharged or transferred, tell DHHS why you think the move is wrong.

### Where do I send my letter and a copy of the DHHS letter?

Division of Appeals and Hearings  
 Department of Health and Human Services  
 P.O. Box 8206  
 Columbia, SC 29202-8206

### How can I keep my benefits while I wait for the Fair Hearing?

If you want to keep your benefits, **you must ask for your benefits to continue** in your letter. Your benefits will be kept at the same level until the hearing officer makes a decision. **The time when you must send this letter depends on what kind of notice DHHS gave you**, and you may have less time than the 30 days you otherwise have to request a Fair Hearing.

- If DHHS gives you notice at least 10 days before the “date of action,” you have **until the “date of action” to request a hearing and ask for your benefits to continue.**<sup>9</sup>
- If DHHS did not give you 10 day notice before they took action, but they sent you a letter, you must ask for a hearing and for your benefits to be reinstated **within 10 calendar days from the date DHHS mailed the notice letter.**<sup>10</sup>
- If DHHS did not give you notice before they took action and told you about the action instead of sending a letter, you can request a hearing and ask for your benefits to be **reinstated no more than 10 days after the “date of action.”**<sup>11</sup>

If you ask to keep your benefits while you wait for a Fair Hearing, but then lose your case, you may have to pay DHHS for those services if the agency seeks repayment.<sup>12</sup>

### What happens if the hearing is scheduled on a date I cannot attend?

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<sup>9</sup> 42 C.F.R. § 431.230.

<sup>10</sup> 42 C.F.R. § 431.231(c).

<sup>11</sup> 42 C.F.R. § 431.231(a).

<sup>12</sup> 42 C.F.R. § 431.230(b).

Call the hearing officer and ask to change the date. Follow up with a letter if you can, so you have a record of the request. **It is important that you attend the hearing as scheduled.** If you do not go to the hearing on the date scheduled, the hearing officer can dismiss your case.<sup>13</sup>

### How should I prepare for the Fair Hearing?

- **Prepare a list** of all of the documents, photos, or other materials you want the hearing officer to use in making the decision.
- **Prepare a statement.** Write down the important facts of your case and why you think the DHHS action is wrong (for example, if the services are medically necessary). You will be able to make opening remarks before the testimony and closing remarks after.
- **Gather evidence** that you can give to the hearing officer. This includes letters from doctors, medical records, letters or emails to and from DHHS or your caseworkers.
- **Bring the notice that DHHS sent you.** Ask the hearing officer to review the notice. If you think the notice left out any of the important information listed above, say so.
- **Copy documents** that you want the hearing officer to use in his or her decision. Bring copies for the hearing officer and for DHHS.
- **Find witnesses** who can help show your side of the case. Ask your doctor or nurse, caregivers, family members, or anyone else who can support your argument. If the people that you want as witnesses cannot attend, ask them to write a letter explaining why your services are medically necessary. Get the letter notarized if possible.
- **Prepare questions** you want to ask your witnesses and DHHS' witnesses.
- **Prepare a written statement.** You can give the hearing officer a "brief" before the hearing, if you are able. A brief is a written document with the facts, your arguments, and supporting evidence. DHHS will likely submit a brief. Even if you do not give the hearing officer a brief, you can still make the arguments, call witnesses, and submit documents at the hearing.

### What are my rights at the Fair Hearing?

Before the hearing, you have the right to **see the contents of your case file and any materials DHHS plans to use** at the hearing.<sup>14</sup> If you did not get your case file, call your caseworker or DHHS at 1-888-549-0820 and ask for a copy. If you have asked for your case file and still have not seen it at least a week before the hearing, call the hearing officer and ask for the hearing to be postponed until you have been given the file and time to review it. Also send a letter to the hearing officer so you have a record of the request.

At the hearing, you have the right to:

- Bring a lawyer, a friend, or family member to speak on your behalf;<sup>15</sup>
- Testify, or speak, on your own behalf;<sup>16</sup>
- Bring witnesses and ask questions of them;<sup>17</sup>

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<sup>13</sup> 42 C.F.R. § 431.223.

<sup>14</sup> 42 C.F.R. §§ 431.242(a) (1) & (2).

<sup>15</sup> 27 S.C. Code Ann. Regs. 126-158.(Supp. 2010)

<sup>16</sup> 42 C.F.R. § 431.242(d); 27 S.C. Code Ann. Regs. 126-158 (Supp. 2010).

- Ask questions of any witnesses that DHHS brings;<sup>18</sup>
- Explain your side of the case, including why your services are medically necessary, why you meet the level of care, or why you are eligible for the services;<sup>19</sup>
- Present documents, photos and any other evidence you want the hearing officer to use in his or her decision.<sup>20</sup>

It is important that you present all evidence and arguments that you want the hearing officer to consider. The Fair Hearing will probably be the only chance you have to present all this information. The hearing officer can make the decision based **ONLY** on what is said and presented at the hearing.<sup>21</sup> The decision is a legal determination. The hearing officer's duty is to decide whether a person is eligible for benefits or qualifies for a certain level of benefits *under the law*.

### What will the Fair Hearing decision look like?

The hearing officer must send you the decision **in writing**. You should get this decision **within 90 days from the day you asked for a Fair Hearing**. The decision should list the facts presented at the hearing and explain what rules or regulations the hearing officer used making the decision.<sup>22</sup>

### What if I lose the Fair Hearing or don't agree with the decision?

DHHS can stop or reduce your services if the decision is not in your favor.<sup>23</sup> If you had services while you waited for a hearing, you may have to pay DHHS for those services if the agency seeks repayment.<sup>24</sup> You can still file a new application for Medicaid services, but you need to have different evidence.

If you do not agree with the hearing officer's decision, you can file an **appeal to the Administrative Law Court (ALC)**. You must file this appeal **within 30 days of the date you were notified of the decision**. There is a \$25 fee to appeal. If you cannot afford the fee, you can file a "Request to Waive Filing Fee" stating that you cannot afford to pay for the appeal. That form can be found at <http://www.scalc.net/pub/pubRequestToWaiveFilingFee.pdf>. If you are appealing a DHHS hearing officer's decision in which a hearing was held, you will be responsible for the cost of making a transcript of the hearing. A transcript is a written record of the hearing. The cost of the transcript is approximately \$16 for each hour that the transcriptionist spends typing the transcript. The rules for appealing to the ALC are found at <http://www.scalc.net/rules.aspx>. If you do not follow the rules, your appeal may be dismissed.

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<sup>17</sup> 42 C.F.R. § 431.242(b); 27 S.C. Code Ann. Regs. 126-158 (Supp.2010).

<sup>18</sup> 42 C.F.R. § 431.242(e); 27 S.C. Code Ann. Regs. 126-158 (Supp. 2010).

<sup>19</sup> 42 C.F.R. § 431.242(d); 27 S.C. Code Ann. Regs. 126-158 (Supp. 2010).

<sup>20</sup> 42 C.F.R. § 431.242(c); 27 S.C. Code Ann. Regs. 126-158 (Supp. 2010).

<sup>21</sup> 42 C.F.R. § 431.244(a).

<sup>22</sup> 42 C.F.R. § 431.244.

<sup>23</sup> 42 C.F.R. § 431.232(d).

<sup>24</sup> 42 C.F.R. § 431.230(b).

Where can I find information about the rules that apply to Fair Hearings? DHHS has regulations about Fair Hearings at 27 S.C. Code of Regulations, R. 126-150 to 126-158 found at <http://www.scstatehouse.gov/coderegs/c126.htm>. The United States Department of Health and Human Services, which is responsible for Medicaid, has rules about Fair Hearings starting at 42 C.F.R. § 431.200, found at [http://edocket.access.gpo.gov/cfr\\_2002/octqtr/42cfr431.200.htm](http://edocket.access.gpo.gov/cfr_2002/octqtr/42cfr431.200.htm). The Centers for Medicare and Medicaid has a manual found at <http://www.cms.gov/Manuals/>. (click on "Paper-Based Manuals"). The manual is called "The State Medicaid Manual" in Chapter 2, "State Organization."

If you do not have access to the internet, your public library may be able to help you get the information. If you have trouble finding the right laws or rules that apply, contact P&A for help locating them.

### How do you contact P&A?

P&A's services are provided statewide and are NOT limited by age, race, sex, type of disability, income, residency, or religion. P&A does not charge for its services. For information or assistance, call the P&A Help Line:

**toll-free statewide**  
866-275-7273 (Voice & TTY) 866 232-4525 (TTY)  
**in Columbia area**  
803-782-0639 (Voice & TTY)

**or**

**visit P&A website:**

[www.pandasc.org](http://www.pandasc.org)

**or**

**write to:**

*Protection and Advocacy for People with Disabilities, Inc.*  
3710 Landmark Drive, Suite 208  
Columbia, S.C. 20204

**or**

**e-mail:**

[info@pandasc.org](mailto:info@pandasc.org)

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact the P&A Help Line for updates. This publication is funded by the U.S. Department of Health and Human Services (Substance Abuse and Mental Health Services Administration and the Administration on Developmental Disabilities) and the U.S. Department of Education (Office of Special Education and Rehabilitative Research). It does not necessarily represent the official views of the funding authorities.

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**SAMPLE LETTER REQUESTING A MEDICAID FAIR HEARING**

Date: \_\_\_\_\_

Division of Appeals and Hearings  
Department of Health and Human Services  
P.O. Box 8206  
Columbia, SC 29202-8206

Re: Fair Hearing Request for:  
\_\_\_\_\_ (name)

Dear Sir or Madam:  
I am writing to request a Fair Hearing regarding the decision of  
\_\_\_\_\_ (agency) on  
\_\_\_\_\_ (date) to do the following:

- Deny eligibility for \_\_\_\_\_.
- Terminate \_\_\_\_\_ service(s).
- Reduce \_\_\_\_\_ service(s) from the amount of \_\_\_\_\_ to \_\_\_\_\_.
- Delay \_\_\_\_\_ service(s).

A copy of the letter taking such action is enclosed. Please continue (my, my child's) services at the present amount pending this Fair Hearing.

I believe this decision was incorrect for the following reasons:

- DHHS violated regulations \_\_\_\_\_;
- \_\_\_\_\_ (name) meets the criteria for services;
- Medical records show that \_\_\_\_\_ (amount) of services is medically necessary;

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please send a complete copy of the case file for

\_\_\_\_\_ (name) and copies of any materials  
you plan to use at the Fair Hearing pursuant to 42 U.S.C. § 431.242.

I have the following special request(s):

- Change in location to \_\_\_\_\_ due  
to \_\_\_\_\_.
- Interpreter needed for \_\_\_\_\_ (name) in  
\_\_\_\_\_ (language, including ASL-American Sign Language).
- Wheelchair accessible Fair Hearing.
- Other:

\_\_\_\_\_  
\_\_\_\_\_.

Please contact me at

\_\_\_\_\_  
\_\_\_\_\_ (phone and address) if you need anything further to proceed  
with this request.

Sincerely,  
(Signature)

\_\_\_\_\_ (printed name)

Enclosure: Copy of DHHS notice of \_\_\_\_\_ (date)

Cc: Anna Maria Darwin, Protection and Independence Team Leader,  
Protection and Advocacy for People with Disabilities, Inc.  
545 N. Pleasantburg Drive, Suite 106  
Greenville, SC 29607