

HEARING PROCEDURES

A Guide to Administrative Hearings

For all appeals filed on or after September 18, 2006



HEARINGS PROCEDURES
(For All Programs)

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Preparing for hearings involves many of the same steps regardless of the program being appealed. The most important step is preparation before the hearing. The following information provides guidelines and instruction for that pre-hearing preparation, the hearing itself, and post-hearing action.

I. **Pre-Hearing Preparation**

Preparation at the local department is an essential step in avoiding issues that may occur during a hearing. See COMAR 07.01.04 (DHR hearings), 10.01.04 (MA hearings) and 28.02.01 (all OAH hearings) for regulations that govern the hearing process.

A. Customer requests an appeal¹

The local department must not limit or interfere with the customer's freedom to make a request for a hearing. A customer may request a hearing orally or in writing.

The local department must not discuss with the customer whether the decision being appealed is correct until the pre-hearing conference (see Section B, below).

1. Request not in writing

If the customer's request is oral, the request must be put in writing on the Request for Hearing Form (DHR/FIA 334) and dated the day of the request. The local department must ask the customer to put the request in writing, and must offer to assist the customer in doing so. If the customer does not put the request in writing, the local department must complete a DHR/FIA 334 form for the customer. The local department must copy it and forward the original to the Office of Administrative Hearings (OAH) immediately, keeping the copy in the file.

2. Written Request

If the customer has submitted a written request that is not on a DHR/FIA 334 form, the local department must complete a DHR/FIA 334 and attach the customer's written request. The local department must copy the form and forward the original to OAH immediately.

3. Completing the Request for Hearing Form (DHR/FIA 334 Revised 4/02).

- a. Ensure that all sections of the form are complete, including customer name, customer ID, address, and date of the adverse action notice for the action the customer is appealing.

¹ References to Customer include a Medical Assistance applicant or recipient.

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- b. If the customer made an oral request and the local department completed the DHR/FIA 334 for the customer, note this by writing “oral request” on the signature line in Section 4.
 - c. If the customer submitted a written request that was not on a DHR/FIA 334 but is attached, note this by writing “written request attached” on the signature line in Section 4.
 - d. The local department must mail or fax the DHR/FIA 334 to OAH immediately.
4. Make sure the local department decision or action was correct. If the local department decision was incorrect, correct it, narrate the correction in CARES and follow up to ensure the action is taken. Have all documents, including any calculations, prepared and available for the conference and the hearing.

B. Customer Conference Prior to the Hearing

1. There should be a conference with the customer prior to the hearing. The conference can be by telephone or face-to-face. The agency supervisor is required to attend this conference. COMAR 07.01.04.04D(2). The case manager and the appeals representative may also attend the conference.
2. If you are unable to reach the customer by telephone, send the customer a letter stating that they must contact the local department within 10 days of the date of the letter if he or she wishes to discuss the appeal. If the customer does not respond to the request for conference, the hearing process goes forward.
3. The point of the conference is to clarify all aspects of the issue that the customer is appealing, not just what is on the hearing request form. Notes regarding the conference **must** be entered in the CARES narration.
4. The following guidelines apply to the conference:
 - a. Ask the customer to tell you why he or she disagreed with the agency decision. Do not interrupt. Listen to what the customer says.
 - b. Be courteous and talk to the customer in language that is easily understood.
 - c. Avoid the use of acronyms, jargon, or business slang (for example, redet, app., or FIA).
 - d. Do not in any way discourage the customer from following through on the hearing request. Do not say things such as “You cannot win,” and do not tell the customer to withdraw the request.
5. After the conference, ask the customer if he or she understands the action taken, including any corrective action taken after the appeal was filed. If the customer does understand, ask if he or she would like to withdraw the hearing request.
 - a. If the customer elects to withdraw the hearing request, a withdrawal form (DHR/OS 87 revised 7/00) must be completed and the original must be sent to

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OAH via mail or transmitted by facsimile. One copy of the DHR/OS is given to the customer and one copy is maintained in the case file.

- b. If the customer wants to continue with the hearing, advise the customer that a packet of information will be sent by the local department and a notice of hearing date will be sent by the OAH.

Advise the customer that the hearings are informal and the customer has the right to bring anyone.

The customer also has the right to be represented by an attorney or other individual. **If you learn that an attorney represents the customer, you must communicate with the attorney on all matters concerning the appeal, unless the customer insists you speak with them directly. If so, you must put “the customer waived legal representation” in the CARES narration.**

C. Preparing the Hearing Summary

The Hearing Summary is a legally binding document and should be treated as such. All information contained in the Hearing Summary must be factual and correct. The document must be proofread and checked for spelling errors.

1. Read the customer’s request again. Read the conference notes and the case file. If something is unclear, call the attorney or customer for clarification.
2. Make sure the local department’s decision or action was correct. If the decision or action was incorrect, correct it. Follow your local department’s established procedure to make a timely correction. When the correction is made, inform the customer. If the correction is in the customer’s favor, ask the customer to withdraw the hearing request. If the customer agrees to withdraw, follow the instructions under Section B(5)(a), above. If not, continue to prepare for the hearing.

It may not always be possible to avoid a hearing, even if there has not been an adverse action or if an agency error has been corrected. In this instance, you should describe the correction, including the date the correction was made and how the correction affects eligibility. At the hearing, you will ask the ALJ to dismiss the appeal.

3. Consider whether the documents and your testimony will be sufficient to support the agency’s action. You may need additional witnesses or documents. If so, you will need to contact witnesses well in advance.
 - a. Do not subpoena a DHR or DHMH employee. After contacting the employee to discuss the case, if the employee’s testimony is necessary, secure a

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commitment from the employee to participate in the hearing. Notify the supervisor of the date and time the employee is expected to participate.

- b. You may have other witnesses subpoenaed by OAH. See COMAR 28.02.01.11. You may also request or subpoena documents from others. See COMAR 28.02.01.10 and .11.

D. Hearing Summary Contents

The Hearing Summary must clearly state the action being appealed. Use the Hearing Summary template available from DHR Policy and Training. Contact Marilyn Lorenzo at 410-767-7333 or mlorenzo@dhr.state.md.us for a copy of the template. Supplement the template with additional pages, as necessary.

1. The first sentence of the Hearing Summary must state the action(s) the customer is appealing, the date of the action(s), and why the customer is appealing. For example:

“Mr. Jones is appealing the local department’s action to deny his eligibility for Medical Assistance effective 04/01/2006 because he was found not disabled by the State Review Team.”

2. Use clear and simple language. Avoid the use of acronyms, jargon, or business slang (for example, redet, app., or FIA).
3. Always refer to the customer as Ms., Mrs., or Mr. and his or her last name. Do not use “the customer.”
4. The summary must include all relevant information that supports the action(s) being appealed.
5. Prepare the summary in chronological order, beginning with the earliest action.

E. The Hearing Packet

1. Set up the hearing packet as outlined below:
 - a. Local department hearing summary and any attachments.
 - b. The OAH Notice of Hearing
 - c. Request for Hearing
 - d. Notice of Action, including the entire printout of the CARES notice, must be included.
 - e. Request For Assistance Form, if applicable.
 - f. Authorization for representation and any other relevant legal document.
 - g. Every page of the application, including the backs of double-sided documents and the signature page.
 - h. Any evidence the local department has regarding the action taken such as: State Review Team documents (including medical records), pay stubs, child support statements, letters to or from the customer, etc.
 - i. All of the CARES narration (and WOMIS narration, if the issue is non-compliance with a work requirement) relating to the action being appealed.

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- j. The pages of COMAR, the Manual, action transmittals and any other policy issuances or citations that support the local department decision.
2. After you have finished assembling the hearing packet and **before making copies, number each page in the lower right corner.** Be sure to number all pages, including double-sided documents. Make a minimum of three (3) identical copies of the hearing packet. **You must be certain that you copy both sides of a double-sided document.** For example, the DHR/FIA 334 is a double-sided document.
3. Send the hearing packet to the customer **no later than 6 days before the hearing** or the customer has the right to have the hearing postponed. If the customer has an attorney or representative, the customer's packet should be mailed to that individual. One packet is presented to the ALJ at the hearing and the original is held at the local department.

F. Hearings Related to SRT Disability Determinations

A hearing requested based on a SRT decision involves more detailed and thorough local department preparation.

The local department should be prepared with a Hearing Summary that explains the SRT decision and subsequent denial of assistance fully enough so that an SRT employee does not have to appear at the hearing, unless the customer has the employee subpoenaed or the ALJ requests the employee's presence. If an SRT employee is subpoenaed by the OAH on behalf of the customer, the local department should receive a copy of the subpoena and should request permission from the ALJ and the customer to have the SRT employee testify through a conference call. If the SRT employee was not subpoenaed at least five days prior to the hearing date, or if the ALJ requests the SRT employee's testimony during the hearing, the local department should request additional time to allow the SRT employee to prepare to testify and make arrangements to testify through a conference call.

SRT Hearing Summary

The Hearing Summary must contain details specific to the SRT decision and include how the SRT made its decision.

Indicate in the summary at which step SRT made the determination of "not disabled" and why. Include all documentation in the hearing packet.

The Hearing Summary should include the following statements in the remainder of this Section. We suggest that you copy and paste the following language into a TDAP or Medical Assistance Hearing Summary template to prevent having to retype it each time.

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Statement:

The State Review Team uses the Social Security Administration's Disability criteria to determine disability. The Social Security Administration defines disability as the inability to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of twelve (12) months. The SRT is mandated to determine disability in accordance with Social Security Administration's Five Step Sequential Evaluation process as outlined below.

Social Security Administration Five Step Sequential Evaluation Process:

Step One: *SRT considers work activity, if any. If the individual is engaging in substantial gainful activity, SRT will find the individual not disabled.*

Step Two: *SRT considers the medical severity of the individual's impairment(s). If the individual does not have a severe medically determinable physical or mental impairment or a combination of impairments that is severe, SRT will find that the individual is not disabled.*

Step Three: *If the individual has an impairment(s) that does not meet or equal one of the Social Security Administration's disability listings, SRT will proceed to Step 4.*

Step Four: *SRT assesses the individual's residual functional capacity and past relevant work. If the individual can still do past relevant work, SRT will find that the individual is not disabled.*

Step Five: *SRT examines whether the individual's condition prevents performance of other work, considering the individual's residual functional capacity, age, education and work experience. If the individual can perform other work, SRT will find that the individual is not disabled.*

II. The Hearing

There are a number of Hearing "musts." You must be on time and be prepared. You must dress professionally and maintain a professional attitude. You must have the hearing packet with you and be ready to discuss the department's action. You must be pleasant and not argumentative. You must stick to the facts of the case.

In the Hearing you represent not only the local department, which made the eligibility decision, but also the other governmental agencies that may have contributed to the decision. Your professional attitude includes respect for other governmental agencies and never giving a personal opinion about the action(s) taken.

The local department presents its case first. The ALJ will record the hearing so speak loudly and clearly enough to be heard. Identify the hearing packet; state the number of

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pages in the packet, and request that it be entered into evidence. Read the Hearing Summary into the record. (The ALJ may ask that you just summarize the facts instead of reading the Hearing Summary). Present any additional facts and/or documents for the case. After you present, the ALJ will ask the customer or the customer's representative if they have any questions to ask you (cross-examination). After the cross-examination, you have the right to testify about any matters raised during the cross-examination. When you have finished testifying, you may call additional witnesses for the local department or request that additional documents be entered into evidence.

When it is the customer's turn to present, listen to what the customer says. Do not interrupt even if something the customer says is incorrect. Take notes if the customer says something that needs to be questioned or rebutted with additional testimony from you or your witnesses. The ALJ will ask if you have any questions to ask (cross-examination). If you have questions, ask them of the customer.

At the end of the customer's testimony, the ALJ may ask if anyone has anything else to say. If you have rebuttal testimony, you should ask for an opportunity to present rebuttal. Point out anything you heard that is contrary to policy or contradicts what the customer said. For example: The customer says he can only work part time, but you know that in order to be eligible for TDAP, the customer has to be unable to work. You should say, "the TDAP policy requires that an applicant be totally unable to work and Mr. Smith can work part-time."

If the local department is wrong, admit the mistake and state the agency will correct the problem immediately. Once you have committed to an action, be sure to follow through and see that it is done.

At the conclusion of the hearing, the ALJ will give both parties an opportunity to make a closing statement. This is your opportunity to summarize the agency's evidence and how it supports the action taken. You may want to explain why the customer's evidence does not support a different action.

The ALJ will send a written decision to the local department, the customer, and the customer's representative.

During the hearing, the local department representative may realize the local department decision is incorrect or the customer may present new information that may affect the local department's decision or action. **The local department should never ask for a remand of the case.** The ALJ is required to decide the case. You should state the agency's position on what the correct decision in the case should be.

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III. Action on the ALJ's Decision

If the ALJ's decision requires the local department to take any action, the local department must comply with the timeframe set by the ALJ. The local department is legally required to take the action. The local department must mail a letter to specify the action taken. A copy of that letter must be sent to the customer.

If you determine that the ALJ's decision is incorrect you can take steps to challenge that decision. The procedure used depends upon the type of case.

A. Exceptions to Proposed Decisions (FIP, EAFC)

In FIP and EAFC appeals, the ALJ issues a proposed decision. That means that the local department or the customer may file an exception to a proposed decision within 10 days of the decision. Exceptions are filed in writing to the designee of the Secretary of Human Resources. Exceptions are governed by COMAR 07.01.04.18 to .20.

B. Reconsideration of Final Decisions (Food Stamps, TDAP, PAA, RCA, Burial Assistance)

When the ALJ issues a final decision (the decision will state that it is final), either party may request reconsideration of that decision. If the request is made within 30 days, either party may request reconsideration if the decision contains errors of law or fact. COMAR 07.01.04.20. To request reconsideration, mail a letter to the ALJ indicating the basis for your request. Send a copy of the letter to the customer.

When considering whether to request reconsideration, keep in mind that the ALJ has already made a decision. You should ask for reconsideration only if you believe that the ALJ has overlooked a fact or law or has misinterpreted well-settled policy.

In very limited circumstances, the ALJ can reconsider a decision after 30 days. Final decisions can be set-aside at any time if they were based upon fraud, mistake or irregularity, as those terms have been interpreted by the courts. (If you believe that this may apply, contact Rosemary Malone at rmalone@dhr.state.md.us or 410-767-7949.)

C. Reconsideration of a Medical Assistance Decision

For Medical Assistance decisions (which are final decisions, not proposed), DHMH has the option to appeal an ALJ's decision to the Board of Review. The local department **may not** appeal to the Board of Review directly. If you believe the ALJ's opinion is not consistent with the regulations, Medicaid Manual, or other policy, contact Ms. Lisa Kulishek, Director of the Beneficiary Services Administration at Kulishekl@dhmh.state.md.us or call Ms. Kulishek at 410-767-6057.

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According to a recent Maryland Court of Special Appeals case, it may be improper for an ALJ to remand the case to the LDSS. Therefore, if an ALJ decision remands the case to the LDSS, the hearings representative should contact Ms. Kulishek immediately upon receipt of the ALJ decision, to determine whether the remand was improper and the case should be appealed to the Board of Review.

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Appendix

Request for Hearing DHR/FIA 334 (Revised 5/06)

Sample Contact Letter

Withdrawal of Request for Hearing DHR/OS 87 (Revised 7/00)

Hearing Summary Form

Hearing Summary Sample 1

Hearing Summary Sample 2

MA Disability Determination Notice of Action DHR/FIA 739 (Revised 4/05)

MA State Review Disability of Blindness Determination Transmittal
DHR/FIA 707 (Revised 11/99)