

## **DUE PROCESS RIGHTS**

Within the Agency for Persons with Disabilities, you have rights to appeal decisions under two authorities. The first is Chapter 120, Florida Statutes, and the second is Chapter 42 §431.200 of the Code of Federal Regulations. Chapter 42 §431.200 of the Code of Federal Regulations provides for “fair hearings” which are used to challenge or appeal actions relating to Medicaid services. Chapter 120, Florida Statutes, provides for “administrative” hearings. These are used to challenge actions related to services funded only by state general revenue money. Providers of Medicaid services may also request administrative hearings.

A fair hearing is only available when Agency for Persons with Disabilities services are paid using federal Medicaid funding. You may request a fair hearing when a request for services is denied, when the Agency fails to act on a request for services within ninety days of request, or when the services you are currently receiving are suspended, terminated or reduced. This process can be used when your services are provided under a Medicaid waiver program. Following is more detail on the hearing process.

### **Rights to a Fair Hearing**

**What is a fair hearing?** A fair hearing is an appeal by an individual when an agency, in this case the Agency for Persons with Disabilities takes any action the individual thinks is not appropriate. This may include denial of assistance, delay in acting on a request for assistance, suspension, termination or reduction of services.

**When may I request a hearing?** You or your authorized representative may request a fair hearing when the Agency takes an action to suspend, terminate or reduce services, or denies or fails to act on your request for assistance through a Medicaid waiver.

You may also contact the local Agency for Persons with Disabilities office to see if your issue can be resolved through reconsideration. A request for reconsideration does not affect the time frame to request a fair hearing. You must request a fair hearing no later than 90 days from the date of the notice of the Agency’s actions or you will waive your right to request a fair hearing.

**How do I request a fair hearing?** To request a fair hearing you must make a request, preferably in writing, to the Agency for Persons with Disabilities Program Administrator in your district, no later than 90 days from the date of the notice of the Agency’s actions. No one may interfere with your freedom to request a fair hearing. The Agency for Persons with Disabilities can assist you in making your request.

You have the right to review your records and any other documents the Agency for Persons with Disabilities will use at the hearing.

**Agency action on your request for a hearing.** Once the Agency receives your request for a hearing your request will be forwarded to the Agency Clerk. The Agency Clerk will determine if you are requesting a fair hearing or administrative hearing. Once this is determined, the request is immediately forwarded to the Office of Appeal Hearing for a fair hearing request, or, to the Division of Administrative Hearings for a formal administrative hearing. Informal administrative hearings, described further below, are handled by the Secretary of the Department or their designee.

**What happens when I request a fair hearing?** If you make a request for a fair hearing what occurs next depends on whether you have been receiving the services and supports that are at issue. If you have been notified that a request for services has been denied or if there has been a delay in acting on your request, then the services will not be initiated unless and until you win the fair hearing.

As a general rule your services and supports should not be suspended, reduced or terminated, without 10 days advance written notice. The 10-day period runs from the date of the notice. If your services are suspended, reduced or terminated without advance written notice, please notify the area Agency for Persons with Disabilities office immediately.

If you have been notified in writing that your services are to be suspended, reduced or terminated, and you request a fair hearing within 10 days, services will continue until the hearing process is completed. If services have been reduced, terminated or suspended, and you request that services be reinstated, this request

must be received by the Agency within 10 days of the effective date of the action. Services will be reinstated effective the date the Agency receives the request. If you request the hearing after the 10<sup>th</sup> day the suspension, termination or reduction has taken place, but no later than 90 days from the date of the notice of the Agency’s actions, no restoration of services will occur until after the decision of the hearing officer.

If you prevail on your hearing, then services will continue or be restored within 5 days of the Agency’s receipt of the final order. If you do not prevail on your fair hearing (challenging the proposed suspension, reduction or termination of services), then you may be required to reimburse the state for the cost of services.

**What are the steps in the fair hearing process?** The first step in the fair hearing process is a local or supervisory review of the evidence. If the issue is resolved on the area office level, you may then request that your fair hearing request be withdrawn.

The next step is a hearing that must be conducted at a reasonable time, date and place (after written notice) by a hearing officer from the Office of Appeal Hearings.

**What happens in a fair hearing?** You have the right to bring witnesses, establish all pertinent facts, present your side of the story without undue interference, and question or refute any testimony or evidence presented. The Agency will be represented by an attorney. A person may be represented by an attorney, or other qualified representative or may appear on his or her own behalf. A listing of possible pro bono legal resources may be found on the Internet at <http://apd.myflorida.com/clients/legal>. Usually, in reviewing request for supports and services funded through the Developmental Disabilities Waiver, staff rely on the *Developmental Disabilities Waiver Services Florida Medicaid Coverage and Limitations Handbook*. The Developmental Disabilities Waiver handbook provides important information about coverage and limitations that apply to Waiver services. The handbook can be found on the Internet at <http://floridamedicaid.consultec-inc.com>. If you do not have access to a computer, you may also review Waiver Handbook at your Area Agency for Persons with Disabilities Office.

**What is a final order?** Considering the evidence presented at the hearing, the hearing officer will prepare a written final order within 90 days of the request. If the hearing officer finds that the action taken was correct, the hearing officer will order that the necessary action be taken. If the hearing officer finds the action taken was wrong, he may authorize corrective action back to the date of the incorrect action, if appropriate.

### **Rights to an Administrative Hearing**

An administrative hearing is an appeal of agency action involving services funded through state general revenue dollars. The hearing may be informal or formal in nature. An informal hearing is held when you admit the basic facts relating to your claim. A formal hearing is held when there is a dispute about the facts relating to your claim. An Administrative Law Judge employed by the Department of Administrative Appeal Hearings conducts a formal hearing. The Department conducts an informal hearing.

You may request an administrative hearing if you believe that your “substantial interests” have been affected. Generally, this would mean that your request for services has been denied, or that services provided to you have been suspended, terminated or reduced. You must request an administrative hearing within 30 days after receiving notice of the Department’s action. If you do not request an administrative hearing within 30 days of receipt of the notice, you will waive your rights to request an administrative hearing.

At an informal hearing you can present evidence to “lessen” the action of the Agency. You may also argue that the action is not legally correct. At a formal hearing, you may present evidence and witnesses and cross-examine the Agency’s witnesses.

Generally, in the other respects the administrative hearing process is similar to a fair hearing process. However, the final order is always issued by the agency. If a formal hearing is held, the Administrative Law Judge issues a recommended order, which is then considered by the agency in the final order process.

You have a right to appeal an unfavorable final order (whether the result of a fair hearing or an administrative hearing) to the appropriate Florida District Court of Appeal.

ADDITIONAL INFORMATION ON YOUR RIGHTS TO A FAIR HEARING MAY BE FOUND IN CHAPTER 42 §431.200 CODE OF FEDERAL REGULATIONS AND SECTION 65-2.042 THROUGH SECTION 65-2.066, FLORIDA ADMINISTRATIVE CODE.



# **Agency for Persons with Disabilities**

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General information on rights to a fair hearing under Chapter 42 §431.200, Code of Federal Regulations, and administrative hearing under Chapter 120, Florida Statutes.

REVISED FEBURARY 2006