

**SA-3340 HEARINGS
10/01/02**

I. INTRODUCTION

This section contains the procedures for conducting local and State hearings when an a/r appeals a county DSS action.

II. APPLICANT'S/RECIPIENT'S RIGHTS

A. The a/r has the right to appeal any action taken, including but not limited to the following:

1. When the county department denies an applicant the opportunity to make an application on the day he first appears at the agency and wishes to apply.
2. When a substitute payee is appointed and the a/r disagrees with this action.
3. When the individual alleges he/she improperly withdrew his/her application.
4. When a replacement check is denied.
5. When assistance has been approved, denied, modified, or terminated.

NOTE: It is not necessary to conduct a hearing when either state or federal law requires automatic adjustments for classes of recipients unless the reason for the hearing is incorrect computation or there is a factual issue regarding whether the change applies.

6. When the county DSS fails to act within the required time standards.
7. When the county department fails to act promptly on a request for a review of the case situation.

B. The a/r may request the hearing verbally or in writing.

C. The a/r must request a hearing within 60 calendar days from the date notice of action is mailed or given, unless he can show good cause for a later request. If good cause exists, the request must be no later than 90 days from the date of the notice of action.

1. For appeals based on allegation of discouragement, improper withdrawal, or improper denial, the time limit for requesting a hearing shall be 60 days (or 90 days with good cause) from the date the applicant became aware or should have known that incorrect or incomplete information given by the county DSS caused the applicant not to apply, caused the applicant to withdraw his/her application, or that the denial was improper.
2. Good cause is defined as:
 - a. Failure of the a/r to receive the notice of action,
 - b. Extended hospitalisation of the a/r or the spouse, child, or parent of the a/r,
 - c. Failure of a representative acting on the a/r's behalf to meet required time frames, or

- d. Illness resulting in incapacity, incompetence, or unconsciousness of the a/r and there is no representative acting on the a/r's behalf, or
 - e. Death of the a/r or his/her representative, or
 - f. Failure of the county DSS to provide sufficient or correct information regarding appeal rights.
3. Evidence of good cause, which must be provided by the a/r, includes but is not limited to:
- a. Physician's written statement,
 - b. Hospital bill, or
 - c. Written statement of a/r, his/her representative, or other individual knowledgeable of situation.
- D. The a/r has the right to be represented at hearings by the person of his/her choice, including an attorney obtained at the a/r's expense.**
- E. In cases involving issues other than disability, an a/r has the right to request a state hearing only after a local hearing has been held and a decision has been rendered.**
- F. The a/r must request a state hearing within 15 calendar days of the mailing of the local hearing decision unless he can show good cause for a later request as defined in [II.C.3.](#), above.**
- G. In cases involving a question of disability, an a/r has the right to request a state hearing. Do not conduct a local hearing.**
- H. If, at any point, the a/r does not exercise his/her right to a hearing or the right to continued assistance, the a/r still has the right to reapply.**

I. Right to Continued Benefits

A recipient whose benefits are changed or reduced may be entitled to continued benefits while awaiting a hearing decision. Continuation of benefits applies only to recipients. It does not apply to applicants who are denied assistance because there are no benefits to continue.

1. Recipients Who Receive [Timely Notice](#)
 - a. If a recipient appeals a reduction or termination of benefits on or before the effective date of the change (10 workdays after the notice is mailed or given to the recipient), he has the right to continued benefits until the end of the month in which the local hearing decision is rendered, except when the reduction or termination involves a disability determination by DDS or the recipient waives his right to continued benefits. If the reduction or termination involves a disability decision by DDS, the recipient has the right to continued benefits until the end of the month in which a State hearing decision is rendered.
 - b. The recipient is not entitled to continued benefits if the appeal is not requested within the 10 workday period.
 - c. When the recipient requests the hearing, advise him that:
 - (1) If the reduction or termination of benefits is affirmed by the local or state hearings officer, he may be required to repay the benefits he received while awaiting a decision, and
 - (2) He has the right to choose not to continue to receive benefits.
 - d. In some cases, a hearing decision upholding the county's action will be rendered prior to the termination of benefits. In these situations, no additional action is necessary. If benefits must continue for an additional period, administratively reopen the case for one month at a time until a decision is rendered. Complete any required case actions during the extended period.

2. **Recipients Who Receive Adequate Notice**
Recipients who receive adequate notice and appeal do not have the right to continued benefits.

III. PROCEDURES FOR HANDLING HEARINGS ON DISABILITY ISSUES

In cases involving a question of disability, the county director or a designee must, within five calendar days of the request for a hearing, forward the request to the Chief Hearing Officer to schedule a state hearing. Refer to [V.](#) below for state hearing procedures.

IV. LOCAL HEARING

A. Purpose

The local hearing allows the county agency to explain the action in question and the appellant to explain why he feels that action should not take place.

B. Scheduling

1. Hold the local hearing within 5 calendar days after it is requested, unless the appellant has good cause for a delay.
2. The appellant has good cause to delay the local hearing when:
 - a. There is a death in the appellant's family.
 - b. The appellant or someone in his/her family is ill.
 - c. The appellant is unable to obtain representation.
 - c. The appellant's representative has a conflict with the scheduled date.

- e. The appellant receives a properly dated and mailed notice of action proposing a reduction or termination of assistance after the 10 workday notice period expires.
 - f. The appellant is unable to obtain transportation.
 - g. The hearings officer determines that the hearing should be delayed for some other reason.
3. If the a/r has good cause, the hearing may be delayed up to 10 more calendar days. A local appeal hearing may not be held more than 15 calendar days after a request for a hearing is received.

C. Place

Hold the hearing in the county social services office unless the appellant is bedfast or has great difficulty moving. In such cases, the hearing may be held where the appellant lives.

D. Seeing the Record

Prior to and during the hearing, the appellant or his/her personal representative may examine the contents of the case file together with portions of other public assistance or social services case files that pertain to the appeal. He/she also may examine all other documents and records to be used at the hearing. The appellant or his/her representative may obtain copies of these materials without charge.

E. Summary

1. Prepare an original and two copies of a summary ([SA-3340 Figure 1](#)) discussing the agency's action and the reasons for that action. Cite the regulation substantiating that action. Attach to the summary copies of pertinent documents.
2. Give the original to the hearing officer. Give one copy to the appellant. Following the hearing, file the other copy in the eligibility record.

F. Attendance

Attendance at the hearing is limited to the appellant, his/her representative, appropriate representatives of the county department, and any witnesses which the appellant or the county wish to call upon for testimony.

G. Conducting the Hearing - Refer to "Local Appeal Hearing Officer's Handbook"

1. The appellant and the county may be represented by attorneys or other representatives obtained at their expense.
2. Hold the hearings before the county director or his/her designee, provided that whoever hears the appeal was not involved directly in the initial decision, which resulted in the appeal.

The designee can include another county employee, a board member, or an employee of a social services agency in another county.

3. It is not required that the hearing be recorded. However, a written summary of the hearing must be maintained.
4. The County and the appellant must each name someone to present the testimony and to call witnesses. Any person testifying must be sworn in.
5. The county's representative must read the summary and explain the county's action, or call upon someone to do so. He/she may call witnesses, one at a time. When the county's testimony has ended, the appellant or his/her representative may question the county's witnesses or representative.
6. The appellant or his/her representative may then explain why he/she feels the county's action should not take place. He/she may call witnesses, one at a time. When the appellant's testimony has ended, the county or its representative may question the appellant, his/her witnesses or representative.
7. Representatives for the county and the appellant may present closing statements summarizing their view of the situation in question.

H. Decision

1. The county director or his/her designee will make a decision in the case, based on appropriate regulations and evidence presented at the hearing. Those factors must be cited in a written statement of the decision.
2. The written statement of the decision must be sent to the appellant by certified mail within 5 calendar days of the local hearing.
3. Put a decision upholding the appellant into effect within two weeks after the decision is rendered.

I. Recovery

If a reduction or termination of assistance is affirmed, any benefits received during the time of the appeal are subject to recovery.

J. Further Appeal

If the appellant is not satisfied with the local hearing decision, he/she may, within 15 calendar days of the mailing of that decision, request a state hearing through the local Division of Social Services, or within 90 days of the date of the original notice of action, if he/she can show good cause for a later request, as defined in [II.C.3.](#), above. The request can be either verbal or written and is made to the department of social services.

V. STATE HEARING

A. Purpose

The state hearing safeguards the interest of the individual client and assures fair and equitable administration of assistance programs.

B. Request for Hearing

1. Submit [DSS-1473, Request for State Appeal](#), to the Chief Hearing Officer, Hearing and Appeals Section, Division of Social Services:

- a. On the day the appellant requests a state hearing that does not involve a question of disability.
- b. Within 5 calendar days of the date the appellant requests a state hearing that involves a question of disability.
2. Attach a copy of the local hearing decision.
3. Attach to the DSS-1473, Request for State Appeal, all medical records dated within the last twelve months when denial or termination of assistance was due to lack of disability. If older information is needed, it will be requested following a review of the more recent information.

C. Scheduling

1. The hearing officer designated to handle the hearing will give reasonable notice to the county and the appellant of the time and place of the hearing.
2. The appellant may request and is entitled to receive a postponement of the scheduled hearing with good cause. The appellant has good cause to postpone the hearing when:
 - a. There is a death in the appellant's family.
 - b. The appellant or someone in his/her family is ill.
 - c. The appellant is unable to obtain representation.
 - d. The appellant's representative has a conflict with the scheduled date.
 - e. The appellant receives a properly dated and mailed notice of action proposing a reduction or termination of assistance after the 10 workday notice period expires.
 - f. The appellant is unable to obtain transportation.
 - g. The hearings officer determines that the hearing should be delayed for some other reason.
3. The postponement may not exceed 30 calendar days from the date the hearing was originally scheduled.

D. Place

Hold the hearing in the county social services office unless the appellant is bedfast or has great difficulty moving. In such cases, the hearing may be held where the appellant lives.

E. Seeing the Record

Prior to and during the hearing, the appellant or his/her personal representative may examine the contents of his case file, together with portions of other public assistance or social services case files that pertain to the appeal. He/she may also examine all other documents and records to be used at the hearing.

F. Summary

1. Prepare an original and two copies of a summary discussing the agency's action and the reasons for that action. Cite the regulations substantiating the action. Attach to the summary copies of pertinent documents.
2. Give the original to the hearing officer. Give one copy to the appellant. Following the hearing, file the other copy in the eligibility record.

F. Attendance

Attendance at the hearing is limited to the appellant, his/her representative, appropriate representatives of the county department, and any witnesses which the appellant or the county wish to call upon for testimony.

H. Conducting the Hearing- (Refer to [SA-3340 Figure 2](#))

1. The appellant and the county may be represented by attorneys or other representatives obtained at their expense.
2. A hearing officer from the Division of Social Services presides at the hearing and administers the oath to all participants. He/She will also record the hearing. No transcript will be prepared unless a petition to Superior Court is filed.
3. The county and the appellant must each name someone to present their testimony and to call witnesses.
4. The county's representative must read the summary and explain the county's action, or call upon someone to do so. He/She may call witnesses, one at a time. The hearing officer may question witnesses during their testimony. When the county's testimony has ended, the appellant or his/her representative may question the county's witnesses or representative.
5. The appellant or his/her representative may then explain why he/she feels the DSS' action should not be implemented. He/She may call witnesses, one at a time. The hearing officer may question witnesses during testimony. When the appellant's testimony has ended, the DSS representative may question the appellant, witnesses, or representative.
6. Representative for the DSS and the appellant may present closing statements summarizing their view of the situation in question.

VI. IMPLEMENTING DECISIONS

A. Time Standards For Hearing Officers

1. The hearing officer must render a decision not more than 90 calendar days from the date of the request for the local hearing.
2. The hearing officer will prepare a tentative decision on the [DSS-1894](#) which will be sent to the appellant by certified mail.

B. Time Standards for Applicant/Recipients Or County DSS

1. The DSS and the appellant may present oral and/or written agreements, for and against the Notice of Decision no later than 10 calendar days from the date of the notice. Both must contact the chief hearing officer to present arguments. No new evidence will be accepted at this level of the appeal process.
2. If no written argument or request for oral argument is made within 10 calendar days of the tentative decision, the tentative decision becomes final 10 calendar days after the date of the DSS-1894.

3. If the party that requested oral argument fails to appear at the hearing for oral argument, the tentative decision becomes final. . If contested, it is final when the final decision is signed. The final decision is forwarded on the [DSS-1893](#), by certified mail.
4. **Further Appeal**
If the appellant is not satisfied with the final decision following the state hearing, he may, within 30 calendar days of the receipt of that decision, file a petition for judicial review in Superior Court. For appeals filed after 30 calendar days, a Superior Court judge may issue an order permitting a review if the judge believes good cause exists for the delay in filing.

C. Time Standards for Implementing Hearing Decisions on Applications

1. All information needed to determine eligibility must be requested within 5 days of the date of the final decision of the appeal.
2. If there is a subsequent need for additional information, it must be requested on a [DMA-8146](#) within 5 workdays of the date that the need for the additional information became known to the DSS.
3. Dispose of the application within 5 workdays of receipt of the last piece of information needed to determine eligibility. Mail the check within five workdays that all information is received.
4. Application processing standards apply to hearing decisions.

D. Time Standards for Implementing Decisions on Terminations/Modifications of Assistance

1. Implement the appeal decision within 14 workdays from the date the decision is received by county DSS.
2. To reopen a terminated case, enter a date of application that is the first day of the month following the effective date of termination. Complete a [DSS-8124, Application Data Processing Form](#). If there is a signed application in the file, this application need not be signed. Follow instructions in [EIS User's Manual](#) to re-enter application.

E. Overrides

If eligibility is approved for any period more than 12 months prior to the date the, send a cover letter to the payment benefits section. Refer to [MA-2395, Corrective Actions and Responsibility for Errors](#), for instructions for Medicaid overrides.