

IMA POLICY MANUAL  
PART VIII: CASE MAINTENANCE

### Chapter 7: Grievances and Fair Hearings

#### Statutory Requirements For Conducting Fair Hearings 7.4

##### Fair Hearing Entitlement 7.4.1

**ALL** At the time of application for benefits and on any notice of adverse action, each applicant/recipient will be informed, verbally and in writing, of the conditions under which he is entitled to request a fair hearing, the process for requesting such a hearing, the right to present witnesses, the right to be represented by legal counsel or other spokespersons of his choosing, the right to have reasonable expenses related to the hearing paid by DHS, and that legal services are available to the applicant/recipient.

##### Request a Hearing 7.4.2

**ALL** Any applicant/recipient for public assistance aggrieved by department action or inaction which affects her participation in a particular program or level of benefits received may request a fair hearing. A hearing request is a clear expression, oral or written, by the applicant/recipient or her representative that:

- she wishes to appeal a decision of DHS
- she wants an opportunity to present its case to a higher authority.

DHS/IMA shall treat a request made by a representative of the applicant/recipient as if made by the applicant/recipient, as long as written authorization of representation is provided within 10 days of the request.

The request for a hearing may be filed with any employee of DHS/IMA or may be filed directly at the OAH.

The right to request a hearing may not be limited or restricted in any way. The request may be made verbally or in writing. DHS must assist the applicant/recipient in completing his/her hearing request, when asked. Upon receiving a request for a fair hearing, the IMA representative shall complete Form 1348. A request for a fair hearing must always be accepted and should be electronically transmitted by facsimile to OARA on the date it was received. The original copy of the fair hearing request and the customer's case record should be forwarded to OARA within 48 hours.

All applicants/recipients shall be afforded the right to request a hearing on any action taken by the agency, including loss of benefits, which occurred in the prior 90 days. All applicants/recipients shall also be afforded the right to request a hearing to appeal a denial of a request for restoration of benefits lost more than 90 days ago but less than one year prior to the request. All applicants will be afforded the right to request a hearing if they are not notified of a decision on their application within the time allowed. In addition, at any time during the certification period, a recipient may request a fair hearing to dispute his current level of benefits.

### **Scheduling a Hearing 7.4.3**

**ALL** A fair hearing shall be held not later than 45 days from the date of the request. At least 10 days prior to the hearing, OAH will send written notice of the date and time of the hearing to the applicant/recipient, his/her representative (if any), and DHS/IMA. This allows all parties involved to have adequate time to prepare for the hearing. However, the applicant/recipient may request or agree to less advance notice to expedite the scheduling of the hearing.

### **Request Postponement of Hearing 7.4.4**

**ALL** The household may request and is entitled to receive a postponement of a scheduled hearing. In the case of Food Stamps, postponement shall not exceed 30 days.

### **Continuation of Benefits Pending Fair Hearing Determinations 7.4.5**

**ALL** Under certain circumstances, if a recipient requests a fair hearing within specified time frames; adverse actions cannot become effective pending the outcome of the appeal. The SSR shall not permit the adverse action to become effective if the following criteria are met:

- The recipient requests the fair hearing before the effective date of the adverse action or within 15 days of the postmark date on the notice of adverse action, whichever is later.
- In the case of FS (but not Medicaid), the certification period has not expired.

Benefits shall be continued at the previous level unless the recipient specifically waives continuation of benefits. The SSR shall implement the adverse action, only if a recipient requests in writing that the adverse action be allowed to take affect pending the outcome of the appeal. If the department's action is upheld by the hearing decision, any benefits paid to the recipient to which he was not entitled must be recovered (see Chapter 6: Overpayment and Underpayment in this Part.)

#### **Example 1**

Ms. James and her two children receive Medicaid. On November 22, she is sent a notice of adverse action indicating that her Medicaid benefits will be terminated effective January 1 because she has moved from DC. On December 23, Ms. James contacts the SSR and requests a fair hearing. Ms. James's MA certification period expires March 1. Ms. James's Medicaid cannot be terminated pending the outcome of the fair hearing.

Mr. Hamilton receives FS. On October 3, he is sent a notice indicating that his FS benefits will be terminated effective November 1 for failing to comply with FSET requirements. Mr. Hamilton contacts the SSR on November 10 and requests a fair hearing. Mr. Hamilton is entitled to a fair hearing, but he will not continue to receive FS benefits pending the outcome of the appeal because the effective date of the action has passed. IMA may reduce or terminate benefits while a fair hearing is pending if:

- a mass change occurs that affects the group's eligibility or level of benefits
- a change is reported by the group or discovered by IMA that affects the group's eligibility or level of benefits and is unrelated to the original hearing request and the group fails to request a hearing after a timely and adequate adverse action notice is sent because of the change.

#### Example


Mr. Logan requests a hearing after being notified that his TANF check will be reduced because he failed to cooperate with CSED. His TANF benefits are continued at the original level, because he does not agree to a reduction pending the hearing. While his hearing is pending, the SSR receives a request to sanction Mr. Logan for nonparticipation in work activities. The SSR sends an adverse action notice to Mr. Logan, telling him that his TANF grant will be reduced if he does not comply with work activity requirements. If Mr. Logan does not comply and does not request a fair hearing to protest the work activity sanction, the SSR should impose the work activity sanction and reduce Mr. Logan's TANF benefits.

#### Conducting a Hearing 7.4.6

**ALL** Hearings shall be conducted by an ALJ who is assigned to the Office of Administrative Hearings. All hearings shall be conducted in accordance with federal and District rules and regulations of the applicable program and the regulations and procedures of OAH. In addition, DHS shall not be represented by an attorney at any hearing in which the applicant/recipient is not represented by an attorney.

#### Rights of the Applicant/Recipient During the Hearing 7.4.7

**ALL** The applicant/recipient or her representative must be given adequate opportunity to:

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- examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing (This includes the application/recertification form and documents of verification used to determine ineligibility or benefit level, provided that confidential information is not released. Confidential materials withheld from the applicant/recipient may not be used for the hearing.)
  - present the case or have it presented by a legal counsel or other representative
  - bring witnesses
  - advance arguments without undue interference
  - question or refute any testimony or evidence, including an opportunity to confront and cross examine adverse witnesses
  - submit evidence to establish all pertinent facts and circumstances in the case.

[http://dhs.dc.gov/dhs/cwp/view,a,1345,q,604145,dhsNav\\_GID,1728,.asp](http://dhs.dc.gov/dhs/cwp/view,a,1345,q,604145,dhsNav_GID,1728,.asp)