

## Chapter II. Hearings and Appeals

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### I. Purpose of Chapter

This chapter outlines the Department of Aging procedures for the Hearing and Appeals processes. For applicants or consumers in the following programs or services, the appeals and fair hearings processes derive from 6 PA Code Chapter 3 and Chapter 21. These regulations govern the processes in the OPTIONS program, State and National Family Caregiver Support Programs, Domiciliary Care Program, Non-Medical Transportation, Nutrition Services, Ombudsmen Program, Protective Services, and Senior Community Center Programs.

### II. Consumer Appeals and Fair Hearings

#### A. General Overview

A consumer can file an appeal for any action or inaction that an Area Agency on Aging (AAA) and the AAA's contracted service providers may take. This section addresses the roles and responsibilities of the Area Agency on Aging (AAA) and the AAA's contracted service providers in the appeals and fair hearings process.

The AAA must provide consumers with information on their appeal rights and the fair hearings processes at enrollment and at a minimum of annually thereafter. The form to be used, *Notice of Appeal Rights*, is located in Appendix B.

An adverse action is a decision by the state, the AAA, or the service provider to deny, reduce, or terminate eligibility (both functional and financial) or services in one of the Department of Aging's programs.

Only adverse actions, as defined, are subject to appeal. If an AAA is unsure whether an action requires the AAA to provide an Adverse Action notice, the AAA is to contact their Quality and Compliance Specialist. Below are examples of some of the most typical kinds of adverse actions.

- A **Denial** can be
  - A decision of the AAA that an applicant is not eligible for a program
  - A decision of the AAA not to provide initial or additional services or additional service hours requested by the consumer.
  
- A **Reduction** can be
  - A decision of the AAA which results in diminished amount, extent, or number of services provided to the consumer. This excludes changes in

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service providers and/or funding streams when the same level of service(s) provided to the consumer is maintained.

- A **Termination** can be
  - A decision of the AAA that a consumer is no longer functionally eligible for a program
  - A decision of the AAA which follows a service suspension brought about by an unsafe situation for agency or direct provider staff that a consumer cannot or will not resolve within a reasonable established timeframe.

**Note:** While a consumer has the right to file an appeal for the above actions, an adverse action notice is not required to be issued to a consumer when:

- An applicant is placed on a waiting list when services could not be provided due to funding.
- A consumer is terminated due to non-payment under Cost Share for the OPTIONS program.

If a consumer should appeal either of these decisions, the AAA is to notify the hearing officer at the pre-hearing conference that the consumer does not have the right to appeal under 6 PA Code Chapter 3.

Under 6 PA Code § 3.4, the AAA will provide written notice of any adverse action they have decided to take to the consumer, provider or legal who will be directly affected by the decision.

*Notice of Adverse Action and Appeal Rights (form is located in Appendix B):*

- must be given in a timely manner and in no event will the notice be given more than **30 calendar days** after the decision has been made
- must include the reasons for the agency action and the evidence on which the action was based
- must advise the consumer that:
  - the decision may be appealed
  - any appeal has to be filed with the AAA as an Informal Complaint within **30 calendar days** following the receipt of the Notice of Adverse Action and Appeal Rights and
  - the AAA, if requested, will provide assistance to the consumer in filling out the appeal request paperwork

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**Note:** All Notices of Adverse Action and Appeal Rights must be retained by the AAA and, where applicable, be made a part of the evidence taken in Informal Complaint proceedings and formal hearings.

### B. Informal Complaint Process

The AAA is required to establish a system for local resolution to informal complaints by consumers and providers as defined under 6 PA Code § 3.5 (d)(1)-(2). During an appeal for a reduction or termination of services, the consumer's existing service levels are to be continued until resolution of the Informal Complaint process. During a consumer appeal for a denied service or program, the enrollment or start of service is to be held pending the outcome of the Informal Complaint process. The AAA will recommend resolution in writing within **ten (10) days** of receipt of the appeal.

**Note:** The AAA will utilize the Domiciliary Care Review Team to handle all complaints or appeals from Domiciliary Care service recipients. For Protective Service complaints or appeals, the Pennsylvania Department of Aging, Bureau of Advocacy, Protective Services Division, will review and resolve informal complaints.

### C. Formal Hearing

A consumer who does not agree with the recommended resolution of the Informal Complaint process may request a formal hearing. This request must be made in writing to the Secretary of Aging within **30 calendar days** following the receipt of the recommended resolution. The written request for a formal hearing must contain all of the following information:

- Name, address, and telephone number of the complainant.
- Name, address, and telephone number of the respondent.
- A copy of the Notice of Adverse Action and Appeal Rights.
- A concise statement of the complaint.
- A statement of all relevant facts and the grounds upon which the complaint is based.
- The relief being sought.

Upon receipt of a request for a formal hearing, the Department of Public Welfare's Bureau of Hearing and Appeals will conduct the formal hearing as per an interagency agreement between the Department of Aging and the DPW, Bureau of Hearings and Appeals. The Secretary of Aging delegates to the Administrative Law Judge (ALJ),

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within the DPW Bureau of Hearing and Appeals, the authority necessary to conduct the hearing proceedings.

The ALJ's office shall notify the complainant and respondent of the date, time and location of the hearing at least **10 calendar days** prior to the selected date. A prehearing conference may be held at the discretion of the hearing examiner.

The hearing examiner will complete the hearing within **45 calendar days** of receipt of the assignment at the time of his appointment by the Secretary. 6 Pa. Code § 3.8 requires the hearing to be completed within 45 days from the date the case is assigned to the ALJ (i.e., the date the scheduling letter is completed). The ALJ can only grant a second continuance under extraordinary circumstances and the request for continuance must be in writing and copied to all parties.

If the Appellant does not appear for the hearing, the ALJ will send a Proposed Report to the appellant and Department of Aging, Office of General Counsel to dismiss the appeal. If the Aging representative does not appear for the hearing the ALJ will proceed with the hearing without the Aging representative present and will write the Proposed Report sustaining or denying the appeal based upon the evidence and testimony provided.

Following review of the Proposed Report, the Secretary shall direct the Department of Aging, Office of General Counsel to issue the Final Order within **30 business** days from the date of the hearing (6 Pa. Code § 3.10).

If the consumer has filed a request for a formal hearing within the required 30 days and has been receiving service during the informal complaint process, these services must continue during the Formal Hearing process. If the consumer is appealing a denied service or program, enrollment or start of service is to be held pending the outcome of the Formal Hearing process.

**Note:** the AAA reserves the right to recover any funds expended for goods or services during the appeals process if the AAA's adverse action decision is upheld in the Final Order.

### III. Provider Appeals and Fair Hearings

#### A. General Overview

Under 6 PA Code § 3.4, the AAA will provide written notice of any adverse action to a service provider whose application to provide services is denied or whose sub grant or contract agreement is terminated or not renewed. The *Notice of Adverse Action and Appeal Rights* must be given in a timely manner and in no event will the notice be given more than **30 calendar days** after the decision has been made. Below are some typical types of adverse actions:

#### 1. *Competitive Bid Process Appeals*

After the competitive bid process has been completed and the AAA has identified the successful bidder(s), the AAA is required to notify all unsuccessful bidders in writing, that they were not selected to contract with the AAA. Providers will be identified as unsuccessful due to failure to meet the minimum quality standards established by the AAA, or due to the bid price of the service.

**Note:** If the AAA has provided notice to all unsuccessful bidders, as outlined above as part of an RFP process, it is not necessary to provide a duplicate notice.

#### 2. *Provider Termination from Contract*

Appeal notification must be given to vendors who are terminated as providers of services funded through the Aging Block Grant due to failure to meet Department and/or AAA contractual requirements.

**Note:** The AAA will utilize the Domiciliary Care Review Team to handle all complaints or appeals from Domiciliary Care providers. Adult Day Service Center Licensure appeal process is available on the PDA website.

#### *Notice of Adverse Action and Appeal Rights:*

- must be given in a timely manner and in no event will the notice be given more than **30 calendar days** after the decision has been made
- must include the reasons for the agency action and the evidence on which the action was based

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- must advise the provider that:
  - the decision may be appealed
  - that any appeal must be filed with the AAA as an informal complaint within **30 calendar days** following the receipt of the Notice of Adverse Action and Appeal Rights
  
- **Note:** All Notices of Adverse Action and Appeal Rights must be retained by the AAA and, where applicable, be made a part of the evidence taken in Informal Complaint proceedings and formal hearings.

### B. Informal Complaint Process

The AAA is required to establish a system for local resolution to informal complaints by providers as defined under 6 PA Code § 3.5 (d)(1)-(2). The AAA will recommend resolution in writing within **ten (10) working days** of receipt of the appeal.

### C. Formal Hearing

If the service provider wishes to have a formal hearing after completing the informal complaint process, they must make a written request to the Secretary of Aging (hereby referred to as the Secretary) within **30 calendar days** following the receipt of the recommended resolution. The written request for a formal hearing must contain all of the following information:

- Name, address, and telephone number of the complainant.
- Name, address, and telephone number of the respondent.
- A copy of the Notice of Adverse Action and Appeal Rights.
- A concise statement of the complaint.
- A statement of all relevant facts and the grounds upon which the complaint is based.
- The relief being sought.

Upon receiving a request for a formal hearing, the DPW's Bureau of Hearing and Appeals will conduct the formal hearing, as per an interagency agreement between the Department of Aging and DPW, Bureau of Hearings and Appeals. The Secretary delegates to the Administrative Law Judge (ALJ) within the DPW Bureau of Hearing and Appeals, the authority necessary to conduct the hearing proceedings.

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The ALJ's office shall notify the complainant and respondent of the date, time and location of the hearing at least **10 calendar days** prior to the selected date. A prehearing conference may be held at the discretion of the hearing examiner.

The hearing examiner will complete the hearing within **45 calendar days** of receipt of the assignment at the time of his appointment by the Secretary (6 Pa. Code § 3.8) (i.e. the date the scheduling letter is completed). The ALJ can only grant a second continuance under extraordinary circumstances and the request for continuance must be in writing and copied to all parties.

If the Appellant does not appear for the hearing, the ALJ will send a Proposed Report to the Department of Aging, Office of General Counsel to dismiss the appeal. If the Aging representative does not appear for the hearing, the ALJ will proceed with the hearing without the Aging representative present and write the Proposed Report sustaining or denying the appeal based upon the evidence and testimony provided.

Following review of the Proposed Report, the Secretary shall direct the Department of Aging, Office of General Counsel to issue the Final Order within **30 business** days from the date of the hearing (6 Pa. Code § 3.10).

### IV. Appeals through Commonwealth Court

Should the consumer or provider disagree with the decision of the Secretary, they have the right to appeal the decision to the Commonwealth Court of Pennsylvania. Consumers and providers may appeal to Commonwealth Court, immediately after but **not more than 30 calendar days** from the date of the Secretary's decision.

Instructions for appealing to Commonwealth Court will be outlined on the Bureau of Hearings and Appeals Notice of Decision.

If the consumer timely appeals a reduction or termination of services to Commonwealth Court, their existing service levels are to be continued during the process. If the consumer is appealing a denied service or program, enrollment or start of service is to be held pending the outcome of the Commonwealth Court Hearing.

Appendices:

Forms

Regulations and Citations