APPENDIX B – HEARINGS

POLICY STATEMENT

The fair hearing process entitles an applicant or recipient (A/R) to an impartial hearing upon his/her request.

BASIC CONSIDERATIONS

Notification of the Right to a Fair Hearing

The A/R must be informed, in writing, of his/her right to a fair hearing, the methods of requesting a hearing, and that assistance with completing the required forms will be provided, if requested. The A/R must be informed of this right at the following times:

- at application
- when any action is taken that affects benefits
- when the A/R requests a restoration of lost benefits

Request for an Initial Hearing

A request for a hearing, either orally or in writing, is an expression by the A/R or his/her personal representative (PR) of the desire for an opportunity to present the case to a higher authority.

A request for an initial hearing may be submitted either to the county Department of Family and Children Services (DFCS) office or the Department of Human Resources (DHR) Legal Services Office (LSO).

Assistance must be provided to the A/R, if requested, with completing the necessary document(s).

A bilingual staff member or interpreter must be provided for any A/R who requests an interpreter. Hearing procedures must be explained in a language understood by the A/R.

The A/R must request an initial hearing within **thirty (30)** days of notification of the decision with which s/he disagrees.

In the event an oral request is made, the A/R must submit a written request within fifteen (15) days of the original request. Written requests received by LSO are forwarded to the Office of State Administrative Hearings (OSAH).

NOTE: All hearing requests must be forwarded to LSO, regardless of when the request was received. LSO will recommend whether OSAH should accept or reject the request.

All hearing requests, oral or written, including requests received more than 30 days after notification is issued, must be forwarded to LSO **within three (3) business days**.

NOTE: Upon receipt of a Women's Health Medicaid (WHM) hearing request by the RSM Project, DCH needs to be made aware of the request so a DCH representative can attend the hearing.

BASIC CONSIDERATIONS

Request for an Initial Hearing (cont.)

RSM Project staff should process the request using standard procedures, and should then contact DCH by sending an email message to tjohnson@dch.state.ga.us or by sending a FAX copy of the request to (404) 656-4913.

Hearing requests received by LSO are copied to the county DFCS office. The county DFCS office will assist, at LSO request, the A/R in submitting and/or processing the hearing request.

Upon receipt of a hearing request, OSAH will notify the county DFCS office and the A/R of the date and time of the hearing. The hearing may be conducted in the county at the DFCS or other government office, at the OSAH office in Atlanta or by telephone.

NOTE: For WHM hearings, when the RSM Project receives notice specifying the date and time of the hearing, they are to contact DCH by sending an email message to tjohnson@dch.state.ga.us or by sending a FAX copy of the request to (404) 656-4913.

A hearing request received from an A/R who is planning to move out of state before the hearing decision is reached may be expedited so that a decision may be issued before they move.

Continuation of Benefits

Upon the A/R's request, Medicaid eligibility and patient liability/cost share may be continued, provided the request for continuation is received within 10 days of the date of timely or adequate notice. Refer to Chart B.1, Continuation of Medicaid Pending an Initial Hearing Decision.

NOTE: The Department of Community Health, Division of Medical Assistance (DCH/DMA) reserves the right to require the A/R to repay continued benefits if s/he loses the hearing.

Allowance should be made in the event the A/R's reports late receipt of notification due to mail processing time. If the A/R provides the envelope in which the notice was received, allow 10 days from the U.S. Postal Service date stamp to determine if benefits are to be continued. If the A/R cannot provide the envelope in which the notice was received, allow 12 days from the date on the notice to determine if benefits are to be continued. In the event the 12th day is a weekend or holiday, allow until the close of business on the first workday following the 12th day.

SSI recipients who have had SSI benefits terminated and who wish to continue Medicaid pending the outcome of an appeal of SSI/Medicaid may do so. This should occur in the interface between SSA and DCH. However, if the SSI A/R reports that this has not occurred and that Medicaid benefits have terminated, have the A/R provide written verification from SSA that they have

BASIC CONSIDERATIONS

Continuation of Benefits (cont.)

appealed the SSI termination. If the A/R only wants to appeal the Medicaid termination and not the SSI, there are no Medicaid benefits to continue since the Medicaid went along with the SSI. DFCS should complete a CMD on the A/R and approve or deny as appropriate. At that point, the A/R may make an appeal of the Medicaid benefits denied through DFCS.

The Initial Hearing

Contact your Medicaid Program Specialist to contact DCH to have the A/R's eligibility restored pending the outcome of the appeal. The Program Specialist will need to provide the written proof to DCH to have the A/R updated to DCH's system.

An OSAH Administrative Law Judge (ALJ) conducts initial hearings.

The hearing includes consideration of the following:

- any agency action, including the following:
  - denial or approval of an application
  - calculation of patient liability or cost share
  - termination of benefits
  - change in COA
  - change in patient liability or cost share
- the agency's delay in action or failure to act, including:
  - delay in application processing
  - failure to act, or delay in action on a change

NOTE: This list is **not** inclusive.

OSAH is also responsible for DMA hearings on the Medicaid decisions resulting from the denial or termination of Supplemental Security Income (SSI). A DFCS staff member must be available to testify that a Continuing Medicaid Determination (CMD) was completed.

NOTE: The Social Security Administration conducts only those hearings related to the direct money payment of SSI, and not the accompanying Medicaid.

OSAH is not responsible for the hearing of DCH/DMA denials of Level of Care (LOC) for Katie Beckett (KB) A/Rs. The hearings for these denials will be held by DCH Legal Services. However, a DFCS staff member is required to attend the hearing. Hearings will be held in the KB A/R's county of residence. Refer to Section 2133, TEFRA/Katie Beckett.

State law prohibits the ALJ from providing legal advice to any party, including the state agency. The OSAH cannot assist the agency in determining who should be present as witnesses at the

BASIC CONSIDERATIONS

The Initial Hearing (cont.)

hearing or what evidence is necessary to establish the case.

Hearing decisions are based on evidence introduced at the hearing.

Hearing decisions specify the reason for the decision, identify the supporting evidence and policy, and make findings of fact and conclusions of law.

Initial Hearings: Rights and Responsibilities of the A/R and DFCS

The **A/R** or his/her **PR** has the right to the following:

- examine the contents of the case record and all pertinent documents and records prior to the hearing

  NOTE: Certain confidential case record information may not be released to or viewed by anyone, including the A/R. Refer to Section 2010 and 2011 for additional information, including what may not be released and penalties for unauthorized release.

  Confidential information that is protected from release and other documents or records that the A/R may not contest or challenge may **not** be presented at the hearing.

- present the case with or without the aid of a representative, including legal counsel, a relative, friend or other spokesperson
- request assistance from the agency for transportation to/from the hearing.

The **A/R** and **DFCS** have the right to the following:

- bring and/or subpoena witnesses
- establish all pertinent facts and circumstances
- present arguments without undue interference
- question or refute any testimony or evidence, including the opportunity to question and cross-examine adverse witnesses.

DFCS has the responsibility for the following:

- ensuring the presence at the hearing of staff members with direct knowledge of the facts in dispute
- ensuring that all relevant agency records and copies are legible and available as evidence
- ensuring that non-agency witnesses and records are present, either voluntarily or by subpoena.

BASIC CONSIDERATIONS (cont.)

Withdrawal, Cancellation or Postponement of the Initial Hearing

Forward any request for withdrawal, cancellation or postponement of the hearing to the LSO within three (3) business days. The withdrawal, cancellation or postponement may be requested by the A/R or his/her PR and may be made orally or in writing.

Notify the OSAH by telephone if the request for cancellation or postponement is made within three (3) days of the scheduled hearing.

The Initial Hearing Decision

The initial hearing decision is issued within ninety (90) days from the date the written request for a hearing is received by the agency, except in the event of a postponement or continuance.

An initial decision favorable to the A/R is final immediately upon receipt of the decision.

An initial decision that is **not** favorable to the A/R becomes final 30 days after the decision. **No** action may be taken to reduce or terminate Medicaid until the decision is final.

DMA reserves the right to reverse an initial or appeal decision. If DMA reverses the decision, DMA will issue a new decision.

The A/R and/or the county DFCS office may appeal the initial hearing decision.

See "Final Appeals" in this section for initial decision appeal information and procedures.

PROCEDURES

Processing an Initial Hearing Request

Upon receipt of a hearing request, follow the steps below.

Step 1

Review the record to determine the following:

- Was correct action taken? If not, correct the case and notify the A/R. S/he may choose to withdraw the request for a hearing.
- Was a CMD completed?
- Is the A/R eligible based on all other points of eligibility with the exception of the one at issue?
- Is there enough information in the case record to correctly determine eligibility? If not, obtain any needed information and/or verification either directly from the A/R or by requesting that OSAH subpoena needed documents and/or witnesses.

PROCEDURES
Processing an Initial Hearing Request (cont.)

Step 2 Discuss the complaint with the A/R or his/her PR prior to submitting the request to ensure that a hearing is necessary.

If a mutually satisfactory decision is reached, the A/R may choose to withdraw the request for a hearing.

Step 3 Inform the A/R that timeliness in filing the hearing request affects continuation or reinstatement of benefits and that late filing may result in denial of the request for a hearing.

Step 4 Submit the following documents to LSO within three (3) business days of receipt of the hearing request, even if unable to contact the A/R to discuss the complaint.

DHR Legal Services Office
2 Peachtree Street, N.W.,
Suite 29-210
Atlanta, GA 30303-3142

Copy all documents submitted to LSO and place in the case record.

- **original** Form 118, Request for Hearing, or any written request for hearing presented by the A/R
- **original** OSAH Form 1-Medicaid
- the application for assistance related to the matter(s) in dispute
- notice to A/R of action appealed
- all records documenting or verifying facts, including records of telephone conversations, interviews, etc., which pertain to the action in dispute and any other materials that were made part of the case file in the normal course of business and on which the agency relied for the action taken, including budgets
- subpoenas for individuals and/or documents prepared for the ALJs. If subpoenas are required for documents, include the type of document, the document custodian's name and address

  NOTE: The request for subpoena form must be completed setting forth the relevance of the testimony/documents sought. This form must be attached to the subpoena sent to OSAH. Copies of the request form and the subpoena must be provided to all parties involved in the hearing. The subpoena, after being signed by the ALJ, is returned to DFCS for personal service on the witness or for mailing to the witness via certified mail.

PROCEDURES

Processing an Initial Hearing Request

Step 4 (cont.)

- copy of all policy and regulation(s) relied upon in reaching the action in dispute.

NOTE: The hearing request must be forwarded to LSO, even if submitted by the A/R beyond the allowed thirty (30) days, if the A/R withdraws the request or if the request was filed in error.

Step 5 Determine if the A/R is entitled to continued or reinstated benefits. Continue or reinstate Medicaid benefits if allowed. Refer to Chart B.1 for continuation of benefits.

Inform the A/R that a request for continuation or reinstatement of patient liability (PL) or cost share (CS) pending a hearing decision may result in an increase of the A/R's financial responsibility if the hearing decision is adverse to the A/R or a decrease of the A/R's financial responsibility if the hearing decision is favorable to the A/R.

NOTE: If the hearing request submitted by or for the A/R does not indicate that the A/R has waived continuation of benefits, assume continuation is desired.

Step 6 Allow the A/R opportunity to examine documents and records that will be used in the hearing. Allow the A/R's representative the opportunity to examine these documents if the A/R signs a Form 5459, Authorization to Release Information.

Step 7 Report any changes in the circumstances related to the hearing, including address changes, to LSO and OSAH.

Forward any subsequent documents received concerning the hearing to LSO.

Implementation of an Initial Hearing Decision

Follow the steps below to implement a hearing decision.

Step 1 Notify the LSO in writing within five (5) working days from receipt of the decision that it has been received and will be implemented.

Step 2 Determine whether the decision is favorable to the A/R or the agency and adjust the A/R's ongoing benefits, including patient liability or cost share, if necessary.

Step 3 Notify the A/R of the action taken via manual notice. The notice must indicate that the action taken is the result of the hearing decision. Include each month's circumstance and eligibility status. Do not include information regarding further appeals.

FINAL APPEALS

POLICY STATEMENT

Both the A/R and the county DFCS have the right to request an appeal of an initial hearing decision.

BASIC CONSIDERATIONS

A LSO Appeals Reviewer conducts appeals of initial hearing decisions (final appeals).

If requested, the Appeals Reviewer reviews the initial hearing decision, all related materials, and renders a final decision. LSO notifies all parties of the final decision.

Applicant/Recipient Appeal of the Initial Hearing Decision

The A/R or his/her representative has the right to the following:

- appeal an initial decision within thirty (30) days from the date of the notice
- submit additional documentary evidence and/or written argument

The A/R has the right to request continuation of Medicaid benefits pending a final appeal decision, provided the request for continuation is received within 10 days of the date of the initial hearing decision. Refer to Chart B.2 for continuation of benefits.

NOTE: The Department of Community Health, Division of Medical Assistance (DCH/DMA) reserves the right to require the A/R to repay continued benefits if s/he loses the hearing.

County DFCS Appeal of the Initial Hearing Decision

The county DFCS has the right to appeal, within seven (7) days, an initial hearing decision through a state level review process if the initial decision:

- involves a serious misapplication of law and/or policy

  or

- has a significant program impact beyond the case involved

NOTE: The initial decision is **not** subject to county DFCS appeal if the disagreement is over issues of fact.

The county initiates a final appeal by submitting a completed Form 136, County Request for Final Appeal, to:

State Medicaid Policy Unit
2 Peachtree Street, Suite 21-492
Atlanta, GA 30303.

The county has the right to submit additional documentary evidence or written argument.

PROCEDURES

Processing an A/R Final Appeal Request

Follow the steps below if the A/R or the county DFCS office requests a final appeal of the initial hearing decision:

Step 1 Upon receipt of a final appeal request from the **A/R**, forward the request to LSO. All final appeal requests, including those received after the 30-day deadline must be forwarded to LSO.

Step 2 Determine if the A/R is entitled to continued Medicaid benefits and continue if allowed. Refer to Chart B.2, Continuation of Medicaid Pending an Appeal of an Initial Hearing Decision.

Step 3 LSO reviews the A/R appeal, renders a final decision and notifies all involved parties. No further appeals are heard following this decision.

Processing a DFCS Final Appeal Request

Step 1 The county DFCS office initiates an appeal of the initial hearing decision by completing and forwarding Form 136, County Request for Final Appeal, to the State Medicaid Policy Unit.

Step 2 The State Medicaid Policy Unit initiates a state level review to determine if the appeal request meets the hearing criteria. If the state office rejects the appeal, no further appeals are heard. If the state office accepts the appeal, forward the request to LSO.

Step 3 LSO reviews the DFCS appeal, renders a final decision and notifies all involved parties. No further appeals are heard following this decision.

OSAH RESPONSIBILITIES

POLICY STATEMENT

The Office of State Administrative Hearings (OSAH) has specific duties regarding the conduct and requirements of a hearing.

BASIC CONSIDERATIONS

OSAH Actions and Responsibilities

The OSAH initiates the following actions as needed:

- provides, at least ten (10) days prior to the hearing, advance written notice to all involved parties to permit adequate preparation of the case
- changes the time and/or location of the hearing upon its own motion or for good cause shown by the applicant/recipient (A/R)
- adjourns, postpones, or reopens the hearing for receipt of additional information at any time prior to the mailing of the state's decision on the case
- conducts a group hearing, consolidating cases where the sole issue involved is one of state and/or federal law, regulation or policy
- conducts a single hearing for multiple programs, if determined appropriate
- conducts the hearing on a newly emerged issue if, at the hearing it becomes evident that the issue involved is different from the one on which the hearing was originally requested
- orders an independent medical assessment or professional evaluation, at agency expense, if the hearing involves medical issues such as a diagnosis, an examining physician's report or a medical review team's decision. The source of the evaluation must be satisfactory to the A/R and the agency.

  NOTE: Members of the medical review team may **not** be subpoenaed.
- determines numbers of persons who may attend the hearing
- denies or dismisses a hearing request.

BASIC CONSIDERATIONS

OSAH Actions and Responsibilities (cont.)

- utilizes only the facts or opinions that are evidence of record or which may be officially noticed and are, therefore, subject to the rights of objection, rebuttal, and/or cross examination by the involved parties. The Administrative Law Judge (ALJ) is the sole "trier of facts".
- makes a decision within ninety (90) days from the date of the receipt of the written request for a hearing
- mails the hearing decision to all involved parties
- informs the claimant of appeal rights and that an appeal may result in a reversal of the initial hearing decision.

The Hearing Decision

Hearing decisions become a part of the case record and must meet the following criteria:

- comply with all federal and state laws, regulations and policies
- take into consideration only those issues directly related to the action appealed
- be based on evidence and other material introduced at the hearing
- be accessible to the public, with the identity of the A/R protected

The Administrative Law Judge's Official Record

The Administrative Law Judge (ALJ) official record must meet the following criteria:

- contain the substance of what transpired at the hearing and all papers and requests filed in the official proceedings
- be available to the A/R or its representative by appointment for copying and inspection

BASIC CONSIDERATIONS (cont.)

Legal Services Office Responsibilities

The LSO appeal reviewer for final appeals has responsibility for the following:

- taking additional testimony
- remanding the case to the ALJ
- requesting a response to any additional material or documentary evidence from the agency
- basing the final decision on the record from the ALJ, augmented by additional material
- notifying the A/R in writing of the final decision and the right to a judicial review.

Use the following chart to determine whether to continue, reinstate or change benefits pending an initial hearing decision.

CHART B.1 – CONTINUATION OF BENEFITS PENDING AN INITIAL HEARING DECISION

IF THE A/R REQUESTS A HEARING	THEN, WHILE THE INITIAL HEARING DECISION IS PENDING,
within 10 days of the date of the **timely** notice and requests continuation of benefits	continue Medicaid at a level equivalent to the level prior to the date of the timely notice. Continue the vendor payment and patient liability or cost share, if applicable.
within 10 days of the date of the **adequate** notice and requests continuation of benefits	reinstate Medicaid at a level equivalent to the level prior to the date of the adequate notice. Reinstate the vendor payment and patient liability or cost share, if applicable.
and claims Good Cause for not appealing during the 10 day timely notice period	Reinstate benefits only upon approval by the ALJ.
and the Medically Needy budget period has ended	determine spend-down for a new budget period and allow the A/R to submit medical bills.
and a change, other than a mass change, affecting eligibility occurs	change the benefits appropriately unless the A/R requests a hearing on the subsequent change and requests continuation of benefits. Notify the ALJ.
and a mass change is required	change the benefits appropriately and notify the ALJ. Continuation or reinstatement following a mass change is appropriate only if the ALJ determines that the mass change was incorrectly applied.

Use the following chart to determine whether to continue, reinstate or change benefits pending an appeal of an initial hearing decision

CHART B.2 – CONTINUATION OF MEDICAID PENDING AN APPEAL OF AN INITIAL HEARING DECISION

IF THE A/R REQUESTS AN APPEAL OF THE INITIAL HEARING DECISION	THEN, WHILE THE APPEAL OF THE INITIAL DECISION IS PENDING
within 10 days of the initial hearing decision and requests continuation of benefits	continue Medicaid, including vendor payment and cost share or patient liability, previously continued pending the initial hearing decision.
and claims Good Cause for not appealing the initial hearing decision within 10 days of the decision	reinstate benefits, including vendor payment and patient liability/cost share, only upon approval by the Appeal Reviewer.
and the Medically Needy budget period has ended	determine eligibility for a new budget period and allow the A/R to submit medical bills.
and a change, other than a mass change, affecting eligibility occurs	change the benefits appropriately and notify the Appeal Reviewer.
and a mass change is required	change the benefits appropriately and notify the Appeal Reviewer. Continuation or reinstatement following a mass change is appropriate only if the Appeal Reviewer determines that the mass change was incorrectly applied.

CHART B.3 – ADJUSTMENT OF MEDICAID BASED ON THE DECISION FROM AN INITIAL HEARING OR THE APPEAL OF AN INITIAL HEARING

IF BENEFITS WERE	THEN
continued or reinstated prior to the initial hearing or final appeal and the decision is **favorable** to the **A/R**	continue Medicaid benefits. Take action to issue any corrective vendor payment as authorized by the ALJ or Appeal Reviewer.
not continued or reinstated prior to the hearing and the hearing or appeal decision is **favorable** to the **A/R**	approve Medicaid retroactively and issue corrective vendor payments as directed by the ALJ or Appeal Reviewer.
continued or reinstated prior to the hearing and the hearing or appeal decision is **favorable** to the **agency**	provide **adequate** notice and reflect the decrease in benefits the month following the decision. Do **not** advise the A/R that s/he may request another hearing, as the hearing decision serves as adequate notice of appeals rights.
not continued or reinstated prior to the hearing and the hearing or appeal decision is **favorable** to the **agency**	maintain case in current status.