

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	<p>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:</p> <ul style="list-style-type: none"> • 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	<p>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.</p> <p>A request for an initial hearing may be submitted either to the county Division of Family and Children Services (DFCS) office or the Department of Human Services (DHS) Legal Services Office (LSO). The LSO will promptly inform the county Department when it receives a hearing request directly from the A/R.</p> <p>Assistance must be provided to the A/R, if requested, with completing the necessary document(s).</p> <p>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.</p> <p>The A/R must request an initial hearing within thirty (30) days of notification of the decision with which s/he disagrees.</p> <p>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).</p> <p>NOTE: All hearing requests must be forwarded to LSO, regardless of when the request was received. Untimely requests for a hearing will not be considered or forwarded to OSAH except for good cause.</p> <p>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.</p> <p>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.</p>

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 Gloria Hill at ghill1@dch.ga.gov or by sending a FAX copy of the request to (404) 463-2538.

Hearing requests received by LSO are copied to the county DFCS office. The county DFCS office will prepare the documentation necessary to support the hearing request and 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 Gloria Hill at ghill1@dch.ga.gov or by sending a FAX copy of the request to (404) 463-2538.

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 (DCH) 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 12 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 14 days from the date on the notice to determine if benefits are to be continued. In the event the 14th day is a weekend or holiday, allow until the close of business on the first workday following the 14th day.

EMA

Effective 1/1/06 continuation of benefits for ongoing EMA services pending a hearing will not be allowed as no future dates of service for EMA are applicable per policy.

BASIC

CONSIDERATIONS

Continuation
of Benefits
(cont.)

SSI

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 appealed the SSI termination. Contact your Medicaid Field Program Specialist 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 in DCH's system. 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

An OSAH Administrative Law Judge (ALJ) conducts initial hearings. See exceptions in chart below.

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.

AGENCY HOLDING HEARINGS	
Program	Hearing Agency
SSI money payment	Social Security Administration (SSA)
SSI Medicaid Denial/Termination	OSAH
DFCS Medicaid COAs	OSAH
Level of Care (LOC) for Katie Beckett	Department of Community Health Legal Services
Breast & Cervical Cancer Program	OSAH
Medicare Part D Low Income Subsidy	Social Security Administration (SSA)
SMEU	OSAH

BASIC

CONSIDERATIONS

**The Initial
Hearing
(cont.)**

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 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 24 hours of receipt. The withdrawal, cancellation or postponement may be requested by the A/R or his/her PR and may be made orally or in writing. The request should be sent by FAX to (404)657-1123, Attn: Office of General Counsel. **EXCEPTION: If received 3 days or less from the scheduled hearing date, send to the Administrative Law Judge contact as indicated on the appointment notice. These should include the docket number.**

**The Initial
Hearing Decision**

Notify the OSAH contact person named in the hearing notice by telephone or facsimile if the request for cancellation or postponement is made within three (3) days of the scheduled hearing.

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 maybe final unless DFCS makes a final appeal to DCH.

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.

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

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

See “Appeals” in this section for initial decision appeal information and procedures.

PROCEDURES**Processing an Initial
Hearing Request
Step 1**

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

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?

PROCEDURES**Processing an Initial
Hearing Request
(cont.)**

- 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.
- 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
- NOTE: Make sure that any available contact numbers for the A/R are included on the OSAH-1.
- 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.

APPEAL

POLICY STATEMENT	Both the A/R and the county DFCS have the right to request an appeal of an initial hearing decision.
BASIC CONSIDERATIONS	<p>A LSO Appeals Reviewer conducts appeals of initial hearing decisions regarding basic Medicaid eligibility only. The Department of Community Health (DCH) conducts appeals of all other initial hearing decisions (final appeals).</p> <p>The designated reviewing authority reviews the initial hearing decision, all related materials, renders a final decision, and notifies all parties of the final decision.</p>
Applicant/Recipient Appeal of the Initial Hearing Decision	<p>The A/R or his/her representative has the right to the following:</p> <ul style="list-style-type: none"> • appeal an initial decision within thirty (30) days from receipt of the decision <p>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 14 days of the date of the initial hearing decision. Refer to Chart B.2 for continuation of benefits.</p> <p>NOTE: The Department of Community Health (DCH) reserves the right to require the A/R to repay continued benefits if s/he loses the hearing.</p>
County DFCS Appeal of the Initial Hearing Decision	<p>The county DFCS has the right to appeal an initial decision, within thirty (30) days.</p> <p>The county initiates a final appeal by submitting a completed Form 136, County Request for Final Appeal, to:</p> <p>Department of Community Health Attn: Legal Services Department 2 Peachtree Street, 40th floor Atlanta, GA 30303.</p>

PROCEDURES**Processing an A/R
Appeal From an Initial
Decision 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 an appeal of the initial decision from the **A/R**, forward the request to Department of Community Health, Legal Services Department.
- 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** The designated reviewing authority reviews the A/R appeal, renders a final decision and notifies all involved parties.

**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 Department of Community Health, Legal Services Section. See page 8.
- Step 2** Notify all parties involved that an appeal from the initial decision has been referred to DCH legal. (AR, AREP, attorneys, etc.)
- Step 3** DCH Legal Services 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	<p data-bbox="272 478 548 552">OSAH Actions and Responsibilities</p> <p data-bbox="557 478 1235 510">The OSAH initiates the following actions as needed:</p> <ul style="list-style-type: none"> <li data-bbox="557 552 1443 667">• provides, at least ten (10) days prior to the hearing, advance written notice to all involved parties to permit adequate preparation of the case <li data-bbox="557 699 1443 814">• changes the time and/or location of the hearing upon its own motion or for good cause shown by the applicant/recipient (A/R) <li data-bbox="557 846 1443 961">• 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 <li data-bbox="557 993 1443 1108">• conducts a group hearing, consolidating cases where the sole issue involved is one of state and/or federal law, regulation or policy <li data-bbox="557 1140 1443 1213">• conducts a single hearing for multiple programs, if determined appropriate <li data-bbox="557 1245 1443 1360">• 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 <li data-bbox="557 1392 1443 1591">• 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. <p data-bbox="605 1623 1443 1696">NOTE: Members of the medical review team may not be subpoenaed.</p> <ul style="list-style-type: none"> <li data-bbox="557 1728 1369 1770">• determines numbers of persons who may attend the hearing <li data-bbox="557 1801 1089 1843">• 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 designated reviewing authority 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 14 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 14 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 14 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 14 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 14 days of the decision	reinstate benefits, including vendor payment and patient liability/cost share, only upon approval by the designated reviewing authority.
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 designated reviewing authority.
and a mass change is required	change the benefits appropriately and notify the designated reviewing authority. Continuation or reinstatement following a mass change is appropriate only if the designated reviewing authority 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 designated reviewing authority.
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.