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Basics on appealing government agency decisions

Any time you have government benefits you have the right to what is called “Due Process”. This means that the government (state, county or federal agency) cannot take something away from you without doing several things first. There are several times when you want to consider an appeal: You also have a right to notices of any action the government takes.

1) Taking away a benefit you have: (Example—You have Medicaid and the state says you no longer qualify, etc.)

- a) They must give you notice in writing at least ten days before they want to take away the benefit. This notice must say what they are doing, why they are doing it, and it must give you a citation of the law or regulation that they are using. The notice must also tell you how you can appeal this decision.
- b) IF YOU APPEAL BEFORE THE DAY THAT THEY PLAN TO TAKE SERVICES AWAY they have to continue benefits until you get a hearing.
- c) They have to guarantee you a hearing in front of an administrative law judge. This hearing is sometimes in person and sometimes on the telephone.

2) Reducing a benefit you already have: (Example: you have Medicaid home health five hours a day and they say you can now only get three hours a day). They must give you the same notice as they do if they take benefits away and they must continue providing the same level of benefits as you were getting if you file for appeal and ask for a hearing right away.

3) Denying you a service that you request: (Examples of services might be wheelchairs, personal care hours, therapies, etc):

- a) You should always get a written denial giving the reason for the denial and explaining appeal rights.
- b) You have the right to an appeal.
- c) You do not have the right to get a new service until the appeal process is finished (and you win) unless you can get a court to order interim relief. This is very difficult and not likely. The process of getting a court to order benefits before the appeal process is finished does require an attorney.
- d) If you are already getting the service and the state is taking it away (or reducing it) then you get to keep the service (at the existing level) during the appeal process
- e) If you do not file for appeal on time, you must re-apply for the service.
- f) Sometimes it is quicker to just re-apply—but not always.

4) Denying you a benefit: Any person has the right to apply for public benefits. Workers can tell people the rules, but may not refuse to let someone apply or deny anyone the opportunity to apply. For example, a Medicaid worker can tell someone with a million dollars in the bank “Because you told me that you have a million dollars in the bank you might not want to apply, because our resource limit is \$2,000. What is not acceptable is to say “I can tell by talking to you that you are not disabled enough to get Medicaid.” The appeal process is always the same –you need to get a written denial and you must appeal within a certain amount of time. You do not get benefits while you are waiting, and if you miss the deadline you have to reapply.

Frequently Asked Questions

1) How do I appeal: On any written decision the instructions should be on the document. If they are not, then simply address it to whoever sent you the document and ask that they send it to the correct place. All you have to do initially is state "I wish to appeal the enclosed decision. I would like a hearing with an administrative law judge. Sign your name and address and any applicable number (Medicaid number, SSN, etc) and date the letter. Mail it certified mail return receipt requested or fax but make sure you have a fax receipt. This is important if later the state says you did not file in time.

If this is about a benefit or service you already have, "I would like services to continue at the current level until the appeal." The state will tell you that if you lose you could have to pay back all of the services you get during the appeal phase. This is true but there are usually hardship rules for people who have nothing to pay back.

Hearings about Colorado Medicaid, Food Stamps, AND , TANF and other state benefits are at the Office of Administrative Courts (OAC) 633 17th Street Suite 1300 Denver, CO 80202
FAX 303-866-5909 (They have a fax limit of 10 pages)

Note: Social Security and Medicare are FEDERAL programs and have their own appeal process.

2) What if I get a verbal denial but no letter? The first thing is to write to whoever gave you the verbal denial and ask them for a written denial. If they refuse to put it in writing, send a letter to the OAC "I am writing to appeal the verbal denial (or reduction) of _____. Write the name of who said what and the date that they said it. Write that you have requested a written denial but have not received it. Send this certified mail return receipt requested or fax and copy the agency that refused to give you written denial.

3) Don't I need an attorney to help with this? Some cases require an attorney but non-attorney advocates or even friends and family can help people with administrative appeals. Two heads are always better than one. Sometimes the state will bring the attorney general with them, so it is good to have an advocate. If you have a non-attorney advocate, you must fill out a non-attorney authorization form.

4) How will I know when the hearing is going to be? You will get a letter advising you of a date. If the date is a problem and you have to change you have to write and ask for a change. We advise people not to do this because this could delay it for several more months. The notice will also say if it is a telephone or face-to-face hearing. If you get a telephone hearing and are not able to effectively communicate by telephone (i.e. you are denied a face to face hearing) please call CCDC. The notices will say that you need to go to a county social services office. If you don't want to do that send the court a letter and ask them to participate by telephone elsewhere (your home, office, etc.) as long as you have a decent phone line.

5) What happens in a hearing? It is like court. You give your opening statement about why you think you are right. You get to explain why should you get the service or benefit or not have a termination or reduction. You can represent yourself or have someone else represent you. You can bring witnesses. If you want to submit evidence, you sometimes have to do that 5 days ahead of time but you will get instructions on how to do that. The state can then cross-examine you or any witnesses. However, they will have to testify also, and you can cross-examine them and their witnesses. You can ask the court for subpoena's if you want to make someone from the state, county or a provider agency testify (you need to follow the instructions carefully). You can do other things to get information from the other side ahead of time.

This document has been prepared as general information by the Colorado Cross-Disability Coalition. This is NOT legal advice. Each situation is unique and we cannot advise en masse without knowing the specifics. You are encouraged to do your own research, ask questions and seek assistance if you need it. This document is meant to provide basic information so that people understand basic due process rights, and do not forfeit benefits based on not understanding that appeals are the manner in which one disputes cuts, denials, reductions and terminations of public benefits.

Nothing about us without us--ever!