

907 KAR 1:075. Hearings and appeals for individuals with an intellectual disability.

RELATES TO: KRS 194A.060, 205.175, 205.231, 205.237, 210.270

STATUTORY AUTHORITY: KRS 194A.025(1), 194A.050(1), 205.231, 205.237, 205.520(3), 205.531, 42 C.F.R. 431 Subpart E, 42 U.S.C. 1396

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.231 and 210.270 require the Cabinet for Health and Family Services, Department for Medicaid Services, to establish a system of hearings to be available to Medicaid recipients. KRS 194A.050(1) requires the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet; or to comply with federal law. This administrative regulation establishes the hearing procedures for Medicaid-eligible individuals with an intellectual disability lodged in state institutions who are proposed by the cabinet to be reclassified and transferred. In accordance with KRS 205.237, this administrative regulation also establishes the maximum fees that may be charged to the recipient for representation by attorneys with regard to the hearings or further resultant appeals.

Section 1. Definitions.

(1) "At the time of any action affecting a recipient's claim" means at the time that the cabinet proposes to:

- (a) Reclassify the level of care of a recipient; or
- (b) Transfer the recipient from the state institution in which the recipient is lodged.

(2) "Authorized representative" means:

- (a)1. A parent;
2. A guardian;
3. A committee of the recipient; or
4. Other person designated by the recipient including a relative or friend;
- (b) An attorney acting at the request of the parent, guardian, committee of the recipient, or on behalf of the recipient; or
- (c) A representative of the facility caring for the recipient who is acting on behalf of the recipient.

(3) "Recipient" means an individual:

- (a) With an intellectual disability;
- (b) Lodged in a state institution;
- (c) Who is eligible for Medicaid benefits; and
- (d) Who is having the cost of his or her care paid for using funds from the Medicaid Program.

Section 2. Informing the Recipient of the Recipient's Rights. Each recipient and authorized representative shall be informed in writing:

- (1) At the time of any action affecting the recipient's claim, of the recipient's right to a hearing;
- (2) Of the method by which the recipient may obtain a hearing; and
- (3) That the recipient shall be represented by an authorized representative or be self-represented.

Section 3. Request for a Hearing. At the time of any action affecting a recipient's claim, any recipient, or an authorized representative acting on the recipient's behalf, may request a hearing by filing a written statement clearly indicating a desire for a hearing with the secretary of the Cabinet for Health and Family Services.

Section 4. Time Limitation for Request. The time limitation for a hearing request shall be as es-

established in KRS 210.270.

Section 5. Continuation of Benefits. If the request for a hearing of a decision to reclassify or transfer any patient with an intellectual disability is received within the thirty (30) day period established by KRS 210.270:

- (1) Medicaid reimbursement shall continue, until the conclusion of the hearing; and
- (2) The recipient shall not be transferred, until the conclusion of the hearing.

Section 6. Acknowledgment of Hearing Requests by the Appeal Panel.

(1) The acknowledgment letter sent by the appeal panel shall contain information regarding the hearing process, including:

- (a) The right to case record review prior to the hearing; and
 - (b) The right to representation.
- (2) A subsequent notification shall include the time and place where the hearing will be held.

Section 7. Withdrawal or Dismissal of Request.

(1) The recipient, or the recipient's authorized representative, may withdraw the recipient's request for a hearing at any time prior to release of the appeal panel's decision.

(2) As appropriate, the recipient or the recipient's authorized representative shall be granted the opportunity to discuss withdrawal with the recipient's legal counsel or representative, if any, prior to finalizing the action.

(3) Except as provided in subsection (4) of this section, a hearing request shall be dismissed if the recipient fails to report for the hearing without prior notification.

(4) A hearing request shall not be dismissed without extending to the recipient, or the recipient's authorized representative, the opportunity to establish that the failure to report for the hearing was for good cause.

Section 8. Recipient's Rights Prior to a Hearing.

(1) Each recipient and the recipient's authorized representative, as appropriate, shall be informed of the recipient's right to:

- (a) Legal counsel or other representation;
- (b) Case record review relating to the issue; and
- (c) Submit additional information in support of the claim.

(2) If the hearing involves medical issues:

(a) A medical assessment shall be completed by a different provider than the person or persons involved in the original decision if the appeal panel considers it necessary pursuant to subsection (3) of this section.

(b) The medical assessment may be requested by:

1. The recipient;
2. The recipient's authorized representative; or
3. An appeal panel member.

(3) A medical assessment shall be considered necessary by the appeal panel if, in the opinion of a majority of the members of the appeal panel, the available medical information is insufficient for the appeal panel to determine whether the recipient should be:

- (a) Reclassified; or
- (b) Transferred.

(4) The reason for denial shall be set forth in writing if:

- (a) A medical assessment at cabinet expense is requested by the recipient; and
- (b) The request for a medical assessment is denied by the appeal panel.

Section 9. Corrective Action Prior to a Hearing.

(1) Prior to a hearing, the chair of the appeal panel may review the case record. If the chair determines that a proposed, pending, or completed action was made erroneously or inappropriately, the chair shall authorize corrective action in the form of:

- (a) Continuing assistance; or
- (b) Eligibility.

(2) Except as provided in subsection (3) of this section, following a corrective action pursuant to subsection (1) of this section, the hearing request shall be dismissed.

(3) A hearing request shall be subject to reinstatement at the request of the recipient or the recipient's authorized representative if that individual feels the corrective action does not fully resolve the issues prompting the hearing request.

(4) Any request for reinstatement pursuant to this section shall be made within twenty (20) days of the notice of the corrective action.

Section 10. Conduct of a Hearing.

(1) A hearing or appeal relating to a decision to reclassify or transfer a person with an intellectual disability in a state institution shall be in accordance with the requirements established in 42 C.F.R. 431 Subpart E (431.200 through 431.250), KRS 210.270, and, as necessary, KRS Chapter 13B.

(2) The appeal panel shall be appointed as required by KRS 210.270.

(3) A hearing officer of the Cabinet for Health and Family Services Administrative Hearings Branch shall be designated as the cabinet representative, in accordance with KRS 210.270(6).

(4) The hearing officer shall conduct the hearing in accordance with KRS 13B.080 and 194A.025.

(5) The chair of the appeal panel may direct or grant a continuance of a hearing in order to secure necessary evidence.

(6) In accordance with KRS 194A.060 and 205.175, all members of the appeal panel shall be required to:

(a) Maintain the confidentiality of:

- 1. The hearings;
- 2. The records;
- 3. The reports; and
- 4. All other documents related to the appeal panel; and

(b) Safeguard all information relating to:

- 1. The recipient; and
- 2. Any authorized representative.

(7) The chair of the appeal panel shall be responsible for:

- (a) Maintaining the official records of a patient's case before the appeal panel;
- (b) Receiving a notice of appeal;
- (c) Acknowledging the appeal;
- (d) Taking and recording the vote of the appeal panel; and
- (e) Sending notice of the decision to the:
 - 1. Recipient; or
 - 2. Authorized representative.

(8) Following the hearing, the chair of the appeal panel shall:

- (a) Take the vote of the appeal panel; and
 - (b) Assign the task of writing the decision to the chair or any other member of the appeal panel.
- (9) The decision of the appeal panel shall:

- (a) Be in writing;
 - (b) Include a finding of facts;
 - (c) Identify laws and administrative regulations that support the decision;
 - (d) Be sent to the appealing party within ninety (90) days from the date of the request for the hearing; and
 - (e) Advise the recipient or authorized representative of the right to appeal the decision in the manner prescribed by KRS 210.270(7).
- (10) The recipient, the recipient's representative, and any other party to the hearing may:
- (a) Present evidence pertinent to the issue on which the adverse action was, or is proposed to be, taken; and
 - (b) Advance any arguments without undue interference.
- (11) The chair and other members of the appeal panel shall, if necessary to secure full information on the issue, examine each party who appears and the party's witnesses.

Section 11. Limitation of Fees.

- (1) The cabinet, and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney's fee. In accordance with KRS 205.237, the fee an attorney may charge an individual shall not exceed the following:
- (a) Seventy-five (75) dollars for preparation and appearance at the hearing before an appeal panel;
 - (b) \$175 for preparation and presentation, including pleadings and appearance in courts, of appeals to the Circuit Court;
 - (c) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals; and
 - (d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Supreme Court.
- (2) The fee agreed to by the attorney and his or her client within the maximums established pursuant to subsection (1) of this section shall be deemed to have the approval of the cabinet.
- (3)(a) Enforcement of payment of the fee shall be a matter entirely between the attorney and the recipient.
- (b) The fee shall not be deducted, either in whole or in part, from benefit checks that may be due and payable to the recipient. (6 Ky.R. 487; eff. 4-1-1980; Recodified from 904 KAR 1:075, 5-2-1986; 18 Ky.R. 1629; eff. 1-10-1992; TAm 7-16-2013; 45 Ky.R. 1441, 2104; eff. 2-1-2019; TAm eff. 3-20-2020.)