

# Did You Know?

## Medicaid Recipients Have Important Fair Hearing Rights

Medicaid is one of the most important assistive technology (AT) funding sources for individuals with disabilities. Fortunately, federal Medicaid law and regulations establish important rights for the individual Medicaid recipient or applicant. One of those rights includes the opportunity for a fair hearing before the state Medicaid agency when a claim for medical assistance under the plan is denied or is not acted on with reasonable promptness. 42 USC 1396a(a)(3).

States Medicaid agencies are required to:

- publicize their fair hearing procedures and inform every applicant and recipient in writing of their right to request a fair hearing, the method by which a hearing may be requested, and that they may represent themselves or be represented by legal counsel or other spokespersons, 42 CFR 431.206(a), (b);
- provide this information when the individual applies for Medicaid and when the agency takes an action that would affect the individual's claim for services, 42 CFR 431.206(c);
- allow the applicant or recipient a reasonable time, not to exceed 90 days, to request the fair hearing, 42 CFR 431.221(d);
- conduct the hearing at a reasonable time, place and date, 42 CFR 431.240(a)(1);
- provide impartial officials or other persons to conduct the hearing who were not involved in the original determination, 42 CFR 431.240(a)(3);
- give the applicant or recipient, prior to and during the hearing, an opportunity to examine the case file as well as all documents and records the agency intends to use at the hearing, 42 CFR 431.242(a).

There are other important fair hearing rights. The applicant or recipient must be provided the opportunity to present witnesses, confront and cross-examine adverse witnesses, establish all pertinent facts, and present an argument without undue interference. 42 CFR 431.242(b)-(e). In *Ortiz v. Eichler*, 794 F.2d 889 (3rd Cir. 1986), the court held that the state welfare agency's practice of considering adverse statements from individuals who were not available for cross-examination or confrontation at administrative hearings violated federal regulations.

The hearing decision must be based entirely on evidence submitted at the hearing. 42 CFR 431.244(a). See *Ortiz v Eichler*, 616 F. Supp 1046 (D. Del 1985), affirmed 794 F.2d 889 (3rd Cir. 1986) (ex parte communications between agency and hearing officer violated requirement that decision be based solely on evidence submitted at hearing). The decision must be in writing and must summarize the facts and identify the regulations supporting the decision. 42 CFR 431.244(d). The agency must take final administrative action ordinarily within 90 days from the date of the request for a fair hearing. 42 CFR 431.244(f)(1). The record must consist only of the transcript or recording or testimony and exhibits, or an official report of what happened at the hearing, all papers and requests filed in the proceeding, and the recommendation or

decision of the hearing officer. 42 CFR 431.244(b). The applicant or recipient must have access to the record at a convenient time and place. 42 CFR 431.244(c).

Federal law and regulations are predicated upon the Supreme Court decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970). The court held that certain public benefits, such as cash assistance, are a statutory entitlement for persons eligible to receive them. “For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.” 397 US at 264. Because they are a statutory entitlement, a person eligible for a public benefit can not be deprived of that benefit without due process. The evidence used to support the government’s case has to be disclosed to the individual and the individual has to be given an opportunity to present witnesses and other rebuttal evidence prior to the termination of benefits.

Federal Medicaid regulations specifically require a fair hearing system that comports with the due process standards set forth in *Goldberg*. 42 CFR 431.205(d). Medicaid recipients have the right to due process, including a hearing, any time the Medicaid agency terminates, suspends, or reduces benefits, or denies an otherwise available service. These due process rights apply when a recipient is seeking funding for AT through a Medicaid service category such as durable medical equipment (DME).

A state may be more generous with its Medicaid program than the federal law requires, but not less generous, and your state may give additional fair hearing rights. Advocates and attorneys are encouraged to review their own statutes and regulations to determine whether their state is in compliance with federal law or whether their law confers more rights upon Medicaid recipients.

Please feel free to contact us if you have any questions or comments. Also, if you won a hearing or court appeal/lawsuit regarding Medicaid fair hearing rights or any item of DME, please send us copies of the hearing decisions or court decisions/documents, so that we can share them with the AT network.

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