

5101:6-8-01

**State hearings: administrative appeal of the state hearing decision.**

- (A) An individual who disagrees with a state hearing decision, or with a decision by the hearing authority to deny or dismiss a hearing request, has the right to request an administrative appeal.

The administrative appeal process does not apply to administrative disqualification hearing decisions.

An administrative appeal may only be requested by or on behalf of an individual applying for or receiving benefits. An administrative appeal may not be requested by the local agency, the state agency, or another entity, such as a managed care plan or "MyCare Ohio" plan, acting for or in place of the local or state agency.

The administrative appeal process is the responsibility of the bureau of state hearings.

- (B) Notice of the right to and the method of obtaining an administrative appeal shall be included on the state hearing dismissal notice, on the JFS 04005 "State Hearing Decision" (rev. ~~3/2003~~1/2015), and on the notice of failure to establish good cause for abandonment required by rule 5101:6-5-03 of the Administrative Code.

(C) Administrative appeal requests

- (1) A state hearing decision, or a decision by the hearing authority to deny or dismiss a hearing request, will be reviewed for one or more of the following reasons:

- (a) The decision is contrary to the weight of the evidence presented.
- (b) A prejudicial error was committed in the course of the proceedings.
- (c) The decision relies on an incorrect application of law or rule.
- (d) When a decision is regarding the prevention, retention and contingency (PRC) program, the decision relies on an incorrect application of the following:
  - (i) The Ohio department of job and family services (ODJFS) model design, developed under section 5108.03 of the Revised Code, if the county department of job and family services (CDJFS) involved adopted it; or
  - (ii) CDJFS's written statement of policies adopted under section 5108.04 of the Revised Code and any amendments the CDJFS has adopted to the statement.

- (2) A "request for an administrative appeal" is defined as a clear expression, by the individual or authorized representative, to the effect that he or she wishes to appeal a state hearing decision or a decision of the hearing authority to deny or dismiss a state hearing request.
- (3) The request must be in writing and signed by the individual or authorized representative.

Written authorization must accompany all requests made on the individual's behalf by an authorized representative, unless the representative was the authorized representative of record at a previous stage in the proceedings, or unless one of the conditions described in rule 5101:6-3-02 of the Administrative Code is met.

- (4) The request must be received by the bureau of state hearings, within fifteen calendar days from the date the decision being appealed was issued.

#### (D) Continuing assistance

The filing of an administrative appeal request will not automatically stay implementation of the initial state hearing decision, denial, or dismissal. However, the bureau of state hearings may choose to exercise the department's inherent authority to delay implementation of a decision when an administrative appeal appears to be meritorious and when the appeal cannot be processed to completion in time to prevent loss of benefits to the individual. In these situations, the bureau of state hearings shall issue a written directive to the local agency, with a copy to the individual and to the appropriate office. Such an interim order, either to stay implementation or to reinstate assistance, shall not constitute a decision on the merits of the appeal, but only serves to preserve the status quo until a decision on the merits can be made.

#### (E) Dismissal

- (1) An administrative appeal request may be dismissed because:
  - (a) It is not made by the individual or authorized representative, as required by paragraph (C)(3) of this rule.
  - (b) It is not timely, as defined by paragraph (C)(4) of this rule.
- (2) The bureau of state hearings shall provide written notice of dismissal to the individual and authorized representative. Copies shall be provided to the local agency for inclusion in the case file and to the appropriate office.

#### (F) Docketing

Once an administrative appeal request has been accepted, the bureau of state hearings shall docket the appeal, assigning it to an administrative appeal hearing examiner.

- (G) If the administrative appeal hearing examiner determines that the original decision and the appeal request do not contain sufficient information upon which to decide the appeal, the official hearing record and/or the recording of the hearing may be reviewed. The hearing examiner will not convene a new hearing.

(H) Administrative appeal hearing examiners

Administrative appeals shall be assigned to and decided by an impartial administrative appeal hearing examiner who has no personal stake or involvement in the case and was not directly involved in the initial decision being appealed.

This person shall be an attorney assigned to the bureau of state hearings and delegated authority by the ODJFS director.

Decisions of the hearing examiner shall be subject to approval by the ODJFS director or a designee.

(I) Administrative appeal decisions

- (1) After reviewing the initial decision, the individual's appeal request, and the hearing record and/or recording if appropriate, the hearing examiner, subject to review and approval in accordance with paragraph (H) of this rule, shall issue an administrative appeal decision which addresses the issues of fact and law raised in the appeal request.
- (2) Administrative appeal decisions shall be issued within fifteen calendar days from the date of the administrative appeal request.
- (3) The administrative appeal decision shall affirm the initial decision when the hearing examiner determines that the initial decision contains no error affecting the outcome of the appeal (except as noted in paragraph (I)(6) of this rule).
- (4) The administrative appeal decision shall reverse the initial decision when the hearing examiner determines that the initial decision contains an error which resulted in an outcome adverse to the individual. Administrative appeal decisions which reverse the initial decision shall contain instructions concerning corrective action and shall require compliance via JFS 04068 "~~State Hearing Compliance~~" (rev. 5/2001) "Order of Compliance Notice" (rev. 1/2015) when appropriate.

- (5) The administrative appeal decision shall vacate the initial decision and remand the case to the original hearing officer when the hearing examiner determines that the record developed does not contain sufficient information to decide the appeal.
- (a) If benefits were continuing due to a timely hearing request, an administrative appeal decision that vacates the original decision and remands the case to the hearings section has the effect of preserving or reactivating the individual's procedural right to continuation of benefits. The agency is responsible for responding immediately to a vacate and remand decision and ensuring that benefits are continued. If the original decision has been implemented, the agency shall immediately reinstate benefits to the previous level.
  - (b) If the factual determination for which the case is being remanded can be made by reviewing the existing hearing record, a supplemental hearing is not necessary. If the existing record is not sufficient, a supplemental hearing shall be convened. If the administrative appeal decision specifically requires the convening of a supplemental hearing, that order shall be followed.
  - (c) Supplemental hearings shall be scheduled on a priority basis. Written notice shall be provided and shall be accompanied by a copy of the administrative appeal decision and any further instructions necessary to ensure that all parties understand the purpose and scope of the supplemental hearing.
  - (d) If the individual or authorized representative fails, without good cause, to appear for a supplemental hearing, the hearing officer shall review the existing hearing record to determine if the facts for which the case was remanded are already established therein.
    - (i) If so, a supplemental decision shall be issued, clearly indicating that a supplemental hearing was scheduled but the individual did not appear, that the record was reviewed, and that the necessary additional facts were established from that review. This shall be followed by the appropriate conclusions of policy and recommendations based on those facts.
    - (ii) If some or all of the additional facts cannot be established from the record, a supplemental decision shall be issued, clearly indicating that the individual did not appear for the supplemental hearing and that the hearing record was reviewed but was silent as to one

or more of the factual issues for which the case was remanded. This shall be followed by the appropriate conclusions of policy and recommendations based on the facts that are available.

(iii) If the individual does not appear for the supplemental hearing, no discussion of the merits of the appeal shall occur between the hearing officer and the agency.

(6) In no event shall the administrative appeal process result in a determination more adverse to the individual than was contained in the initial decision being appealed.

(7) The individual and authorized representative shall be provided with the written administrative appeal decision, which shall include notice of the right to judicial review, or other appeal rights, as appropriate. Copies of the decision shall be sent to the local agency and to the appropriate office.

When the administrative appeal involves one of the medical determinations listed in paragraph (C)(2) of rule 5101:6-6-01 of the Administrative Code, a copy of the decision shall also be sent to the medical determination unit.

When the administrative appeal involves ~~action or lack of action by a managed care plan or "MyCare Ohio" plan~~, copies of the decision shall also be sent to the managed care plan or "MyCare Ohio" plan and upon request to the Ohio department of medicaid ~~bureau of managed care~~.

#### (J) Administrative appeal hearing record

The administrative appeal decision, together with all requests, documents, and correspondence filed in the proceeding, shall constitute the exclusive administrative appeal hearing record. The record shall be compiled, certified and maintained by the bureau of state hearings in accordance with applicable record retention requirements and made available for review by the individual and authorized representative.

#### (K) Library of administrative appeal decisions

The bureau of state hearings shall maintain a library of all administrative appeal decisions. The decisions shall be available for public inspection and copying, subject to applicable disclosure safeguards.

#### (L) Finality

- (1) An administrative appeal decision that affirms or reverses the initial decision being appealed shall constitute the final and binding administrative decision on the issue(s) involved.
- (2) An administrative appeal decision that vacates the original decision and remands the case to the assigned hearings section does not constitute a final administrative resolution, since the supplemental decision issued on remand shall be subject to further administrative appeal.

(M) Compliance

Compliance with administrative appeal decisions shall be in accordance with rule 5101:6-7-03 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 10/17/2017

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Certification

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Date

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