

Appealing an Adverse Decision to BHA and Beyond

Presented by:
Anthony L. Marone, Esq., McAndrews Law Offices
Mark Newell, Esq., Department of Human Services

Agenda

- The Appeal and the Appellant
- Time Limits and *Nunc Pro Tunc*
- Grounds for Appeal
- BHA Hearings, Complaints and Grievances
- Scheduling the Hearing
- Decisions and Stipulations
- Reconsideration and Commonwealth Court

The Right to Appeal

- A denial, suspension, or discontinuance in whole or in part;
- A change in the amount of payment;
- A denial, discontinuance, reduction, or exclusion from a Departmental program including the client's choice of services;
- Undue delay in making a payment adjustment or acting upon a request or application;
- No right to appeal Departmental decision to initiate prosecution in overpayment but can appeal computation of amount or collection procedures.

Appeal Objectives

- Impartial, objective review of decisions, actions, delays or inactions of Department;
- To settle issues raised by the client;
- Produce clear and definitive decision setting forth the findings of the Department;
- Contribute to uniformity in application of Departmental regulations.

Hearing Request



- “An expression, oral or written, by the client or the person acting for him, such as his legal representative, relative, or friend, to the effect he wants an opportunity to present his case to a higher authority.” 55 Pa. Code § 275.2.
- Appeal section/rights in notice.
- Nursing facility appeal, HCR ManorCare v. DPW

Hearing Request

1. ID info;
2. Program;
3. Appeal;
4. SNAP;
5. Hearing Type;
6. Interpreter;
7. Signature;
8. Date;
9. Phone;
10. CAO Info

The image shows a form titled "Your Right to Appeal and to a Fair Hearing". It contains several sections for providing information, including:

- 1. Name, Address, Phone:** Fields for Name, Address, and Phone Number.
- 2. Appeal Information:** A section with checkboxes for "I am appealing a decision made by the Department of Public Welfare" and "I am appealing a decision made by the Department of Health".
- 3. Hearing Type:** A section with checkboxes for "I am requesting a hearing on my appeal" and "I am requesting a hearing on my appeal and I am requesting a hearing on my appeal".
- 4. Signature and Date:** Fields for Signature and Date.
- 5. Representative Information:** Fields for Representative Name and Representative Telephone Number.

The Appellant's Rights

- The Appellant is the applicant or recipient who requested a hearing and signed the appeal.
- Right to appear at a hearing, be represented, present evidence, confront and cross-examine the Department.
- Right to request a subpoena from hearing officer.
- Right to examine documents the Department will present at hearing, both prior to and during hearing.
- Right to review contents of case file, even file of service provider.
- Right to request a pre-hearing conference with Manager or Supervisor.

When to Appeal



- Must appeal a written notice within 30 days of mailing date on notice.
- Will be precluded from litigating issue at expiration of 30 days.
- If no written notice, 60 days from date of decision or action.
- If the Department fails to send written notice due to administrative error, 6 months from action or failure to act.

Appeal *Nunc Pro Tunc*

- After 6 months, the applicant or recipient must appeal *nunc pro tunc*.
- May only file if he or she signs an affidavit stating 1) did not know of right to appeal or believed problem was being resolved, 2) believed the Department erred, and, 3) the appeal is filed in good faith.
- Jurisdictional defect. BHA will issue a Rule to Show Cause. If no grounds to proceed, appeal will be dismissed without a hearing, ruled untimely, and will be considered *res judicata*.

Appeal timing and benefits

- If appeal a proposed adverse action within 10 days, the CAO will continue benefits unchanged.
- If the client receives continued benefits and loses the appeal, the CAO will establish an overpayment.
- If the client requests Reconsideration, the benefits continue pending the Final Order of Reconsideration.
- The PA 162 should include the date to timely file an appeal and to continue benefits.
- Consider appealing immediately to continue benefits or consider waiting to appeal if gathering documents.

Grounds for Appeal

- Is it good practice to give a detailed explanation of why you are appealing?
- Can you just write "I appeal"?
- Failure to provide – 042 appeal.
- Excess resources.
- Transfers for less than Fair Market Value.
- Hardship?

Choice of Hearing



- Telephonic Hearing.
- Telephonic Hearing at CAO.
- Face-to-Face Hearing.
- Locations – Erie, Pittsburgh, Harrisburg, Reading, Wilkes-Barre, Philadelphia
- Face-to-Face Hearing with Department participating by phone.

BHA Time Limits



- Final Administrative Action (“FAA”) must be taken 90 days from the date of the appeal. This includes the hearing, the decision by the ALJ, and review by the Chief Administrative Law Judge.
- The FAA may be extended by the time of the delay by the appellant.

Interim Assistance

- When the FAA has not been rendered within the applicable time limit, the appropriate Deputy Secretary will notify the county office to begin Interim Assistance until the FAA is rendered.
- Has this ever actually happened??
- When the appellant requests interim assistance, the Executive Director of the CAO will investigate within 48 hours.

BHA Hearings

- The hearing will be held before an ALJ and conducted in an orderly but informal manner. The appellant and CAO will have an opportunity to present their witnesses, evidence, etc. A transcript will be kept. The ALJ will render his or her opinion based on the evidence presented at the hearing as applied to Departmental Regulations.
- What about Constitutional issues? Precedential value of decision? Invalidate Departmental regulations?

Conduct of the Hearing



- ALJ opening statement.
- ALJ will ask appellant to state issues.
- Conference?
- County will present its case.
- Appellant cross-examine witnesses.
- Appellant presents his or her case.
- Cross-examination by County.
- Hearing officer may ask questions.
- Hearing officer will ask appellant if he or she wishes a further opportunity to present case, speak, etc.
- The hearing officer may continue the hearing or adjourn.

Withdrawal and Abandonment

- A hearing request can only be withdrawn by the Appellant.
- Counsel must enter his or her appearance to withdraw.
- A hearing is considered abandoned if the Appellant fails to appear “without good cause” as determined by the ALJ.
- Abandoned appeals are dismissed.

The Hearing Decision

- Hearing Authority, Basis for Decision, Notice of Decision.
- The Hearing Authority is the Secretary.
- The Basis for the Decision will be restricted to the record at the BHA hearing. Standard is Substantial Evidence.
- Briefs and exhibits are due at the hearing, but the ALJ may keep the record open for 5 days after the hearing.
- The Notice of the Decision will specify the reasons for the decision and inform the appellant of his or her right to appeal.

 **Stipulations** 

- An on-the-record agreement between the County and the appellant.
- Is it always better to agree?
- All Stipulations have a final date where all actions must be completed.
- If the Appellant fails to comply with the Stipulation, the **original 162 stands**.
- **Is there a new notice??** 
- Notice of Dispute within 30 days of date of final action.

Reconsideration

- Either party has 15 calendar days from the Date of the decision of the Director of the BHA to request Reconsideration from the Secretary.
- The request must be in writing.
- The Secretary may affirm, amend, reverse the decision or remand to the ALJ for further findings of fact.
- All decisions are confined to matters of law, the Secretary will not disturb findings of fact.

Commonwealth Court 

- Can appeal an adverse BHA decision to Commonwealth Court.
- You do not need to request Reconsideration.
- Must file within 30 days of the final decision of the Director of BHA (FAA Order).
- If the Secretary grants Reconsideration, the time limit for the appeal will be 30 days from when the Secretary responds to the request.
- Failure to exhaust administrative remedies.


