



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

**MEMORANDUM**

DATE: May 28, 2010

TO: Mr. Roy LaFontaine, Director  
Division of Developmental Disabilities Services

FROM: Daniese McMullin-Powell, Chairperson *DMP/KH*  
State Council for Persons with Disabilities

RE: 13 DE Reg. 1458 [DDDS Final Agency Appeal Process Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Developmental Disabilities Services' (DDDS) final appeal process regulation published as 13 DE Reg. 1458 in the May 1, 2010 issue of the Register of Regulations. The SCPD commented on the proposed version of this regulation in March 2010. DDDS has now adopted a final regulation incorporating several amendments prompted by the commentary.

First, SCPD applauded the Division for issuing an appeal "regulation" as juxtaposed to a "policy". DDDS acknowledged the endorsement.

Second, the Council suggested adding a provision clarifying that resort to the DDDS appeal process does not supplant access to other grievance systems available under law. DDDS agreed with the suggestion and incorporated a variation of the Councils' proposed language.

Third, SCPD suggested an amendment to encourage, but not require, exhaustion of informal resolution options prior to appealing to DDDS. The Division agreed and inserted conforming language.

Fourth, SCPD suggested correction of a reference to "an appeal DDDS". The Division corrected the reference.

Fifth, the Council suggested deletion of an extraneous comma. The amendment was made.

Sixth, the Council suggested deletion of another extraneous comma. The amendment was made.

Seventh, SCPD suggested the addition of an authorization to restore the status quo pending appeal based on consensus reached between DDDS and the client. DDDS agreed and added some conforming language.

Eighth, SCPD recommended that the 90 day period to request a Medicaid hearing be tolled during the pendency of the DDDS appeal. DDDS responded that the suggestion “is currently under review with the applicable agencies”.

Ninth, SCPD recommended insertion of “limitation” in §2.4. No change was effected.

Tenth, the Council recommended explicitly allowing appeals of disagreements over ELP content or implementation. The Division rejected the suggestion based on the following rationale:

DDDS does not want to get into the practice of the Division Director, via the Appeals Committee (who don’t ordinarily even know the person receiving services), overturning an ELP. If a right is being violated and cannot be addressed at the team level, the appellant should address it via the DDDS Client Rights Complaint Process (reference second comment).

At 1460.

Eleventh, SCPD recommended authorizing an appeal to contest “other adverse DDDS action or refusal to act with significant impact on appellant”. DDDS declined to adopt the suggestion.

SCPD certainly appreciates that DDDS adopted several amendments prompted by the Council’s commentary.

cc: Ms. Mary Anderson  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

13reg1458 ddds appeal ty 5-10