



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: July 23, 2012

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

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

RE: 16 DE Reg. 6 & 30 [DSS Proposed Expedited Fair Hearing Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its fair hearing process to specifically address expedited fair hearings available to Medicaid and Delaware Healthy Children Program (DHCP) participants. DHSS noted the omission during the CMS review of the DSHP Plus review process. The regulation was published both as an emergency (16 DE Reg. 6) and proposed (6 DE Reg. 30) regulation in the July 1, 2012 issue of the Register of Regulations. SCPD has the following concerns and recommendations regarding the proposed revisions.

First, §5304.3, Par. 1 (p. 36) indicates that the "MCO must issue an expedited resolution within 3 working days after receiving the appeal." Obviously, a claimant attempting to persuade an MCO to issue a favorable decision within the "3 working days" timeframe would ordinarily benefit from reviewing the MCO's case records to facilitate any submission of justification or expert medical evidence. Unfortunately, there is no DSS regulation addressing expedited access to MCO case records. It would be preferable to add a provision requiring prompt access to such records in the context of a request for expedited resolution.

Second, if a claimant requests a fair hearing to contest an MCO's adverse decision processed under the expedited resolution regulation [§5403.3, Par. 1], the DSS hearing officer is expected to issue a decision within 3 working days. See §5500, Par. 1; and 42 C.F.R. §431.244(f)(2). However, §5403, Par. 2, allows the MCO or agency to wait "3 working days" to provide access

to case records. Thus, a claimant would be “hamstrung” in preparing for the expedited hearing since he/she would lack timely access to MCO or State agency case records. CMS regulations mandate that beneficiaries will have access to records before the date of hearing to allow meaningful participation in the appeal process. See, e.g., 42 C.F.R. §431.242(a). Therefore, SCPD recommends that §5403, Par. 2, be revised as follows:

For expedited resolution requests, case records must be promptly made available within ~~3 working days~~ 1 working day of the receipt of the appeal.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

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

16reg6 & 30 dss-fair hearing 7-23-12