

5101:6-6-02 Rights and responsibilities of the participants.

(A) The agency representative

The agency representative presents and is the advocate for the agency's case at the hearing. This person shall explain the reasons for the agency's action, cite the regulations upon which the action was based, provide relevant case information and documents, and answer relevant questions from the individual and the hearing officer. The agency representative has the same rights as the individual to confront and cross-examine during the hearing.

WHEN THE HEARING INVOLVES ACTION OR LACK OF ACTION BY A MANAGED CARE PLAN, THE MANAGED CARE PLAN REPRESENTATIVE SHALL HAVE THE SAME RIGHTS AND RESPONSIBILITIES AS THOSE OF THE AGENCY REPRESENTATIVE.

(B) The individual making the hearing request

- (1) The individual and representative shall have the opportunity to present their case in their own way. The hearing shall be conducted informally, and formal rules of evidence shall not apply.
- (2) The individual and authorized representative shall have adequate opportunity to:
 - (a) Examine, at a reasonable time before the hearing as well as during the hearing, the contents of the case file, except for confidential information protected from release, as well as all records and documents to be used by the local agency at the hearing.
 - (b) Bring witnesses.
 - (c) Submit evidence to establish all pertinent facts and circumstances.
 - (d) Advance arguments without undue interference.
 - (e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(C) The hearing officer

- (1) State hearings shall be conducted by an impartial ODHS hearing officer who has no personal stake or involvement in the case and was not directly involved in the initial determination being appealed. The hearing officer shall be under the direction and supervision of the appropriate district director.
- (2) The hearing officer shall not consult with either party concerning the substance of the case prior to the hearing, except for review of the hearing request and appeal summary.
- (3) Hearings are normally held at the local agency office. The hearing officer shall assure that the accommodations provided by the local agency for the hearing are adequate and that the hearing can be conducted in privacy, with the proper decorum, and with a minimum of distractions. Disputes concerning the adequacy of the space provided shall be referred to the district director for resolution with the director of the local agency.
- (4) The hearing officer shall regulate attendance at the hearing in accordance with rule 5101:6-6-01 of the

Administrative Code. If limited space requires, witnesses may be called into the hearing room one at a time.

- (5) The hearing officer shall begin the hearing by starting the recording equipment and providing the following introductory information:
 - (a) The name and role of the hearing officer, the case name, and the appeal number.
 - (b) How the hearing will be conducted, including the order of presentation and questioning.
 - (c) The time frame within which a decision must be issued.
 - (d) Who will issue the decision.
 - (e) How the parties will be notified of the decision.
 - (f) Where the complete hearing record will be kept after the decision is issued.
 - (g) The available appeal rights.
- (6) After the opening remarks, the hearing officer shall state the issue to be heard, as it appears on the hearing request. The issue shall always be whether the agency's action or inaction was in accordance with ODHS rules. The hearing officer shall entertain requests from either party to amend the issue as stated. Amendment is appropriate so long as it does not substantially alter the nature of the issue or the ability of the parties to address the issue at the hearing. Any amendment of the issue as stated on the hearing request shall be formally recorded.
- (7) The hearing officer shall ask both parties for any additional issues, and shall rule on their inclusion in the hearing. An additional issue may be heard only if both parties agree, and if the hearing officer determines that both parties are prepared to address the additional issue and that there is adequate time to do so.
- (8) The hearing officer shall record the name and role of each person in attendance and shall administer an oath or affirmation to all who intend to offer testimony.
- (9) The hearing officer shall regulate the order of presentation by the parties. Normally, the agency presentation will be made first, subject to questioning by the individual and the hearing officer, followed by the individual's presentation, subject to questioning by the agency and the hearing officer. Both parties will then be allowed a brief closing statement.
- (10) In regulating the conduct of the hearing, the hearing officer is responsible for developing the fullest possible record upon which to base all necessary findings of fact. Each party shall be treated fairly and impartially and given adequate opportunity to address the issues. The hearing officer has an affirmative obligation to assist unrepresented individuals in understanding the nature of the issue and the regulations that relate to it, and in presenting testimony and evidence necessary to address all relevant factual questions. The hearing officer shall take an active part in questioning the parties and the evidence presented, insofar as that is necessary to develop the fullest possible record.
- (11) After all relevant testimony and evidence has been presented, the hearing officer shall determine whether a sufficient record has been developed upon which to make the decision. If not, the hearing officer may either order that the hearing be continued to a later date or leave the record open for the submission of additional evidence.

- (a) Where relevant and useful, the hearing officer may order an independent medical assessment or professional evaluation.
 - (b) If the hearing is to be continued to a later date, as for instance to take testimony from a witness not present at the initial hearing, the hearing officer shall schedule the continuance at the earliest possible date acceptable to all parties and shall formally record the new date and time, as well as the specific purpose of the continuance. Notification of the parties at the hearing shall be followed by written notification via ODHS 4002.
 - (c) If the record is to be left open to allow the submission of additional documentary evidence, the hearing officer shall formally record the nature and purpose of the additional evidence and shall establish the earliest possible realistic deadline for its submission to the hearing officer.
 - (d) Additional evidence submitted prior to the deadline shall be forwarded to the other party with notice of the deadline for response. Evidence submitted after the deadline may be returned to the submitting party with notice that it will not be used in reaching the decision.
 - (e) The hearing officer shall also have the authority to reconvene the hearing if the nature of the additional evidence or response requires. When the record has been left open for submission of additional evidence by the agency, the individual shall always be afforded the right to rebut such evidence in person at a reconvened hearing if he or she chooses.
 - (f) When the record has been left open, the hearing decision shall so indicate, and shall record the resulting submissions or failure to submit, as well as the substance of any rebuttal.
- (12) If assistance has been continued due to a timely appeal, the hearing officer shall determine, prior to adjourning the hearing, whether the sole issue is one of state or federal law and not one of fact or judgment. If so, the hearing officer shall direct the agency, via "Authorization to Take Proposed Action During Pendency of Hearing Decision," ODHS 4050, to take the proposed action immediately.
- (13) The hearing officer shall close the hearing by informing the parties when they can expect the written decision, adjourning the hearing, and turning off the recording equipment.
- (14) Following the hearing, the hearing officer shall not discuss the substance of the case with either party, unless at a supplemental hearing at which both parties are present.
- (15) Finally, the hearing officer shall prepare the "State Hearing Decision," ODHS 4005, to include the issue, findings of fact, conclusions of policy, and recommendations, and submit it to the district hearing authority.

Effective Date: June 1, 1997

Certification: Arnold R. Tompkins

May 21, 1997
Date

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Statutory Authority: Revised Code Sections 2301.35, 5101.35
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