



MCO Appeals: Preparing for the Fair Hearing

If your Managed Care Organization (MCO) has denied, revoked, or reduced coverage for a Medicaid service, and you have exhausted the MCO's internal appeals process, the next step if you wish to further appeal is to request a Fair Hearing through the Department of Medical Assistance Services (DMAS) Appeals Division. Preparation is the key to effectively presenting your case at a Fair Hearing. In this factsheet, we offer some tips for effectively preparing for your fair hearing.

1. Review the MCO's decision letters carefully.

Your MCO must notify you in writing of its intent to deny, revoke, or reduce a Medicaid service. This notice is sometimes called a "notice of adverse action" or "adverse benefits determination." You should read this notice carefully and save it to refer to again in the future. Do not throw it away!

A notice of adverse action must include, among other things, the action that the MCO intends to take, the reasons that it intends to take that action, and references to the law, regulation, or policy that requires or allows it to take that action. It also must include information about how you can appeal the adverse action, and in the case of reduction or revocation of previously approved services, it must include information about the circumstances in which you can have the services continued while you pursue an appeal.

You should read the notice carefully. It will explain the timeline that you must be prepared to address any factual errors contained in them. If the MCO denied a service because of incomplete or missing paperwork or information, you may be able to supplement the record with the missing paperwork or information. You may also be able to address the MCO's stated reasons for denying the requested service by obtaining a Letter of Medical Necessity from a qualified healthcare professional who can speak to the alleged deficiencies in the record.

A note of caution though: in our experience, it is not uncommon for an MCO to offer a new reason for their decision at the fair hearing in addition to the reasons contained in their decision letters. If they do, you may wish to note this to the Hearing Officer. In this scenario, you may also wish to ask the Hearing Officer to allow you to submit additional evidence after the conclusion of the hearing that addresses the newly stated reason for the adverse decision.

Review the MCO's Appeal File carefully

In the MCO's internal appeal decision, most likely towards the end of the decision, you should find information about how to request the MCO's appeal file. This file should contain everything that the MCO considered when it made its decision. If you submitted any evidence to the MCO that is not in this file, you may submit this evidence again prior to the Fair Hearing, and you should note that it was previously submitted to the MCO but was not included in the appeal file.

You may also find additional information that is helpful to understanding why the MCO made the decision that it did, such as internal MCO policies that the MCO relied upon, peer review reports from doctors who reviewed your case, or other documentation of the MCO's internal considerations and deliberations.

Obtain and submit additional evidence to support your case

You can submit new evidence to the DMAS Appeals Division at any time up to and during the fair hearing; and in some circumstances, the Hearing Officer may allow you to submit additional evidence after the hearing has concluded. You should, however, submit new evidence as soon as possible prior to the hearing to give the Hearing Officer an opportunity to review it in advance of the hearing. Because fair hearings are informal hearings, there are no strict rules of evidence. Evidence that you submit should, however, be germane to your need for the service requested. Evidence that can be helpful to your case may include, but is not limited to:

- 1) Letters from qualified healthcare professionals who can speak to the medical necessity of the service requested;
- 2) Relevant medical or psychological evaluations;
- 3) Other medical records pertaining to your need for the service at issue;
- 4) For children, Individualized Education Programs, or other academic records that speak to the need for the requested service;
- 5) DMAS policies or guidance documents that support your case.

Outline your argument

The fair hearing is your chance to make your case to the Hearing Officer. Hearings can be stressful, and it can be difficult to remember to say everything that is relevant to your case during the hearing. It can be helpful to go into the hearing with an outline of the points that you want to make to the Hearing Officer. Some people may find it helpful to bring a checklist with each main point that they wish to convey to the Hearing Officer, so that they can check off each point as it is made to be sure that they hit on each point during the hearing.

A note of caution: You may have many grievances with your MCO that are outside of the scope of the Fair Hearing. You have limited time to make your case to the Hearing Officer, and you want to ensure that you use that time to focus on the issues that are directly relevant to your appeal.

Prepare any witnesses you intend to have at the hearing

You have a right to have witnesses testify on your behalf at the hearing. Witnesses may include anyone who can testify to your need for the service at issue, such as your treating doctor(s), physical or occupational therapist, nurse, or another medical professional with expertise in diagnosing and/or treating your condition(s).

You may wish to speak to any witnesses who will appear on your behalf before the hearing to be sure that you know what issues they will speak to. Consider the outline of major points that you want to make at the hearing and who can speak with most authority to each of those points. For example, if the service at issue is occupational therapy, and your occupational therapist will be speaking as a witness, you may want to be sure that she will discuss what the service entails, how you have benefited or would benefit from the service, the frequency and duration of the service that you need, and what harm could come from not receiving the service.

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