

Appeals & Dispute Resolution

When HCBS/PD consumers do not agree with the decision of the Center for Independent Living (CIL) or Home Health Agency (HHA), the consumer may appeal the decision to SRS if they cannot work the issue(s) out with an agency representative. Consumers have a right to a hearing before the state hearing officer if their request is received in writing within 30 days of receiving the Notice of Action. The CIL or HHA will explain the hearing procedure and supply the necessary forms to the consumer. The consumer may have legal counsel or other representation at the hearing. If a request for a fair hearing is received prior to the effective date of action, assistance may continue at the current level pending a decision; however, any overpayment from a continuation may be recovered if the decision is not in the consumer's favor. If the consumer is then dissatisfied with the fair hearing decision, they may request a review of the decision by the state appeals committee.

M-1 Appeals procedure

- a. The HCBS/PD consumer must submit their appeal to the CIL or HHA and to the SRS Office of Administrative Hearings (OAH). The request must be in writing but no specific form is required.
- b. The SRS OAH will send the appeal from the HCBS/PD consumer to the appropriate AMM.
- c. The AMM staff will send the appeal to the CIL, HHA or payroll entity involved. The CIL or HHA director will prepare the appeal summary per K.A.R. 30-7-75. If the CIL or HHA director needs help in preparing the summary, the AMM staff will assist them.
- d. If the AMM staff prefers to prepare the appeal summary, they may do so.
- e. The AMM staff, CIL, or HHA directors will be responsible for meeting all time frames related to the appeal. Failure to comply with the appeal time frames will likely result in an SRS reversal.
- f. If the CIL or HHA director prepares the summary, the CIL or HHA director will give the summary to the AMM to submit to the SRS OAH.
- g. Once the appeal is scheduled, the OAH will notify the AMM staff of the date, time and location. It is the responsibility of the AMM staff to notify all witnesses. Only three different locations can be connected by telephone for the appeal hearing.

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- h. If the appellant has an attorney present at the hearing, it is recommended that SRS and/or the CIL or HHA be represented by counsel. If the appellant does not have an attorney present at the hearing, the AMM staff or CIL or HHA director may have an attorney present at their discretion.

M-2 Preparing the case for the Fair Hearing

- a. The AMM staff member goes as a representative of SRS. The CIL or HHA is responsible for justifying their actions to the hearing officer.
- b. The AMM staff prepares the SRS opening statement which is to include the following:
 - i. What is/are the issue(s)?
 - ii. Identify the program(s) involved.
 - iii. Include the source of authority for the agency's actions (e.g., manual reference, statues, etc.).
- c. It is the responsibility of the CIL or HHA to gather the facts that support their actions.
 - i. Documents (e.g., NOAs, case notes, UAI, LTC Services Threshold Guides, ES forms, letters, etc.).
 - ii. Identify the witnesses and request they be subpoenaed. Be sure to contact them prior to when they will be served with the subpoena.
- d. Subpoenas
 - i. Submit the request to the Administrative Hearing Section.
 - ii. Have the subpoena served and complete the affidavit.
 - iii. The following are examples of when a subpoena should be requested:
 - (1) EES Specialist or ESS Supervisor - Regulations regarding HCBS budgeting and copies of KAECSES screen showing the determination for Independent Living without HCBS services. Copies of pertinent notices, any ES-3160s or ES-3161s regarding the situation, and the EES case file.

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(2) CIL or HHA representative - HCBS eligibility criteria and scoring of needs and any other sections pertinent to the appeal situation. Copies of notices and the case file including the updated case notes.

e. Meet with your witnesses and prepare them for their presentation at the Fair Hearing.

M-3 Closure

When a case has gone through the appeal process and the agency's action is upheld, it must be closed immediately upon notification of the appeal findings.

a. Continuity of services during the appeals process

If a request for a fair hearing is received prior to the effective date of action, assistance may continue at the current level pending a decision; however, any overpayment from a continuation may be recovered if the decision is not in the consumer's favor. If the consumer appeals the first decision and requests that services be reinstated pending the outcome of the second appeal, services can be provided with the understanding that if the State's decision is upheld in the second appeal, the consumer would be liable to the provider agency for the repayment of any services rendered since the first appeal finding was determined.

M-4 Dispute resolution

a. Chain of command

POC resolution should be dealt with at the local level involving at least the director of the CIL or HHA and the AMM staff, prior to contacting the CSS Central Office. When problems arise between the ILC and the AMM staff, the ILCs supervisor should contact the AMM staff supervisor to attempt resolution. If this step fails, the supervisor of the ILC should contact the local EES Chief. If there is no resolution at this level, the ILC should then contact the CSS Central Office.