

Complaints & Fair Hearing Process

L-1 Complaints

As an advocate for the person receiving services, the TCM should help resolve any complaints the individual may have. If the TCM is not able to alleviate the problem or the complaint is with the Center for Independent Living (CIL), Home Health Agency (HHA), or the person's TCM, they should be directed to do the following:

- a. If the complaint is with the person's TCM, they should try to resolve the problem at that level. If that is not possible, the consumer needs to discuss the matter with the TCM's supervisor or the Director of the CIL or HHA.
- b. If the individual feels the complaint needs further resolution, they may wish to file a grievance with the CIL or HHA. The CIL or HHA should make the necessary forms and grievance process information available for the person.
- c. The consumer also has the option of filing a complaint with the grievance unit of the fiscal agent (contact information can be found in Section O.). When this is done, the fiscal agent logs and tracks complaints. If a provider has three complaints submitted against them, an investigation is then initiated.
- d. Complaints regarding abuse, neglect, or exploitation should be referred to Adult Protective Services. (See Section O. for contact information.)

L-2 Consumer Grievance Unit

The fiscal agent also has a Consumer Grievance Unit that receives calls regarding providers. Any person that has a concern regarding a Medicaid provider and the quality of care that is being provided may call this unit and this would lead to an investigation of the concern. Their contact number can be located in Section O. of this manual.

L-3 Requests for Fair Hearing

When a person receiving HCBS/TBI services does not agree with the decision of the CIL, HHA, or TBI Program Manager, they may appeal the decision at the state level if they cannot work the issue(s) out with an agency representative. Persons receiving services have a right to a Fair Hearing before the State of Kansas Department of Administration's Office of Administrative Hearings if their request is received in writing within 30 days of receiving the Notice of Action they are disputing. The CIL, HHA, or TBI Program Manager should explain the Fair Hearing procedure and supply the necessary forms to the individual.

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The person may choose to have legal counsel or other representation at the Fair Hearing. If a request for a Fair Hearing is received prior to the effective date of the NOA, assistance may continue at the current level pending a decision; however, any overpayment from a continuation may be recovered if the decision is not reversed. If the consumer is then dissatisfied with the Fair Hearing decision, they may request a review of the decision by the State Appeals Committee.

a. Fair Hearing Procedure

- i. The individual receiving HCBS/TBI services must submit their request for Fair Hearing to the community agency and to the Office of Administrative Hearings (OAH). The request must be in writing but no specific form is required.
- ii. The OAH will send the request for Fair Hearing from the HCBS/TBI consumer to the TBI Program Manager.
- iii. The TBI Program Manager will send the request for Fair Hearing to the CIL, HHA or payroll entity involved. The agency director will prepare an agency summary per K.A.R. 30-7-75. If the agency director needs assistance in preparing the summary, the TBI Program Manager will provide assistance.
- iv. If the TBI Program Manager prefers to prepare the agency summary, they may do so.
- v. All parties involved in the request for Fair Hearing are responsible for meeting the time frames set by the OAH. Failure to comply with these time frames may result in a reversal of the agency decision.
- vi. If the agency director prepares the summary, they should give the summary to the TBI Program Manager to submit to the OAH within the given time frame.
- vii. Once the Fair Hearing is scheduled, the OAH will notify the TBI Program Manager of the date, time and location. It is the responsibility of the TBI Program Manager to notify all witnesses. Only three different locations can be connected by telephone for the appeal hearing. The appeal can also be held in-person at the Topeka OAH office, or by means of a record review.
- viii. If the individual receiving services has an attorney present at the hearing, it is recommended that SRS and/or the community agency be represented by counsel. If

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the individual does not have an attorney present at the hearing, the TBI Program Manager or agency director may have an attorney present at their discretion.

b. Preparing for the Fair Hearing

- i. The TBI Program Manager attends as a representative of SRS. The community agency is responsible for justifying their actions to the Hearing Officer.
- ii. The TBI Program Manager prepares the SRS opening statement which is to include the following:
 - (1) What is/are the issue(s)?
 - (2) Identify the program(s) involved.
 - (3) Include the source of authority for the agency's actions (e.g., manual reference, regulations, statutes, etc.).
- iii. It is the responsibility of the CIL or HHA to gather the facts that support their actions.
 - (1) Documents (e.g., NOAs, case notes, UAI, ES forms, correspondence, etc.).
 - (2) Identify the witnesses and request they be subpoenaed. Be sure to contact them prior to when they will be served with the subpoena.
- iv. Subpoenas
 - (1) Submit the request to the OAH.
 - (2) Have the subpoena served and complete the affidavit.
 - (3) The following are examples of when a subpoena should be requested:
 - a) SRS eligibility worker and/or their 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 eligibility case file.
 - b) Community agency 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.
- v. Meet with witnesses and prepare them for their presentation at the Fair Hearing.

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c. Case Closure after Fair Hearing

When an issue relating to eligibility has gone through the Fair Hearing process and the agency's action is upheld (i.e., ineligibility for services), it must be closed immediately upon notification of the Hearing Officer's findings.

d. Office of Administrative Hearings (OAH) Fair Hearing Process

The Office of Administrative Hearings conducts fair and impartial hearings for citizens and other affected parties when they contest the actions of the state agencies determining their legal rights.

- i. Request for Fair Hearing - must be made in writing and received by OAH within 30 days of the date of the agency's notice of action; appellant can use OAH form or just provide a written statement of what they are appealing.
- ii. Pre-Conference Hearing - doesn't always take place; depends on circumstances.
- iii. Hearing - can be in person, by conference call, or on the review of records.
- iv. Initial Order of Presiding Officer - If no one requests a review by the State Appeals Committee, then the order becomes final and binding on the 30th day following the order being served. (OAH can affirm, remand, or reverse.)
- v. Request for Review by State Appeals Committee - Due 15 days from date of order. Appellant (or whoever is requesting the review) is responsible for having a transcript of the hearing prepared and paying for it.
- vi. Order of State Appeals Committee - Becomes final when signed by the Secretary. Appellant has the right to file a petition for judicial review with the appropriate District Court (county in which the order or agency action was issued, where the appellant reside, or where the order takes effect) within 30 days of the final order. If this is done, they must serve a copy of the petition to the Secretary of SRS and should notify OAH of the appeal of the final order.
- vii. Petition for Reconsideration – (Rarely used since goes back to the Secretary who signed and finalized the Order of the State Appeals Committee.) Must be filed within 15 days to the agency head. Agency head has 20 days to render a written order. This petition is not a prerequisite for seeking judicial review of the agency

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head's final order. If reconsideration has not been requested and is not a prerequisite for seeking judicial review, a petition for judicial review of a final order shall be filed within 30 days after service of the order.

Things to remember when involved in an OAH Appeal:

- ▶ All information regarding an appeal is subject to strict confidentiality standards.
- ▶ All final orders served by mail get 3 days added to time limits.
- ▶ Documentation is extremely important to support any actions that have been taken.
- ▶ All correspondence or contact regarding the appeal should be directly solely to the TBI Program Manager or Agency Director.
- ▶ An SRS Attorney may be involved depending on the type and complexity of the appeal.

OAH Contact Information:

Kansas Department of Administration
Office of Administrative Hearings
1020 S Kansas Ave., Topeka, KS 66612-1327
Telephone: (785) 296-2433
Fax: (785) 296-4848
E-mail: oah@da.state.ks.us
Web page: <http://da.state.ks.us/hearings>

CSS also has a web page with information on Fair Hearings at:
<http://www.srskansas.org/hcp/css/appeals.html>