**DDA Medicaid Waiver Appeals**

December 2014

If DDA sends you a denial of eligibility, denies a request for waiver services, or reduces or terminates your waiver services, it will send a notice like the one below. We have added some additional information to help you understand your rights.

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| **DDA’s Notice of Medicaid Fair Hearing Rights with DRM Advice** | **Notice: Medicaid Fair Hearing**  **You have the right to a hearing on the decision(s) stated in the enclosed DDA Determination Letter (the letter that approved or denied your request for services).** In order to have a hearing on the decision(s), **you must mail your written request for a Medicaid Fair Hearing within 90 days after the postmark on this Determination Letter.** DDA will allow four extra days for the mailed request to reach DDA. If you do not request a hearing, the decision stated in the Determination Letter will be final. You should use the Request for a Hearing form that is enclosed with this Notice. (The request for a hearing is also called an “appeal.”) If you wish, the Regional Office or your Resource Coordinator, if you have one, may assist you in preparing and submitting your Request for a Hearing. The Request for a Hearing may also be submitted by your Authorized Representative. An explanation of who may be an Authorized Representative is given below.  **DRM Advice:** Most people cannot afford legal representation, but you should obtain an attorney if possible.  In order to have your DDA Medicaid services continue during the hearing process, your request for a hearing must be postmarked and mailed within 14 days after the date of the Determination Letter.  If the Determination Letter approves the request for services for a limited time (for example, three or six months) and you wish to receive the service but want to appeal the time limit, the request for a hearing must be postmarked within 14 days after the date of the Determination Letter that APPROVED the request for services.  **DRM Advice:** DDA does not agree that ongoing services such as CSLA staff or 1:1 support must be continued pending a hearing if DDA approved the services for a limited time. DDA’s position is that it granted the services for only one time period. If you have an urgent need for services to continue pending a hearing, contact DRM. |
| **DDA’s Notice of Medicaid Fair Hearing Rights with DRM Advice** | Mail your Request for a Hearing, with a copy of the Determination Letter, to the following address:  **Department of Health and Mental Hygiene**  **Office of Health Services**  **Attention: Appeals**  **201 W. Preston Street, 1st Floor**  **Baltimore, MD 21201**  The Medicaid Fair Hearing is held by the Office of Administrative Hearings (OAH), which is separate from DDA and DHMH. The OAH will schedule the hearing, which will be at a place reasonably convenient and accessible to you.  **DRM Advice:** The Office of Administrative Hearings is located at 11101 Gilroy Rd, Hunt Valley, MD 21031, Baltimore County, Maryland. Your Medicaid Fair Hearing will be held at the Office of Administrative Hearings unless you request a change. You have a right to have the hearing in a more convenient location, which typically means it will be held in another state office in your county. If you need to have the hearing in your county or if you need a different location, ask for a change in writing on the Request for a Hearing form.  **Accommodations:** Ask for any necessary accommodations for you or a witness on the hearing request form.  You will be expected to be present. If you cannot be present, you must contact the OAH and ask to reschedule the hearing or to identify the Authorized Representative who will attend in your place. Note that it is not easy to have a hearing postponed.  **DRM advice:** OAH does not typically postpone a hearing unless you show very good reasons such as if you can prove that you, your attorney or an important witness is unavailable. To ask for a postponement, send a written request to OAH at least 5 days before the hearing. Include documentation of your unavailability, such as a doctor’s note or copy of travel reservations. During the 5 days before the hearing, if you suddenly need a postponement, telephone an OAH postponement officer at 410- 229-4273 or 410-229-4273 and explain that you need an emergency postponement. |
| **DDA’s Notice of Medicaid Fair Hearing Rights with DRM Advice** | At the hearing, you may represent yourself, have legal counsel, or use an Authorized Representative. You may bring witnesses or documents to help you establish facts and to explain your circumstances. You may also ask to have witnesses testify by telephone.    **DRM advice:** Bring at least two extra copies of documents: one for the Administrative Law Judge and one for DDA’s attorney.  If a witness needs to testify by telephone, contact OAH and request permission for your witness to testify by phone. Make sure your witnesses have copies of documents they will need.  A reasonable number of persons from the general public may be admitted to the hearing if you wish. DDA will pay for necessary costs other than attorney fees, and may pay for these costs for your witnesses if they are necessary for the proper conduct of the hearing.    **DRM advice:** If you or any of your witnesses need help with costs such as transportation or babysitting in order to attend the hearing, write this in your hearing request form.  Prior to the hearing, you may ask to see the documents and records that DDA will use at the hearing and for the names of the witnesses that DDA intends to call.  **DRM advice:** You may obtain documents and a list of witnesses from DDA by sending a request to DDA’s attorney **at least 30 days before the hearing date.** If you cannot go to DDA to review and copy documents, ask for DDA to provide them to you free of charge. Be sure to write the OAH case number on the letter. Ask DDA to tell you about any costs before copying the documents for you. Write to: Office of the Attorney General, Department of Health and Mental Hygiene, 300 W. Preston Street, Suite 302, Baltimore, MD  21201.  If DDA’s attorney does not respond within 15 days, send a follow up letter. If you still get no response, complain to OAH in writing. |
| **DDA’s Notice of Medicaid Fair Hearing Rights with DRM Advice** | If you get NEW OR ADDITIONAL information before the hearing, you may request RECONSIDERATION of the decision(s) in the enclosed Determination Letter, by mailing the Reconsideration Request form that came with this Determination letter. **IF YOU ASK FOR RECONSIDERATION, YOU SHOULD ALSO CALL OAH AND WITHDRAW YOUR APPEAL, because you will get a** NEW Determination Letter after your request for reconsideration.    **DRM advice:** If your services are time-sensitive, you may not want to withdraw your appeal while you wait for DDA to reconsider your request. OAH is not always able to schedule hearings promptly. If you withdraw the appeal and DDA denies your request for reconsideration, it could be months before you get a new hearing date.  Once you get the new Determination Letter, you may request ANOTHER HEARING on the new determination. In that case, the time limits for requesting a hearing will start from the date on the NEW DETERMINATION LETTER.  Further information about the Medicaid Fair Hearing can be found in the Code of Maryland Regulations (COMAR) [10.01.04](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.01.04.*) and [28.02.01](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=28.02.01.*), and in the Code of Federal Regulations (CFR) [42 CFR §431.200](http://www.ecfr.gov/cgi-bin/text-idx?SID=efac623424168fc0a51da1da39284dc0&node=sp42.4.431.e&rgn=div6). COMAR regulations can be viewed at [www.dsd.state.md.us](http://www.dsd.state.md.us). Federal regulations can be viewed for free at <http://www.law.cornell.edu>, among other websites.  **DRM advice:** For regulations, click on the following:  [Code of Maryland Regulations for Medicaid Fair Hearings](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.01.04.*)  [Code of Maryland Regulations for OAH](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=28.02.01.*)  [Code of Federal Regulations for Medicaid Fair Hearings](http://www.ecfr.gov/cgi-bin/text-idx?SID=efac623424168fc0a51da1da39284dc0&node=sp42.4.431.e&rgn=div6)  Also, you may ask to have a Case Resolution Conference (“CRC”) before the Medicaid Fair Hearing. The purpose of the Case Resolution Conference is to try to settle some or all of the issues in your appeal without having to go to the formal Medicaid Fair Hearing. If you ask for a CRC on your Request for a Hearing form, the CRC will be scheduled at a location within your region with a DDA moderator. The CRC will be held before the date of your Medicaid Fair Hearing. You may represent yourself, or you may have an attorney, Authorized Representative, friend or family member represent you at the CRC. You should be prepared to explain why the decision in the Determination Letter is wrong, ask questions about DDA’s decision and explain what you want DDA to do for you. Note that you may have a CRC only if you also request a Medicaid Fair Hearing.  You may be eligible for free legal assistance from Disability Rights Maryland, 1-800-233-7201, or the Legal Aid Bureau, at 1-800-999-8904. |
| **DDA’s Notice of Medicaid Fair Hearing Rights with DRM Advice** | **Authorized Representative**  COMAR 10.01.04.12 states the requirements for an authorized representative. In brief, these are:  1. You may designate your authorized representative in writing, or by showing proof that the authorized representative has legal authority to act on your behalf.  2. The following people may be your authorized representative because they have legal authority:  a. If you are under 18, your parent;  b. Your legal guardian, if you have one or someone has applied to be one.  c. Your healthcare surrogate under Health General Article, §5-605, Annotated Code of Maryland;  d. A person with a validly executed power of attorney; or  e. Your attorney or paralegal.  3. If the applicant or recipient lacks the capacity to designate an authorized representative, and there is no individual or organization with the legal authority to act, an authorized representative can be any individual or organization acting responsibly on behalf of the applicant or recipient who:  (a) In good faith, is acting in the best interest of the applicant or recipient; and  (b) Declares that the applicant or recipient lacks legal capacity, and for organizations, declares that its directors, employees, officers or employers, if any, do not have a direct financial interest in the outcome of the fair hearing.  4. If the applicant or recipient lacks the capacity to designate an authorized representative, and there is no individual or organization with the legal authority to act, AND no there is no one who falls within paragraph 3, above, an authorized representative can be any individual or organization with a direct financial interest in the outcome of the hearing or whose employer has a direct financial interest in the outcome of the hearing who:  (a) In good faith is acting in the best interest of the applicant or recipient;  (b) Declares that the applicant or recipient lacks legal capacity; and  (c) Declares that, to the best of his or her belief, no other individual or organization is willing and able to act on the applicant or recipient’s behalf.  5. For additional and more detailed information about authorized representatives, see COMAR 10.01.04.12. |

For more information about applying for or accessing DDA services, see DRM’s web site at [www.DisabilityRightsMD.org](http://www.DisabilityRightsMD.org). For advice or technical assistance, call 410-727-6352, extension 0 and ask for intake.