Medicaid Appeals - How to Win

The Basics

The appeal and hearing system is established in Mississippi state Medicaid regulations under Title 23, Part 100, Chapter 4 and Chapter 5 of the Mississippi Administrative Code and must meet the requirements of federal regulations under 42. CFR 431.205(a).

Request in Writing - Requests for a state fair hearing should be made in writing! Oral requests will be sent a hearing request form by the Division of Medicaid. Written requests should be made by mail - the notice will give the address to send the request for a hearing.

> **My Advice -** A written hearing request does not have to be fancy. It could even be handwritten or on the back of a napkin and still meet the requirements of the regulations. BUT! Do your best to clearly state the reason for the appeal in your request. **Also**, make sure to specifically request a **state fair hearing**!

State Fair Hearing vs Local Hearing - Local hearings are permitted in most circumstances, but **not required**.

Hearings that involve medical decisions (which are most of them) will be state fair hearings.

> **My Advice -** Always request a state level hearing. The local hearing is likely to delay the ultimate decision and very unlikely to result in a victory for the beneficiary.

Representation - The beneficiary may have a "legal representative" which includes, an attorney, a paralegal representative with a legal aid service, the parent of a minor child, a legal guardian or conservator, or an individual with power of attorney for the beneficiary.

OR…

The beneficiary may be represented by anyone he/she designates, but must do so in writing. This can be done after the request for a hearing is made in a separate document that is sent to the Division of Medicaid.

> **My Advice -** Get a lawyer if you can! Unfortunately, most private attorneys do not take Medicaid appeals cases because there is no mechanism to pay attorneys' fees unless the beneficiary pays out of his/her own pocket. Contact organizations like

Disability Rights Mississippi and other legal services agencies for assistance instead.

Time - Time limits are important and there are deadlines that must be met. The beneficiary has 30 days from the date the notice **was mailed** to appeal and request a hearing. The 30 day limit may be extended if good cause can be shown.

My Advice - When you get the notice, don't wait! Appeal as soon as you can! Don't count on "good cause" as a way to get more time. In the legal world, "good cause" is the equivalent of telling your teacher that the dog ate your homework. It might work, but what if it doesn't?

The Division of Medicaid must take "final administrative action" (translation: make a final decision) within 90 days of a request for a hearing.

My Advice - In my experience, this rule is more flexible than it sounds… and that's a good thing! The Division of Medicaid often wants to have hearings **too fast**. You need time to gather additional medical records or reports from your doctors. If the hearing

happens too fast, you won't have the evidence you need to win your case. Don't be shy about asking Medicaid to push back the date of the hearing so that you have time you need to prepare for the hearing.

The Hearing - State fair hearings are not open to the public. Anyone attending the hearing is there to testify about the issues at hand. All hearings are done by telephone, unless specified otherwise.

My Advice - Clients often complain about telephonic hearings, but in reality, they are a great thing for beneficiaries. Why? For a couple of reasons. First, travel is often difficult and expensive for people with disabilities. Second, there is a good chance you will need at least one or two of your doctors or medical providers to testify at your hearing. It's much easier for a busy doctor to sit in her office for a conference call for an hour than it is to get her to travel to Jackson for an in person hearing.

Continuation of Benefits - While the time limit to file an appeal and request a hearing is 30 days, the window for continuation of benefits is much shorter. The request for appeal/hearing must be received by the Division of Medicaid within 12 days of the notice date - that's 10 days,

plus 2 days to allow for mailing time. If the appeal is not received within that time, the appeal proceeds, but the benefits don't!

Note: The Division of Medicaid has the right to recoup the cost of any medical services under the continuation of benefits if the final decision is against the beneficiary.

> **My Advice -** This is why you don't wait to file your appeal! If you want your benefits to continue while your appeal is pending, you have to be on the ball and get your appeal in as soon as possible. Also, while it is possible that you could be asked to repay the cost of medical care while your appeal is pending if you lose your case, I have never seen Medicaid actually do that. Nor have I heard of it happening. So it seems to be rare, but it is legal for them to do it.

Know Your Rights - There are three rights:

1. The right to examine at a reasonable time before the date of the hearing and during the hearing the contents of the applicant or recipient's case record. the right to have legal representation at the hearing and to bring witnesses.

2. The right to produce documentary evidence and establish all pertinent facts and circumstances concerning eligibility.
3. The right to present an argument without undue interference and to question or refute testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

   My Advice - Let's focus on Right 1 and Right 2. Make sure you request a copy of your case record under Right 1. Most of the time you will find that it is shockingly incomplete! That brings us to Right 2. Exercise this right and make sure to submit additional medical records. Give them everything you can that might be relevant. If you don't, you will probably lose your case (see below)!

Managed Care

Some Extra Steps - Managed care has added an extra stage to the appeals process. This takes the form of an appeal to the Managed Care company first, before an appeal can be filed with the Division of Medicaid for a state fair hearing.

Different Timing - Beneficiaries have 60 days from the date of the adverse benefit determination notice to file their appeal under federal regulations. See 42 CFR 438.402(c)(2)(ii). Appeals may be filed orally, but appeal in writing is always a better policy.

If the Managed Care company rules against a beneficiary, he/she has 120 days from the date of the company's notice of resolution of his/her appeal. See 42 CFR 431.221(d) and 42 CFR 438.408(f)(2).

Hearings - Hearings are permitted if the beneficiary requests one, but are not required. Additional arguments and evidence may be presented in writing or in person (or other remote means).

> **My Advice -** Appeals to the MCO are rarely successful, but they are required before you can get to a state fair hearing if you receive Medicaid benefits under the Managed Care (known as MSCan) program. Don't be discouraged if the MCO rules against you - take your case to the state level!

The Strategy

Now that you know the mechanics of Medicaid appeals, how do you go about building your case so you have the best possible chance of winning your case?

Witnesses - Get your witnesses together and get them ready for the hearing. Who do you need? Medical providers, PCAs, family members who live with you all make great witnesses in Medicaid appeals. But remember, you aren't calling your mother as a witness to talk about what a good person you are! The witnesses should be people who can talk about your care and needs.

Call a Doctor - Your doctor(s) are powerful witnesses. In fact, they are probably the most important witnesses you can call in a Medicaid appeal. Since your hearing is almost certainly via telephone, your doctor is more likely to be able to find time to participate in your hearing than if the hearing were in person. Give your doctors plenty of notice about the appeal and the hearing!

Find the Issue - Do your best to figure out **why** you are being denied and how to address the issue. Is your plan of care way out of date? Do you need an updated evaluation? Does the request for durable medical equipment need to come from your doctor instead of the wheelchair company? Once you know the reason for the

denial, you can focus your efforts on addressing the real problem.

Bring New Evidence - The simple fact is, if you don't bring new evidence to the hearing, you are probably going to lose. The hearing officer has already seen the evidence that already exists in your case file… and the Division of Medicaid has already decided that you should lose based on that evidence. If you want to win, you need the evidence that Medicaid **doesn't** have. Get your case file from Medicaid and see what is missing; they never have all the medical records! Gather your medical records and send them to the hearing officer - show him that there is more to your case than what he has already seen.

I Meant Lots of New Evidence - Send them every scrap of paper that you can find that **might** be medically relevant to your appeal. Bury them in paper. Get every record you can - every report, every prescription, every nurse's note. Overwhelm the Hearing Officer with new evidence and your odds of winning go way up.

Stop Denials Before They Start - Keep your evaluations and plans of care up to date, if at all possible. Make sure you attend as many doctor's appointments as you possibly can. Fill every prescription you possibly can. If your doctor

recommends a particular therapy or course of treatment, do it! Up to date treatment records, evaluation reports, and plans of care can prevent a lot of denials from happening in the first place.