

Department of Public Health and Human Services	Section: CASE MANAGEMENT
MEDICAL ASSISTANCE	Subject: Requesting a Fair Hearing/ Continuation of Benefits

Supersedes: FMA 1506-1 (01/01/07)

References: ARM 37.5.101; 103; 301; .304; .305; .307; .313; .316; .318; .322; .325; .328; .331; .334; .337; .503; .505; ARM 37.82.101; 42 CFR 431.200 through .246

GENERAL RULE—A fair hearing will be granted to any applicant who requests a hearing because his/her application is denied or is not acted upon with reasonable promptness. Also, a hearing will be granted to any recipient who is aggrieved by any action resulting in reduction, discontinuance, termination, overpayment, or a determination establishing conditions for the receipt of benefits. The hearing request must be received by the agency in writing, within 90 days from the date of mailing of the adverse action notice.

► **NOTE:** A written request for a fair hearing does not have to be signed by the requestor. However, the written request for a fair hearing must be submitted by the requestor in writing to the agency.

A hearing request is defined as a clear expression by the applicant/recipient (claimant), or the authorized representative acting for him/her, that he/she wants the opportunity to present his/her case to a higher authority. The freedom to make such a written request will not be limited or interfered with in any way. The Department may assist the claimant to submit and process the request.

State law grants any 'real party in interest' (e.g., medical providers) the right to request a fair hearing and/or appeal a hearing decision.

The individual's fair hearing rights, how to request a hearing and/or continuation of benefits pending the hearing decision and repayment, if the decision is in favor of the Department, are stated on the reverse side of the system notice informing the individual of the Department's action.

**EXPEDITED
HEARING**

Expedited hearings may be granted to households who request hearings, but plan to leave Montana before decisions can be made under regular time frames.

Section: CASE MANAGEMENT

Subject: Requesting a Fair Hearing/
Continuation of Benefits**HEARING
REQUEST
DENIAL or
DISMISSAL**

A hearing may be denied or dismissed when:

1. The individual (or representative acting on his/her behalf) withdraws hearing request. This withdrawal must be in writing for Medicaid.

NOTE: If a written request for withdrawal is made prior to the request for a fair hearing being sent to the Office of Fair Hearings, both documents must be mailed to the Office of Fair Hearings.

Obtaining a verbal request for a fair hearing withdrawal is not to be used as a substitute for conducting an in-person Administrative Review, unless the individual or his/her representative is unable to come to the OPA. The OPA must make an attempt to meet with the claimant to present an opportunity to share information and to fully respond to concerns regarding the adverse action. (FMA 1506-2)

When a request for a fair hearing is withdrawn verbally, the OPA must:

- a. Contact the Office of Fair Hearings by phone (444-2470 or 444-2472) or e-mail Bobbie Conrady (bconrady@mt.gov) the same day a request for withdrawal is made. Provide the date of verbal withdrawal and whether or not the issue was resolved in favor of the claimant. The Office of Fair Hearings will issue a confirmation of dismissal.
- b. Enter a system case note the same day the request for withdrawal is made, stating that the individual provided a verbal request to withdraw the fair hearing.

NOTE: If a verbal request for withdrawal is made prior to the request for a fair hearing being sent to the Office of Fair Hearings, the hearing request must still be mailed.

The household has one opportunity to reinstate the fair hearing after verbally withdrawing their request. Within 10 days of receipt of the confirmation of dismissal from the Office of Fair Hearings, the household may make a request for reinstatement directly to the Office of Fair Hearings.

If an oral reinstatement of the fair hearing is requested at the county level, the county office must contact the Office of Fair Hearings by phone or e-mail the same day the oral reinstatement request is made. Case notes of the oral request for reinstatement of the fair hearing must be entered the same day as the request.

Section: CASE MANAGEMENT

Subject: Requesting a Fair Hearing/
Continuation of Benefits

If a written reinstatement of the fair hearing is received by the county, the county office must fax the written request to the Office of Fair Hearings (444-3980) the same day the written request is received. The Office of Fair Hearings will follow up with notification of reinstatement.

2. The individual (or representative) fails to appear at the hearing without good cause;

NOTE: The Hearing Officer may reschedule the hearing if the claimant shows good cause for failure to appear. A hearing cannot be dismissed when a claimant does not appear for an Administrative Review.

NOTE: When the claimant failed to appear or request to reschedule, and the hearing is determined abandoned, the Hearing Officer will send a notice of dismissal or denial (in which the claimant is offered the opportunity to explain his/her failure to appear) to the claimant.

3. The request is received by the Department more than 90 days from the date the notice was mailed;

► **NOTE:** When a fair hearing request is received by the OPA more than 90 days from the date the notice was mailed, the OPA must forward it to the Office of Fair Hearings. When a request is untimely, the OPA must file a motion to dismiss with the Office of Fair Hearings. The notice of adverse action must be attached to the motion to dismiss. The Office of Fair Hearings will then dismiss the case if proper. (For Medicaid, the RPS should review the motion to dismiss before it is sent to the Office of Fair Hearings.)

4. Either federal or state law requires automatic benefit changes (unless the issue is incorrect benefit adjustments);

5. The Hearing Officer does not have jurisdiction over the subject matter or the appeal procedure.

NOTE: The above list of reasons for dismissal is not all inclusive.

HEARING POSTPONEMENT

The household or the Department may request and is entitled to receive a postponement of a scheduled hearing. The postponement cannot exceed 30 days unless agreed to by both parties.

Section: CASE MANAGEMENT

Subject: Requesting a Fair Hearing/
Continuation of Benefits**CONTINUATION
OF BENEFITS**

A hearing request filed within the period between the date the system notice of adverse action was mailed and the effective date of the action may result in continuation (reinstatement) of benefits until a final hearing decision is rendered.

The claimant has a right to claim good cause for not filing the request for continued benefits timely.

NOTE: If the notice of adverse action period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits is received the day following the weekend or holiday, the State agency shall consider the request timely.

Continued benefits will be automatic with all Medicaid fair hearing requests unless the household specifically states they do not want Medicaid coverage while the hearing is pending.

Benefits cannot be continued if the issue is one of State or Federal law or policy.

- ▶ **Example:** When the issue at hearing is related to Medicaid not covering prescriptions for a Medicare beneficiary, the claimant is not entitled to continued benefits during the fair hearing process as the issue is a matter of federal law.

The Department (OPA) must clearly and thoroughly explain the claimant's responsibility to repay benefits received during the hearing process if the adverse action is upheld.

- ▶ If the decision is in favor of the Department, recovery of benefits issued during the continuation period must be initiated, if appropriate, and/or the adverse action imposed. This would include benefits issued during a period when a recipient is appealing an SSA determination that disability has ended, unless the claimant continues to receive SSI throughout the appeals period.

Changes reported during continuation of benefits should be acted upon according to change reporting policy. (See 'Reduction of Continued Benefits' below).

**REDUCTION OF
CONTINUED
BENEFITS**

Once benefits are continued or reinstated, do not reduce or terminate benefits prior to the official hearing decision unless:

1. Eligibility ends for failing to meet any other eligibility requirements or time-limits are reached, such as the redetermination period expires

Section: CASE MANAGEMENT

Subject: Requesting a Fair Hearing/
Continuation of Benefits

and the household fails to complete the redetermination process for ongoing benefits;

2. A change affecting the recipient's eligibility occurs while the hearing decision is pending and the filing/assistance unit fails to request a hearing after the subsequent notice of adverse action;
3. The Hearing Officer makes a preliminary determination (in writing and at the hearing) that the sole issue is one of State or Federal law or policy and no issue of improper benefit calculation, misapplication, or misinterpretation of State or Federal law or policy exists; or,
4. A mass change affecting the recipient's eligibility or benefit level occurs while the hearing decision is pending.

MASS CHANGE CONTINUATION

A mass change occurs when changes in either State or Federal law require automatic benefit adjustments for classes of recipients. When benefits are reduced or terminated due to a mass change, continue benefits at the prior amount only if the issue being contested is that:

1. Eligibility or benefits were improperly computed; or
2. Federal law or regulation was misapplied or misinterpreted.

DURATION OF CONTINUED BENEFITS

Continue benefits if all financial and nonfinancial requirements are met with the exception of the issue in dispute:

1. Until a hearing decision is rendered, **OR**
2. Until the claimant exhausts the available administrative remedies which includes the appeal to Board of Public Assistance, **OR**
3. The time for appeal to the Board has passed without either the claimant or the Department appealing to the Board.

PROCEDURE

Responsibility

ACTION

Eligibility Case
Manager

1. Assist the applicant/recipient in submitting the hearing request, if necessary.
2. If the request is submitted to the county office, forward it to the Office of Fair Hearings that day or the following day. Notify Central Office of the hearing request.

Section: CASE MANAGEMENT

Subject: Requesting a Fair Hearing/
Continuation of Benefits

3. Advise the claimant of any free legal services that may be available (this information is on the 'Request for Fair Hearing' form).
4. Upon request, make available without charge the specific materials (including the hearing rules) necessary for a claimant or his/her representative to prepare for the administrative review and/or hearing.
- Claimant/
Representative
5. Complete the 'Request for Fair Hearing' form or write a similar request for a hearing. Include the following information on the request:
- a. To which program (e.g., TANF Cash or Medicaid, etc.) the request relates;
 - b. What adverse action was taken; and,
 - c. The claimant's name and address.
6. Mail the request to:
- Department of Public Health and Human Services
Office of Fair Hearings
P. O. Box 202953
Helena, Montana 59620-2953
- Eligibility Case
Manager
7. Reinstate and/or continue benefits as appropriate.
8. Advise the claimant of the requirement to repay all benefits received while awaiting the hearing decision, if the decision is not favorable.
9. Upon receipt of the notification from the Office of Fair Hearings of a hearing request, schedule an administrative review within the stated time lines (FMA 1506-2).

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