

INFORMATION FOR INDIVIDUALS AND FAMILIES

Developmental Disabilities Administration (DDA) Services: How To Appeal Through The DDA Informal Hearing Process

ADDITIONAL INFORMATION ON THE APPEAL PROCESS

Types of Decisions That Can Be Appealed:

- Eligibility for Services
- Reduction of Services
- Refusal for Increase of Services
- Any DDA decision or failure to make a decision

Your support coordinator can help you to appeal. You can also have a family member, friend, or agency staff help you to appeal. You can also hire a lawyer to represent you in your appeal.

For more information on topics discussed in this fact sheet, contact

The Arc of Frederick County

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INTRODUCTION

Any decision (or failure to make a decision) by DDA can be appealed. Generally, people try to work these issues out informally. But sometimes that doesn't work or doesn't make sense. Sometimes an individual or family may need to officially appeal a DDA decision.

One way to do that is to ask for an informal appeal from DDA. The regulations for this appeal are found at COMAR 10.22.16. <http://www.dsd.state.md.us/comar/>

TYPES OF ISSUES THAT CAN BE APPEALED

A person can use this process to appeal decisions like access and eligibility determinations – whether a person is eligible for services at all, or whether the person is potentially eligible for all services as a person with a developmental disability, or only eligible for individual support services because of the nature of the person's disability.

This process can also be used to appeal a reduction of services, a refusal to increase services, or generally any DDA decision (or failure to make a decision). This is a process for individuals to appeal decisions made by DDA. It is not the agency's or the representative's appeal.

WHO CAN APPEAL

You can use this process if you are applying for or receiving DDA services. You may present your own case as your own "proponent," or use a "representative" who is an advocate and has a different role. The representative receives all information and is the contact for DDA. The representative can be a parent or family member, a support coordinator, a lawyer, or anyone with a legitimate interest in the welfare of the individual. Regardless of who acts as the representative, only the person on whose behalf the hearing is requested (or family member if appropriate) has the authority to agree or disagree with any proposed settlement or course of action.

These Fact Sheets are designed to provide general information only and are not designed to substitute for the assistance of a Support Coordinator.

LAYING THE GROUNDWORK

In most cases, the most important preparation is to take each piece of the requirements for the service you're requesting and figure out what document or which witness will prove the point you want to make. Consider the reasons for DDA's refusal. Do you have documents or witnesses to contradict this position?

For example, if you are challenging an eligibility decision, take each piece of the eligibility requirements and figure out what document or which witness will prove each point. Or if you are challenging DDA's refusal to provide a service identified as necessary for a person who already receives services, does the Individual Plan show the need for the support requested? If so, it is important to clearly include the nature and scope of the proposed services and supports that an individual needs and have the appropriate people sign the form. If not, do you have a doctor or some other professional who will say why the support is needed? If the team didn't agree, do you have a person or document that will prove why their decision was incorrect? Make sure DDA has all the documents that you think prove your position.

If the request for services or funding is denied by DDA or DDA fails to make a determination within "a reasonable period of time" (not defined by regulation), the person should consider all options, from trying to resolve the issue informally to requesting a hearing.

Keep copies of all correspondence and detailed notes of all phone conversations related to the need for the services requested and related to the appeal.

TIMELINE

A REQUEST FOR A HEARING MUST BE MADE:

- Within 45 days of written notice of denial of service;
- Within 45 days following the action appealed; or
- Within 45 days after the person knew or should have reasonably known about the state's failure to make a decision or take action.

If you miss the date for an appeal, you can ask DDA to make a new decision (and submit additional information that helps your position). If you are not satisfied with the new decision, you can appeal that decision within the timelines above.

HOW TO APPEAL

A person appealing (or their representative) can request an informal hearing by mailing or delivering a letter to the Director of DDA.

The letter should include the following information:

1. That the recipient of services desires a hearing;
2. The specific action or inaction which is being challenged;
3. Although not required, it's a good idea to give a brief statement explaining why the recipient believes he or she should receive the services; and
4. Although not required, it's a good idea to request DDA to provide the basis on which it denied the request for services.

Keep the letter short and to the point.

SERVICES CAN'T BE REDUCED WHILE AWAITING A HEARING

DDA's decision to reduce or terminate services cannot be implemented until a decision is made by the Hearing Officer (called the "Secretary's Designee"), unless DDA determines that an emergency exists and that delaying action until the hearing would have a serious and adverse affect on the health or safety of the person.

In other words, if DDA is proposing a reduction or termination of services or funding from a current level, DDA must generally continue to fund the services at the current level until the individual requesting the hearing loses the hearing and hasn't appealed further within the timelines provided. If a person is asking that DDA take certain new action, the action doesn't have to be implemented unless the person wins the hearing.

WHAT HAPPENS BEFORE THE HEARING?

Remember to set a date for a hearing, even if you are trying to resolve the issue informally. You can cancel the hearing if the issue is resolved before the hearing. The date can be rescheduled if someone who is very important can't be there for a good reason.

DDA has to acknowledge the request for a hearing within 10 days of the postmark of the request. They also must give reasonable advance notice in writing of the issues to be decided, the time, date and place of the hearing, the right to be present, the right to an attorney, and the right to request and present witnesses and evidence. The hearing must be scheduled no sooner than 10 days, but not more than 30 days, after mailing the acknowledgement, unless agreed upon by all parties.

Before the hearing, you can ask for information from DDA, and ask for certain people to be at the hearing as potential witnesses. You may want to ask to receive or review all files and information related to the decision that may be held anywhere within DDA, so you will know what information DDA might present at the hearing and see if any information is helpful to your appeal. Requests to review information should be made in writing and can be included with the original appeal.

WHAT HAPPENS AT THE HEARING

At the hearing, the Secretary's Designee will begin by explaining the issues to be decided and the procedure to be followed. The hearing will be tape-recorded and all written evidence will be kept by the Secretary's Designee as part of the "record."

The person appealing will explain why s/he objects to DDA's decision and what s/he wants DDA to do. The person appealing may then call witnesses and/or present information like the Individual Plan, incident reports, or doctors' reports that support the need for the services requested. There are no special rules of evidence; information has to be relevant and people should try to be polite.

WHAT HAPPENS AT THE HEARING—continued from page 3

The person and his/her representative have the right to give information or “testify.” Each side may ask questions of the other side’s witnesses. Each side can ask that future witnesses (except the person appealing, their representative or DDA’s legal representative) wait outside the room while other witnesses testify. If everyone agrees, a witness may testify by telephone if s/he cannot be present, but both sides and the Secretary’s Designee must be able to hear and ask questions while the phone testimony is going on.

In order to win, the person appealing has to persuade the Secretary’s Designee that it is more likely that DDA made the wrong decision than the right decision. It’s not like a criminal trial where a person must prove the point “beyond a reasonable doubt.”

The Secretary’s Designee must make a decision within 14 days of the hearing. S/he must give a written decision, and it must include a description of the issues presented; who won on each issue; and whether the action requested by the person is granted. If DDA is directed to take action, the decision must be clear about the type of action to be taken and the timeline for it to occur.

WHAT IF THE PERSON IS UNHAPPY WITH THE DECISION?

A person can appeal the decision to an Administrative Law Judge. There are strict timelines and procedures for these appeals. Information regarding the appeals process should be provided with the Secretary’s Designee’s decision.

WHERE CAN I GET HELP?

Your support coordinator can help you to appeal. You can also have a family member, friend, or agency staff help you to appeal. You can also hire a lawyer to represent you in your appeal.