

North Sound Mental Health Administration

Section 1000 – Administrative: Fair Hearing

Authorizing Sources: See references Policy 1001

Cancels: Executive Director approval 11/29/2005

See Also:

Providers are required to adopt or have a policy “consistent with” this policy

Approved by: Executive Director

Date: 2/5/2009

Responsible Staff: Quality Manager

Signature:

POLICY #1004.00

SUBJECT: FAIR HEARING

PURPOSE

To outline the State Fair Hearing process and requirements. (See 1001- North Sound Mental Health Administration [NSMHA] Complaint, Grievance, Appeal, and Fair Hearing Policy General Policy Requirements, 1002-NSMHA Complaint and Grievance Policy, 1003 NSMHA Appeal Policy, and 1005 Notice Policy Requirements Policy for information about additional policy requirements.)

FAIR HEARING POLICY

A fair hearing is a hearing conducted through the auspices of the state Office of Administrative Hearings (OAH). The term "fair hearing" is synonymous with administrative hearing. The OAH is an independent state agency and is not a part of Department of Social and Health Services (DSHS), the Mental Health Division (MHD), or NSMHA.

A. Rights to Request a Fair Hearing

Consumers and their representatives have the right to request pre-hearing and administrative hearing processes described in Washington Administrative Code (WAC) Chapter 388-02. Consumers may call the Office of Administrative Hearings (OAH) at 1-800-583-8271 to inquire about qualifying for a State fair hearing. Situations when a consumer may request a fair hearing include the following:

1. A consumer believes there has been a violation of the Washington State DSHS rules
2. NSMHA violates timeframes for a grievance, appeal, expedited appeal, or authorization request.
3. A Medicaid enrollee does not receive a favorable disposition of an appeal by NSMHA.
4. A consumer does not receive a favorable disposition of a grievance from NSMHA.
5. Following receipt of a written Notice of Adverse Determination by NSMHA or formal designee
6. A consumer is dissatisfied with their services

B. Assistance with Fair Hearings

NSMHA will provide assistance to consumers in pursuing fair hearings. NSMHA will provide information about how to request a fair hearing and access to Ombuds services. Ombuds services are available to investigate, advocate and assist consumers throughout the fair hearing process at no cost.

Consumers may have a representative who acts on their behalf in requesting a fair hearing. Consumers may also hire a lawyer to represent them, at their own cost. There will be no retaliation against a consumer who requests a fair hearing. Consumers may contact NSMHA or Ombuds services if they have concerns about retaliation.

C. Timelines to File a Fair Hearing

If consumers receive a written Notice of Adverse Determination or do not receive favorable disposition of a grievance or appeal (Medicaid enrollees) by NSMHA, they may request a fair hearing. In the case of appeals, the request for fair hearing must be filed within 20 days from the date of receipt of the notice of adverse ruling.

If consumers are dissatisfied with services or believe there has been a violation of the DSHS rules or that NSMHA or providers have violated certain timelines they may request a fair hearing at any time. Consumers may call the Office of Administrative Hearings (OAH) at 1-800-583-8271 to inquire about qualifying for a State fair hearing prior to utilizing the NSMHA grievance or appeals process. Ombuds services are available to assist consumers with this process.

D. Where to Request a Fair Hearing

Consumers may request a fair hearing with the OAH by calling 1-800-583-8271. Consumers may also contact the Ombuds Services toll free at 1-888-336-6164 or NSMHA for assistance in requesting a fair hearing.

E. Continuation of Benefits/Services during the Grievance, Appeal, and Fair Hearing Process

Consumers may request that their previously authorized services or benefits continue or are reinstated during the NSMHA and provider complaint or grievance process, NSMHA appeal process (enrollees), and State fair hearing process.

NSMHA encourages resolution of appeals and grievances at the lowest possible level. However, a consumer may request a fair hearing without first utilizing the provider or NSMHA grievance process. They may also request a state fair hearing prior to utilizing the NSMHA appeal process (Medicaid Enrollees) if they believe DSHS rules or timelines have been broken.

If a consumer requests a fair hearing prior to utilizing the NSMHA appeal or grievance process, NSMHA will continue or reinstate previously authorized services (if the original period covered by the original authorization has not expired) pending fair hearing at the consumer's request.

Consumers will be notified in writing for any circumstances in which the consumer may be asked to pay for the cost of those services if the hearing decision upholds the original decision.

Appeal Process

During the NSMHA Appeals process, NSMHA will continue or reinstate the enrollee's benefits if all of the following apply (see also NSMHA Appeal Policy #1003 for additional information and requirements):

1. The enrollee or the provider files the appeal on or before the later of the following:
 - a. Within 10 calendar days of receipt of the NSMHA notice of action
 - b. The intended effective date of NSMHA's proposed action.
2. The appeal involves the termination, suspension or reduction of a previously authorized course of treatment.
3. Services were ordered by an authorized provider or inpatient provider
4. The enrollee requests a continuation of services/benefits, and
5. The original period covered by the original authorization has not expired at the time of the request for continuation of benefits.

If, at the enrollee's request, NSMHA continues or reinstates the enrollee's benefits while the appeal is pending, the benefits must be continued until one of the following occurs:

1. The enrollee withdraws the appeal.

2. Ten days pass after NSMHA mails notice of disposition of an appeal and the resolution is not in favor of the enrollee, unless the enrollee, within the 10-day timeline, has requested a State Fair Hearing (with continuation of benefits until the fair hearing decision is reached),
3. The State Office of Administrative Hearings (OAH) issues a fair hearing decision adverse to the enrollee, or
4. The time period or service limits of a previously authorized service has been met.

Enrollees will receive information regarding their right to request that previously authorized services continue or be reinstated during the appeals and fair hearing process and that they may be asked to pay for services provided during the appeal, and fair hearings process if the decision is adverse to the consumer.

Following appeals that are not resolved wholly in favor of the enrollees, the NSMHA notice of adverse ruling will also include the right to request a State Fair Hearing, the process for requesting a Fair Hearing, the right to request to continue to receive benefits while the hearing is pending, how to make the request, and notice for any circumstances in which the enrollee may be asked to pay for the cost of those benefits if the hearing decision upholds the original action.

Grievance Process

During the NSMHA or provider grievance process, NSMHA and providers will continue or reinstate the consumer's previously authorized services at the consumer or their representative's request. NSMHA will also continue or reinstate previously authorized services pending fair hearing. (Previously authorized services will continue if the original period covered by the original authorization has not expired).

Consumers will receive information regarding their right to request that services continue or be reinstated during the grievance and fair hearing process and notice for any circumstances in which they may be asked to pay for disputed services provided during the grievance and fair hearings process if the decision is adverse to the consumer.

Following provider grievances that are not resolved wholly in favor of the consumer, NSMHA providers grievance notice of resolution will include the right and process to pursue a grievance with NSMHA, and the right for previously authorized services to continue or be reinstated during the NSMHA grievance process at the consumer or consumer representative's request, and notice for any circumstances in which the consumer may be asked to pay for the cost of those services if the grievance upholds the original decision.

Following NSMHA grievances that are not resolved wholly in favor of the consumer, the NSMHA grievance notice of resolution will include the right to request a State Fair Hearing, the process for requesting a Fair Hearing, the right to request to continue to receive previously authorized services while the hearing is pending, how to make the request, and notice for any circumstances in which the consumer may be asked to pay for the cost of those services if the hearing decision upholds the original decision.

F. Reversed Resolutions of Appeals

If the State fair hearing officer reverses a decision to deny, limit or delay services that were not furnished while an appeal was pending, NSMHA or formal designee and providers must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's mental health condition requires.

If the State fair hearing officer reverses a decision to deny authorization of services and the enrollee received the disputed services while the appeal was pending, NSMHA must pay for those services.

If the final resolution of the appeal upholds the NSMHA action, NSMHA may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services and in accordance with Code of Federal Regulations (CFR) 42.431.230 (b).

G. Additional Requirements for Fair Hearings

For fair hearings that involve appeals, parties to the fair hearing include NSMHA, the consumer, and the consumer's representative or the representative of a deceased consumer's estate. The Fair Hearing process must be completed within 90 days of the date the appeal was initially filed, excluding any time taken by the Enrollee to file for a Fair Hearing following receipt of the notice of disposition of appeal.

NSMHA, community mental health agencies, designees, and other contracted individuals and providers will cooperate with and abide by promptly all administrative hearing procedures and decisions. NSMHA will require this in contracts and will monitor this requirement.

ATTACHMENTS

None