



STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

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TO: Distribution List

DATE: December 3, 2014

SUBJECT: Division Circular # 37 – Appeal Procedure (N.J.A.C. 10:48)

Attached is a revision of Division Circular #37, Appeal Procedure. This circular is N.J.A.C. 10:48, adopted in the New Jersey Register on December 1, 2014. The text of the adoption can be found on the Department of Human Services' website under "Rule Adoptions" at www.state.nj.us/humanservices/providers/rulefees/ruleadop/.

A handwritten signature in blue ink that reads "Elizabeth M. Shea".

Elizabeth M. Shea
Assistant Commissioner

**DIVISION CIRCULAR #37
(N.J.A.C. 10:48)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: December 1, 2014
DATE ISSUED: December 3, 2014

- I. **TITLE: APPEAL PROCEDURE**

- II. **PURPOSE:** To delineate the steps to be taken when disagreements arise between the Division and individuals receiving or applying to receive Division services. The chapter's aim is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.

- III. **SCOPE:** This circular applies to disagreements between the Division and individuals receiving or applying to receive Division services, the legal guardians of individuals receiving or applying to receive Division services, or their authorized representatives, where applicable.

- IV. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is the Appeal Procedure rules which appear at N.J.A.C. 10:48.



Elizabeth M. Shea, Assistant Commissioner
Division of Developmental Disabilities

CHAPTER 48

APPEAL PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

10:48-1.1 Purpose

The purpose of this chapter is to delineate the steps to be taken when disagreements arise between citizens and the Division of Developmental Disabilities. The aim of the chapter is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.

10:48-1.2 Scope

- (a) This chapter pertains to all disputes and disagreements with service components of the Division involving:
 - 1. An individual receiving or applying for Division services;
 - 2. The guardian of an individual receiving or applying for Division services;
 - 3. An authorized representative of an individual receiving services or an individual or guardian applying for Division services; or
 - 4. A licensee, or his or her authorized representative, of the Department of Human Services that provides Division services.

10:48-1.3 General provisions

- (a) Division staff are responsible for informing persons served and their families/guardians about their right to appeal and to supply them with copies of the appeal procedure.
- (b) An appeal may be settled at any time by a settlement agreement.
- (c) If an individual fails to follow the time limits for requesting an appeal as established in this chapter, the Assistant Commissioner may deny the appeal.
- (d) The assessment of an individual to contribute toward the cost of care and maintenance if he or she has been residentially placed by the Division may be appealed in accordance with N.J.A.C. 10:46D.

10:48-1.4 Appeals of licensing actions

- (a) Appeals of licensing actions relative to Division programs may be appealed under the Administrative Procedures Act as described at N.J.A.C. 1:1.
- (b) Appeals of licensing actions relative to Division programs shall be directed to the Department of Human Services, Office of Licensing.
- (c) The appeal of licensing actions shall be initiated within 30 days from the date on the written notification of licensing action.
- (d) The request for appeals shall be submitted in the format as described in N.J.A.C. 10:48-1.6(e).

10:48-1.5 Definitions

The following words and terms, when used in this chapter, shall have the meanings as defined in N.J.A.C. 1:1-2.1 or this section unless the context clearly indicates otherwise.

“Administrative hearing” means a proceeding which is conducted by the Office of Administrative Law.

“Administrative review” means a review of the documentary record that is conducted by a review officer appointed by the Assistant Commissioner, following an informal conference concerning a non-contested matter.

“Appeal” means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division, which involves eligibility, placement, or provision of service. The decision shall be a specific action or proposed action, which is identifiable in terms of date, and person(s) making the decision. General complaints or employee grievances shall not be considered appeals.

“Appellant” means the authorized person who may file an appeal with the Division. The authorized person is one of the following:

1. An individual receiving or applying for Division services;
2. The guardian of an individual who is receiving or applying for Division services;
3. An authorized representative of an individual receiving services or applying for services from the Division, a guardian of an individual receiving services or applying for services from the Division. Written verification of status as an authorized representative from

the individual or guardian authorizing representation shall be required;

4. A licensee, or his or her authorized representative, of the Department of Human Services that provides services to an individual receiving services from the Division; or
5. An attorney, if written verification of the client/attorney relationship is provided.

“Assistant Commissioner” means the Assistant Commissioner of the Division of Developmental Disabilities.

“Chairperson” means the individual appointed by the Administrative Practice Office to hold an informal conference.

“Contested matter” means an adversarial proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1)

“Days” shall mean calendar days unless otherwise specified.

“Division” means the Division of Developmental Disabilities.

“Division of Medical Assistance and Health Services (DMAHS)” means the agency under the Department of Human Services that is designated in accordance with 42 CFR §431.10, as the single State agency for the administration of the New Jersey Medicaid program.

“Evidence” is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay. (N.J.A.C. 1:1-2.1)

“Fair hearing” means an administrative proceeding to resolve an appeal of a Medicaid waiver-funded service when the service has been denied or will be reduced, suspended, or terminated.

“Final decision” means a decision by an agency head that adopts, rejects, or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after an administrative review conducted in accordance with this chapter.

“Guardian” means a person or agency who has qualified as a guardian of the person of an incapacitated individual pursuant to court appointment, to make decisions on behalf of the incapacitated individual in those areas where incapacity has been determined by a court as set forth at N.J.S.A. 3B:12-24.1.

“Informal conference” means a meeting prior to an administrative review in which the respective parties may informally attempt to resolve the issue which is the subject of appeal.

“Involved parties” means the representative of the appellant and the service component.

“Non-contested case” means those appeals not requiring a contested case proceeding under the statutory definition of contested case at N.J.S.A. 52:14B-2(b).

“Non-waiver services” means those services provided to an individual eligible for Division services for which the Division does not receive reimbursement through the Federal Medicaid program.

“Office of Administrative Law (OAL)” means the independent unit assigned to the Department of the Treasury, which has the authority to hear contested matters.

“Placement” means the out-of-home living arrangement, other than for respite, provided by the Division.

“Recommended decision” means the initial determination in a non-contested case made by a Division administrative review officer. That decision is subject to comments or exceptions by the parties and may be accepted, modified or rejected by the Assistant Commissioner.

“Service component” means the operational unit of the Division (for example, Developmental Center, region, bureau, etc.) from which the disputed matter arises.

“Service plan” means a written, individualized plan, consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed by the interdisciplinary team. It is an outcome-based planning tool that, at a minimum, identifies each individualized program, support, or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person or agency responsible for its implementation. The complexity of the service plan will vary according to the individual’s interests, preferences, and needs. The service plan format must be Division-approved, but can be chosen from various types of plans, as determined by the requirements of the specific program, service, or support and can include, but is not limited to, the following types of

plans: individual service plan, individual habilitation plan, or essential lifestyle plan.

“Settlement” means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including:

1. Pre-transmission settlement efforts by an agency;
2. Pre-transmission settlement efforts by an administrative law judge at the request of an agency;
3. Mediation by an administrative law judge; and
4. Post-transmission settlement conferences by an administrative law judge. (N.J.A.C. 1:1-2.1)

“Settlement agreement” means a written agreement that resolves disputed matters in whole or in part. The terms of a settlement agreement shall be written and time limited, or otherwise note when the terms of the agreement have been satisfied. A settlement agreement must be signed by all parties, and is contingent on the signature of the Assistant Commissioner or designee. Unless expressly stated in writing, a settlement agreement shall not:

1. Be construed, interpreted or used as evidence of any admission of fact, law, responsibility, wrongdoing, or liability on the part of any party;
2. Referred to in any subsequent proceedings by any party other than to enforce the express terms of the agreement; and
3. Constitute precedent in any subsequent matter involving the parties or others.

“Settlement conference” means an initial step toward resolving a contested matter prior to transmitting the appeal to the OAL as a contested case.

“Waiver services” means the services available through the authorized Medicaid waiver program in which an individual is enrolled or to which an individual has applied.

10:48-1.6 Process for requesting an appeal

- (a) An initial appeal shall be made in writing to the Administrative Practice Office, Division of Developmental Disabilities, P.O. Box 726, Trenton, NJ 08625-0726.

- (b) Appeals of eligibility under N.J.A.C. 10:46-2 or specific offers of non-waiver-funded services shall be initiated within 30 days from the date on the written notification of ineligibility or offer.
- (c) Appeals of the denial, suspension, reduction, or termination of waiver services must be made, in writing, within 20 days from the date of the notice of such action.
- (d) Appeals of services shall be limited to those services indicated in the service plan or appropriate for inclusion in a service plan that were requested and denied.
- (e) The request for appeal shall be in writing and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. An appeal shall be denied if the required information is not provided. The request shall include:
 - 1. Name and address of appellant;
 - 2. Name and address of person receiving services or applying for services from the Division, if the appeal is made by the person's legal guardian or authorized representative;
 - 3. A brief statement of the matter under appeal;
 - 4. A list of potential witnesses, if known; and
 - 5. Reference to the law, rule, regulation or policy alleged to be violated, if known.
- (f) The Administrative Practice Office shall review the appeal. If the Administrative Practice Office determines that the matter does not conform to the definition of appeal, it shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.
- (g) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the Administrative Practice Office.
- (h) The appeal shall be reviewed to determine if it is a contested or non-contested matter.
 - 1. If the matter is determined to be contested, the requirements of N.J.A.C. 10:48-2 shall apply.
 - 2. If the matter is determined to be non-contested, the requirements of N.J.A.C. 10:48-3 shall apply.

- i. The appellant shall be notified in writing that the matter is non-contested.
 - ii. If the appellant disagrees, he or she may request a review of that decision by the Assistant Commissioner.
- (i) If the matter does not meet the conditions of this section, and the appellant believes that the matter is contested as defined in this chapter, the appellant shall set forth his or her reasons supporting that the matter should be considered contested in writing.

10:48-1.7 Appeal of offer of placement

- (a) Except in emergencies, an appellant may request that the Assistant Commissioner defer the placement of an individual pending resolution of an administrative appeal, as set forth in N.J.A.C. 10:48-2, when the following circumstances apply:
 - 1. The appeal is received verbally or in writing 10 days before the proposed placement, and the appellant:
 - i. Can demonstrate that the placement may place the individual at risk of abuse or neglect;
 - ii. Has new information that was unknown or available at the time the placement offer was made; or
 - iii. Can demonstrate that the placement shall significantly compromise the appellant's ability to have the Division's action reversed or modified through the appeal process.
 - 2. If the Assistant Commissioner agrees to defer the placement, the Division shall not be required to maintain the status quo unless the Division was funding placement prior to the request to defer.

SUBCHAPTER 2. CONTESTED CASES

10:48-2.1 Appeal of waiver-funded services

- (a) Appeals of the denial, suspension, reduction, or termination of waiver-funded services are contested. A fair hearing, as described in N.J.A.C. 10:49-10, shall be offered for appeals of waiver-funded services. The Division may also offer an alternate dispute resolution conference to resolve the appeal. The alternate dispute resolution conference is not a requirement or prerequisite to the fair hearing. The process for the alternate dispute resolution conference is described

at N.J.A.C. 10:48-6.1. The Division's process for requests for a fair hearing is described at N.J.A.C. 10:48-6.2.

- (b) Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1.

10:48-2.2 Appeal of non-waiver-funded services

- (a) Appeals of eligibility determinations under N.J.A.C. 10:46-2 and appeals of specific offers of non-waiver-funded placements shall be considered to be contested.
- (b) If the matter is determined to be contested, prior to transmittal to the OAL, a settlement conference, as described at N.J.A.C. 10:48-5, shall be offered to resolve the matter.
- (c) If all parties agree to the settlement conference, the conference shall be scheduled by the Administrative Practice Office.
- (d) The appellant may request to waive the settlement conference and that the Division transmit the matter directly to the OAL, as described in N.J.A.C. 10:48-7.

SUBCHAPTER 3. NON-CONTESTED CASES

10:48-3.1 Non-contested cases

- (a) Appeals of non-waiver-funded services that are funded only by State funds and for which there are no statutory or regulatory rights of appeal shall be considered non-contested.
- (b) If the matter is determined to be non-contested, an informal conference, as described at N.J.A.C. 10:48-4, shall be offered to resolve the matter.
- (c) The appellant may waive the informal conference. If the informal conference is waived, the Division shall conduct an administrative review pursuant to N.J.A.C. 10:48-4.2.
- (d) The Assistant Commissioner may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL, in accordance with N.J.S.A. 52:14F-5.o.

SUBCHAPTER 4. INFORMAL CONFERENCE AND ADMINISTRATIVE REVIEW OF NON-CONTESTED CASES

10:48-4.1 Informal conference

- (a) Informal conference requirements are as follows:
1. An informal conference shall be scheduled by the Administrative Practice Office in response to a non-contested matter. The informal conference shall be scheduled no more than 30 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 30 working days may only occur upon mutual agreement of both parties.
 2. The Administrative Practice Office shall appoint a chairperson to convene the informal conference.
 3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties, and a decision or the agreement of the parties with respect to each issue. The reasons for the decision shall be provided. The report shall be provided to the appellant within 30 working days of the conference. A copy of this summary shall be retained in the individual's file.
 4. The appellant may be represented by legal counsel at the informal conference.
 5. No transcript shall be made of the informal conference.
- (b) The Rules of Evidence shall not be strictly enforced. Evidence as defined in N.J.A.C. 1:1-2.1 may be submitted in informal conferences or administrative reviews. An allegation or conjecture does not constitute evidence.
- (c) If an agreement is reached, the parties shall execute a settlement agreement, which shall conclude the matter.

10:48-4.2 Administrative review

- (a) For all issues not resolved at the informal conference, the appellant may submit a written request to the Assistant Commissioner for an administrative review.
1. A written request for an administrative review shall be made within 25 working days from the date on the written informal conference report.
 2. The Assistant Commissioner or designee shall appoint an administrative review officer.

3. Each party shall submit written arguments supporting their position to the administrative review officer within 30 working days of written notification of the administrative review. Documentary evidence may also be provided.
4. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement of an individual into evidence instead of an affidavit.
5. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41, which entitles an individual to a copy of the individual's client record.
6. The administrative review officer shall prepare a written decision.
7. The written decision shall be forwarded to the involved parties within 30 working days of the receipt of both arguments. The written decision shall set forth the reasons for conducting the administrative review. This shall be considered the recommended decision.
8. Written comments, objections, or exceptions to the recommended decision may be made by either party and shall be sent to the Assistant Commissioner within 20 working days from the date of the recommended decision.
9. After review of the recommended decision and any comments, objections, or exceptions, the Assistant Commissioner shall issue a final decision, in writing, within 30 working days of the close of the comment period.
10. Upon issuance, the final decision shall be sent to the parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

SUBCHAPTER 5. SETTLEMENT CONFERENCE

10:48-5.1 Settlement conference

- (a) The appellant shall be notified in writing of a time and date of a settlement conference.
- (b) The settlement conference shall require a meeting of the parties unless both parties agree to a conference by telephone.
 1. The settlement conference shall be chaired by a designee of the Administrative Practice Office.

2. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential and inadmissible as evidence.
 3. Evidence or testimony shall not be presented.
 4. No recording of the conference shall be made.
 5. The appellant may be represented by legal counsel.
 6. In addition to the Administrative Practice Office's designee, a representative of the service component initiating the action under appeal shall be present. The Division may elect to have representation by the Office of the Attorney General.
- (c) If an agreement is reached, the parties shall execute a settlement agreement, which shall conclude the matter.
- (d) If no settlement is reached at the conference, the Administrative Practice Office shall notify the appellant that he or she may submit a written request to the Assistant Commissioner to transmit the matter for an administrative appeal before the OAL.

SUBCHAPTER 6. ALTERNATE DISPUTE RESOLUTION CONFERENCE AND FAIR HEARING

10:48-6.1 Alternate dispute resolution conference

- (a) Alternate dispute resolution conference requirements are as follows:
1. An alternate dispute resolution conference shall be scheduled by the Administrative Practice Office. The alternate dispute resolution conference shall be scheduled no more than 30 working days from the date that the request for alternate dispute resolution is received. Extension of the conference date beyond 30 working days may only occur upon mutual agreement of both parties.
 2. The Administrative Practice Office shall appoint a chairperson to convene the alternate dispute resolution conference.
 3. Following the conference, the chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties, and a decision or the agreement of the parties with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 30 working days of the conference. A copy of this summary shall be retained in the individual's file.

4. The appellant may be represented by legal counsel at the alternate dispute resolution conference.
 5. No transcript shall be made of the alternate dispute resolution conference.
 6. The Rules of Evidence shall not be strictly enforced.
- (b) If an agreement is reached, the parties shall execute a settlement agreement, which shall conclude the matter.
- (c) If the alternate dispute resolution conference is waived, or if settlement is not reached, or at any time in the process, the appellant may request a fair hearing as described at N.J.A.C. 10:48-6.2.

10:48-6.2 Fair hearing

- (a) Appeals of the denial, suspension, reduction, or termination of waiver services shall be heard in accordance with N.J.A.C. 10:49-10.
- (b) Such request for hearing shall be made in writing within 20 days from the date of the notice of the Division's action giving rise to said complaint or issue, or after the conclusion of an alternate dispute resolution conference that did not result in settlement of all issues.
- (c) Requests for a fair hearing for Division services shall be submitted to the Division. The Division shall forward the request to DMAHS within five working days.
- (d) The Division will forward the request to DMAHS for transmittal to OAL. The Division will include a cover memorandum to DMAHS that describes the Division's position; a copy of the notice to the Appellant which initiated the dispute; and a copy of the appeal letter.
- (e) In the matter of a fair hearing, the Director, DMAHS, shall render the final decision.

SUBCHAPTER 7. OFFICE OF ADMINISTRATIVE LAW

10:48-7.1 Office of Administrative Law

- (a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

- (b) If the contested non-waiver-funded services matter is not settled, the Assistant Commissioner shall transmit the matter to the Office of Administrative Law.
1. In the instance of all other contested matters, the matter shall be transmitted within 20 working days of the notice by the Administrative Practice Office that the settlement conference did not resolve the matter.
 2. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue.
 3. The Assistant Commissioner may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5.o).
- (c) The Assistant Commissioner shall notify the appellant that the matter has been transmitted to the OAL.
- (d) A decision rendered by OAL shall be adopted, rejected, or modified by the Assistant Commissioner or in the case of fair hearing, by the Director, DMAHS, within 45 days of its receipt (N.J.S.A. 52:14B-10(c)). This shall be the final decision of the matter under appeal.
- (e) Upon issuance, the final decision shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.