

DEPARTMENT OF HUMAN RESOURCES FAMILY INVESTMENT ADMINISTRATION	TEMPORARY CASH ASSISTANCE MANUAL	
APPEALS-1102	COMAR 07.01.04.	FRAUD/INTENTIONAL PROGRAM VIOLATION AND APPEALS 1100

1102.1 REQUIREMENTS

- A. Any applicant or recipient given or sent an adverse action letter or notice must, in addition to the letter, receive a Request for Fair Hearing (appeal) form (DHR/FIA 334) and a return envelope.
- B. The applicant or recipient has the right to appeal any decision made on his or her application or active case.
- C. The request for a hearing can be made:
 1. To any employee of the local department whose job assignment requires public contact
 2. In writing or orally
 - a. If the customer has submitted a written request that is not on a DHR/FIA 334 form, the local department must complete a DHR/FIA 334 and attach the customer's written request
 - The local department must copy the form and forward the original to OAH immediately.
 - b. When the request is not in writing:
 - i. The request must be put in writing on the Request for Hearing Form (DHR/FIA 334) and dated the day of the request
 - ii. The local department must ask the customer to put the request in writing, and must offer to assist the customer in doing so
 - iii. If the customer does not put the request in writing, the local department must complete a DHR/FIA 334 form for the customer
 - iv. The local department must copy it and forward the original to the Office of Administrative Hearings (OAH) immediately, keeping the copy in the file

1102.2 GENERAL PROCEDURES

- A. The local department:
 1. Provides the customer with form **DHR/FIA 334, Appeal for Fair Hearings**

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2. Assists the applicant or recipient with completing the form
3. Ensures that all sections of the form are complete, including customer name, customer ID, address, and date of the adverse action notice for the action the customer is appealing
 - a. If the customer made an oral request and the local department completed the DHR/FIA 334 for the customer, note this by writing "oral request" on the signature line in Section 4
 - b. If the customer submitted a written request that was not on a DHR/FIA 334, note this by writing "written request attached" on the signature line in Section 4 and attach the customer's written request
4. Ensures that the form has been properly completed, dated, and signed
5. Advises the applicant or recipient of any legal services available
6. Advises the customer of the right to have benefits continued, through the end of the certification period, pending the hearing decision
 - This does not apply to an applicant because there is no certification period.
7. Forwards the completed form to the Office of Administrative Hearings (OAH) within **5 days of receipt**
 - The local department must mail or fax the DHR/FIA 334 to OAH immediately
8. Submits a summary of the facts and all necessary documentation regarding the appeal to OAH and the customer six days before the scheduled hearing date
9. Attends the hearing to explain:
 - a. How the decision was made
 - b. How the benefit or grant was calculated
 - c. Which program policies were used

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- B. The applicant or recipient has the right to a pre-hearing agency conference prior to the scheduled date of the hearing.
1. Make sure the local department decision or action was correct. If the local department decision was incorrect, correct it, narrate the correction in CARES and follow up to ensure the action is taken. Have all documents, including any calculations, prepared and available for the conference and the hearing.
 2. The purpose of the conference is to attempt to resolve the issue before the hearing by providing the customer with:
 - a. An explanation of and a reason for the intended action
 - b. An opportunity to speak on his/her own behalf (they may be represented by a friend or an attorney), to ask questions, and to present information that shows the local department's action is incorrect
 - c. An opportunity to informally resolve the dispute and eliminate the need for the hearing
 3. A pre-hearing conference does not preclude a hearing
- C. If the pre-hearing conference ends favorably, the applicant or recipient must sign a withdrawal statement.
1. The local department retains a copy, and sends the original copy to OAH
 2. OAH acknowledges receipt of the withdrawal in writing to the local department and to the applicant or recipient
- D. Upon receipt of a hearing request, OAH:
1. Schedules an administrative hearing date
 2. Sends the parties involved notification of date, time, and hearing location
 3. Assigns an Administrative Law Judge (ALJ) to hear the case
 4. Has the ALJ hear and record the proceedings, and upon conclusion

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5. Has the ALJ review all evidence and testimony and make a decision in accordance with applicable law
6. Sends all parties involved a copy of the decision, and information on how to file an appeal in the circuit court if they disagree with the final decision

Note: Should additional information be submitted by the applicant or recipient at the hearing that the local department did not have when the decision was made, the local department may request the ALJ to postpone the hearing to allow the local department to review the new information.

- E. If the OAH decision is favorable to the local department, the local department:
 1. Takes **immediate** actions to implement the decision (no additional adverse action is required), reducing or terminating the benefit, and
 2. Makes a referral for an overpayment as appropriate
- F. If the decision is favorable to the applicant or recipient, the local department:
 1. Complies with the decision within **10 calendar days** of the decision date
 2. Issues benefits to correct an underpayment, if applicable (restoring benefits for no more than 12 months)
 3. Notifies OAH, **immediately**, that all required actions have been completed

1102.3 THE OFFICE OF ADMINISTRATIVE HEARINGS

- A. The Office of Administrative Hearings (OAH) is an independent agency within the Executive Branch of state government, reporting directly to the Governor.
- B. OAH is responsible for:
 1. Hearing all state administrative law cases and appeals
 2. Scheduling the date for hearings requests received from a:
 - c. Local department
 - d. Agency

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- e. .Business
 - f. Applicant, or
 - g. Recipient
3. Sending notice of the hearing to the local department, agency, business, applicant, customer, and other involved parties:
 - a. At least 15 days before the scheduled hearing date
 - b. Rescheduling postponements
 4. Conducting an unbiased hearing
 5. Advising the parties involved of the right to be represented by a lawyer or other person of their choice
 6. Determining whether or not the administrative action taken was correct and in compliance with existing laws, program policies, and procedures based on the evidence submitted at the hearing
 7. Issuing the final administrative decision not later than 90 days after the date of the hearing
 8. Sending a copy of the decision to the parties and the local department
- C. The decision rendered by an Administrative Law Judge (ALJ) is:
1. Binding on the local department, agency, or business; and
 2. Subject to review by the circuit court

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1102.4 PREPARATION FOR THE HEARING

Preparing for hearings involves many of the same steps regardless of the program being appealed. The most important step is preparation before the hearing.

A. Pre-Hearing Preparation.

2. There should be a conference with the customer prior to the hearing. The conference can be by telephone or face-to-face
 - a. The agency supervisor is required to attend this conference.
 - b. The case manager and the appeals representative may also attend the conference
 - c. If the case manager is unable to reach the customer by telephone, send the customer a letter stating that the local department must be contacted within 10 days of the date of the letter if he or she wishes to discuss the appeal
 - d. If the customer does not respond to the request for conference, the hearing process goes forward
2. The point of the conference is to clarify all aspects of the issue that the customer is appealing, not just what is on the hearing request form. Notes regarding the conference **must** be entered in the CARES narration
3. The following guidelines apply to the conference:
 - a. Ask the customer to explain why he or she disagreed with the agency decision. Do not interrupt. Listen to what the customer says
 - b. Be courteous and talk to the customer in language that is easily understood
 - c. Avoid the use of acronyms, jargon, or business slang (for example, redet, app., or FIA)
 - d. Do not in any way discourage the customer from following through on the hearing request. Do not say things such as "You cannot win," and do not tell the customer to withdraw the request

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4. After the conference, ask the customer if he or she understands the action taken, including any corrective action taken after the appeal was filed. If the customer does understand, ask if he or she would like to withdraw the hearing request
5. If the customer elects to withdraw the hearing request, a withdrawal form (DHR/OS 87 revised 7/00) must be completed
 - a. The original must be sent to OAH via mail or transmitted by facsimile
 - b. One copy of the DHR/OS is given to the customer and
 - c. One copy is maintained in the case file
6. If the customer wants to continue with the hearing, advise the customer that a packet of information will be sent by the local department and a notice of hearing date will be sent by the OAH.
7. Advise the customer that the hearings are informal and the customer has the right to bring anyone.
8. The customer also has the right to be represented by an attorney or other individual
 - If you learn that an attorney represents the customer, you must communicate with the attorney on all matters concerning the appeal, unless the customer insists you speak with them directly. If so, you must put “the customer waived legal representation” in the CARES narration.

B. Preparing the Hearing Summary.

1. The Hearing Summary is a legally binding document and should be treated as such. All information must be factual and correct and the document must be proofread and checked for spelling errors
2. Proofread the customer’s request, including the conference notes and the case file. If something is unclear, call the attorney or customer for clarification
3. Make sure the local department’s decision or action was correct

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4. If the decision or action was incorrect, correct it
 - a. Follow your local department's established procedure to make a timely correction. When the correction is made, inform the customer
 - b. If the correction is in the customer's favor, ask the customer to withdraw the hearing request

5. It may not always be possible to avoid a hearing, even if there has not been an adverse action or if an agency error has been corrected. In this instance, describe the correction, including the date the correction was made and how the correction affects eligibility. At the hearing, ask the ALJ to dismiss the appeal.

6. Consider whether the documents and your testimony will be sufficient to support the agency's action. Additional witnesses or documents may be needed. If so, witnesses must be contacted well in advance of the hearing date.
 - a. Do not subpoena a DHR or DHMH employee
 - b. After contacting the employee to discuss the case, if the employee's testimony is necessary, secure a commitment from the employee to participate in the hearing
 - c. Notify the supervisor of the date and time the employee is expected to participate
 - d. You may have other witnesses subpoenaed by OAH (See COMAR 28.02.01.11)
 - e. You may also request or subpoena documents from others(See COMAR 28.02.01.10 and .11)

C. Hearing Summary Contents.

1. The Hearing Summary must clearly state the action being appealed
2. Use the Hearing Summary template available from DHR Policy and Training
3. Contact The Office of Programs, Policy and Training for a copy of the template. Supplement the template with additional pages, as necessary

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4. The first sentence of the Hearing Summary must state the action(s) the customer is appealing, the date of the action(s), and why the customer is appealing. For example:

“Mrs. Jones is appealing the local department’s action to deny her eligibility for Temporary Cash Assistance (TCA) effective 04/01/2008 because she did not cooperate with work requirements.”

5. Use clear and simple language: avoid the use of acronyms, jargon, or business slang (for example, redet, app., or FIA)
6. Always refer to the customer as Ms., Mrs., or Mr. and his or her last name. Do not use “the customer”
7. The summary must include all relevant information that supports the action(s) being appealed
8. Prepare the summary in chronological order, beginning with the earliest action

D. The Hearing Packet.

1. Set up the hearing packet as outlined below:
 - a. Local department hearing summary and any attachments
 - b. The OAH Notice of Hearing
 - c. Request for Hearing
 - d. Notice of Action, including the entire printout of the CARES notice, must be included
 - e. Request For Assistance Form, if applicable
 - f. Authorization for representation and any other relevant legal document
 - g. Every page of the application, including the backs of double-sided documents and the signature page
 - h. Any evidence the local department has regarding the action taken such as: State Review Team documents (including medical records), pay stubs, child support statements, letters to or from the customer, etc

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- i. All of the CARES narration (and WORKS narration, if the issue is non-compliance with a work requirement) relating to the action being appealed
 - j. The pages of COMAR, the Manual, action transmittals and any other policy issuances or citations that support the local department decision
2. After assembling the hearing packet and **before making copies, number each page in the lower right corner**
 - a. Be sure to number all pages, including double-sided documents. Make a minimum of three (3) identical copies of the hearing packet
 - b. **You must be certain that you copy both sides of a double-sided document** (for example, the DHR/FIA 334 is a double-sided document)
 3. Send the hearing packet to the customer **no later than 6 days before the hearing** or the customer has the right to have the hearing postponed
 - a. If the customer has an attorney or representative, a packet should be mailed to that individual as well as the customer.
 - b. If the packet is being mailed at least 6 days prior to the hearing, mail one packet to the ALJ and retain the original in the local department.

1102.5 THE HEARING

- A. There are a number of Hearing “musts”
 1. Be on time and be prepared
 2. Dress professionally and maintain a professional attitude
 3. Have the hearing packet with you
 4. Be ready to discuss the department’s action
 5. Be pleasant and not argumentative
 6. Stick to the facts of the case
- B. The local department presents its case first
- C. The ALJ records the hearing so speak loudly and clearly enough to be heard
- D. Identify the hearing packet; state the number of pages in the packet, and request that it be entered into evidence

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- E. Read the Hearing Summary into the record (The ALJ may ask that you just summarize the facts instead of reading the Hearing Summary)
- F. Present any additional facts and/or documents for the case
- G. After you present, the ALJ will ask the customer or the customer's representative if they have any questions to ask you (cross-examination)
- H. After the cross-examination, you have the right to testify about any matters raised during the cross-examination
- I. When you have finished testifying, you may call additional witnesses for the local department or request that additional documents be entered into evidence
- J. When it is the customer's turn to present:
 - 1. Listen to what the customer says**
 - 2. Do not interrupt even if something the customer says is incorrect
 - 3. Take notes if the customer says something that needs to be questioned or rebutted with additional testimony from you or your witnesses
 - 4. The ALJ will ask if you have any questions to ask (cross-examination). If you have questions, ask them of the customer
- K. At the end of the customer's testimony, the ALJ may ask if anyone has anything else to say
 - 1. If you have rebuttal testimony, you should ask for an opportunity to present rebuttal
 - 2. Point out anything you heard that is contrary to policy or contradicts what the customer said

For example: The customer says he can only work part time, but you know that in order to be eligible for TDAP, the customer has to be unable to work. You should say, "TDAP policy requires that an applicant be totally unable to work and Mr. Smith can work part-time."
- L. If the local department is wrong, admit the mistake and state the agency will correct the problem immediately

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- **Once you have committed to an action, be sure to follow through and see that it is done.**

M. At the conclusion of the hearing, the ALJ will give both parties an opportunity to make a closing statement

- This is your opportunity to summarize the agency's evidence and how it supports the action taken. You may want to explain why the customer's evidence does not support a different action.

NOTE: During the hearing, the local department representative may realize the local department decision is incorrect or the customer may present new information that may affect the local department's decision or action. **The local department should never ask for a remand of the case.** The ALJ is required to decide the case. You should state the agency's position on what the correct decision in the case should be.

N. The ALJ will send a written decision to the local department, the customer, and the customer's representative

1102.6 ACTION ON THE ALJ'S DECISION.

- If the ALJ's decision requires the local department to take any action, the local department must comply with the timeframe set by the ALJ
- The local department is legally required to take the action
- The local department must mail a letter to specify the action taken.
- A copy of that letter must be sent to the customer
- If you or the customer determine that the ALJ's decision is incorrect, the next step is to appeal to Circuit Court.