

ADMINISTRATIVE HEARING RIGHTS

In compliance with Chapter 120, Florida Statutes, the Agency for Persons with Disabilities provides administrative hearings before the Division of Administrative Hearings (“DOAH”) to individuals substantially affected by actions of the Agency. If APD seeks to deny, reduce, terminate, or suspend Medicaid Waiver services, then the hearings are also governed by Federal law (42 CFR, Subpart E). The purpose of the hearing is to provide an opportunity for an impartial, objective review of actions APD takes in the programs it administers.

APD provides written notice of hearing rights, including the method of requesting hearings, to new applicants for services at the time of application and the time of decision on the application. Persons already receiving APD services, regardless of how those services are funded, are provided notice of their hearing rights at any time APD seeks to terminate or reduce their existing services, or seeks to deny a request for additional services. All parties appearing at a hearing involving Waiver services may represent themselves or be represented by legal counsel, a relative, a friend, or other legal spokesperson.

A request for hearing must be made in writing to the Agency within 30 days of the date the notice of agency action is received.¹ **However, if APD has notified you that it intends to reduce, terminate, or suspend Waiver services you are already receiving, you must request a hearing within 10 days in order to continue to receive those services pending a decision after the hearing.**² Section 120.54(5) (b) 5, Florida Statutes, requires the following information in your hearing request:

1. The name, address, and telephone number of the party making the request and the name, address

¹ Section 393.125(1)(c) Florida Statutes. See also J.M. v. Agency for Persons with Disabilities, __ So. 2d __, 2006 WL 2251885 (Fla. App. 1 Dist.), 33 Fla. L. Weekly D2121 (August 8, 2006)

² 42 C.F.R. 431.230(a)

and telephone number of the party’s counsel or representative upon whom service of pleadings and papers must be made;

2. A statement that you are requesting an administrative hearing and dispute the facts alleged by the Agency, in which case the facts in dispute must be identified, or that you are requesting a hearing but do not dispute the facts underlying the Agency’s decision;
3. A reference to, or copy of, the Agency decision and the date you received it.

You may obtain assistance with your request for hearing by contacting the local Agency for Persons with Disabilities area office.

APD will forward your hearing request to DOAH, with a notice requesting assignment of an Administrative Law Judge (“ALJ”). The notice also advises that matters associated with the hearing are confidential and requests that the client or applicant be referenced by initials only. For the convenience of APD consumers, APD will also request that the hearing be held in the locality where the consumer resides. DOAH will assign an ALJ and issue an Initial Order notifying the parties of the Judge’s name and the DOAH case number. This information is sent to the address provided in the hearing request. If that address changes, DOAH should be notified in writing.

DOAH will issue, at least 14 days in advance of the hearing, a Notice of Hearing that states the time and place of the hearing, along with some basic information about hearing procedures and the issues to be considered. The APD will be represented by an attorney. DOAH provides a very helpful brochure on its website at www.doah.state.fl.us titled “Representing Yourself before the Division of Administrative Hearings” for persons representing themselves. A listing of possible pro bono legal resources may be found on the Internet at <http://apd.myflorida.com/customers/legal>.

Before the hearing, the party requesting the hearing can ask for copies of the documents and records that APD will be using at the hearing. If attendance at the hearing on the date scheduled is impossible, the party unable to attend must request a continuance from the ALJ. Except for an extreme emergency, the request must be made at least 5 days before the scheduled hearing date. The party requesting the continuance must contact the other party to see if they agree to a continuance and obtain alternative hearing dates.

At the hearing, following the ALJ’s opening remarks regarding hearing procedure and any preliminary matters, the respective parties will have an opportunity to present their cases, bring witnesses, submit evidence, and question or refute any evidence or testimony offered by the opposing party. For hearings involving authorization of services, APD’s witnesses will appear by telephone. The ALJ is an impartial, independent person who is not employed by APD and who does not have a personal interest in the outcome of the case. A record is made of everything that is said at the hearing.

After the hearing, both parties have an opportunity to submit, within a specified time, a written recommendation as to how the ALJ should rule. After considering any recommendations submitted, the ALJ will issue a “Recommended Order” to APD; APD will issue the “Final Order”. If either party disagrees with the Recommended Order or believes that the ALJ made a mistake, he or she can submit objections (called “exceptions”) to any of the findings in the Recommended Order to APD within 15 days of the date of the Recommended Order. The exceptions should reference specifically the paragraphs in the Order objected to, along with the reasons for the objections.

APD will consider and rule upon the exceptions when it considers the Recommended Order and will issue a Final Order. APD is required, generally, to issue a Final Order within 90 days of the date the hearing is requested.

If the Final Order is not in your favor, you have the right to appeal APD's decision to the appropriate District Court of Appeal within 30 days of the date APD files the Final Order. The Final Order will include a statement describing your rights to appeal.

At any time after a hearing is requested, the requesting party has the right to withdraw the request by informing the assigned ALJ, in writing. The ALJ will then close the case.

In accordance with the Americans with Disabilities Act, persons needing special accommodation to participate in the proceeding should contact the ALJ's administrative assistant at least seven days before the hearing through DOAH's address or telephone numbers, or via 1-800-955-8771(TDD) or 1-800-955-8770(Voice) Florida Relay Service.



Agency for Persons with Disabilities

GUIDE TO ADMINISTRATIVE HEARINGS



General information on rights to hearings under Code of Federal Regulations, Chapter 42, Subpart E, and Chapter 120, Florida Statutes.

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