

What can you do if you don't agree with a decision made about your Home and Community Based Services (HCBS) Waiver program and/or services? Appeal!



As a waiver applicant or recipient, you have the right to appeal if any of the following happens:

- Your waiver application is denied;
- Your waiver is ending;
- Your request for a specific type or amount of waiver service is denied;
- Your current waiver services are being reduced or changed;
- You are not given a choice of service providers or you are denied the provider you choose;
- You are not given the choice between receiving your long term care services in a facility (for example, a nursing home) or getting the services in your home or community; or
- You experience an unreasonable delay by the State or the agency that manages the waiver locally getting your waiver approved, having your waiver services start, or responding to your request for a change to your waiver service plan.

In many of the situations listed above, you will receive a notice of a decision by the state or local waiver agency. This notice should tell you that you have a right to appeal the decision and give you instructions for how to file an appeal. Generally, you have 30 days from the date of the notice to file an appeal. **If you have been receiving waiver services that are ending or that are being reduced or changed, you must appeal within 10 days of the date on the notice in order to keep receiving your waiver benefit and/or services going during the appeal process!**

Appeal requests must be made in writing. Usually, you request an appeal by completing a section of the notice of decision from the state or waiver agency; but, you could also write a letter requesting an appeal. If possible, you should mail your appeal request via certified mail, return receipt requested, or some other way that gives you proof of when the appeal request was mailed.

In some cases, you may not receive a written notice of decision with instructions about how to file an appeal (such as in the situation where there is an unreasonable delay by the local waiver agency in starting your services). In these situations, please contact PHLP's Helpline (1-800-274-3258) for advice.

All appeals regarding waiver services are heard through the Department of Human Services (formerly the Department of Public Welfare) Fair Hearing process. After you file your appeal, you will be contacted by the Bureau of Hearings & Appeals (BHA) and scheduled for a Fair Hearing either in-person or by telephone depending on what you requested when you filed your appeal. BHA has 90 days from the date you requested an appeal to hold a hearing and make their decision, so a hearing may not be scheduled right away.

Once a hearing is scheduled, you will be mailed a notice telling you of the date and time of the hearing. **You need to respond to the notice to let BHA know if you are available on that day or not and if you still want to have a telephone or in-person hearing.** You can change how the appeal is done, so if you first requested a telephone hearing and you later decide you want to change it to an in-person hearing (or vice versa), you can note the change when responding to the notice of hearing date and time.

Pre-Hearing Conference

You have a right to a pre-hearing conference with the agency who made the decision that you are appealing. This is a way for you and the CAO or local agency to try and resolve the issue being appealed before going to the Fair Hearing. **You can ask for a pre-hearing conference when you file your appeal.** If the issue is not resolved at the pre-hearing conference, then you go forward with Fair Hearing process. You do not have to request a pre-hearing conference before having the Fair Hearing, but sometimes it's a good idea to see if the situation can be resolved more quickly and a Fair Hearing can be avoided.

Fair Hearing Process

At the Fair Hearing, an Administrative Law Judge (ALJ) will review the case and will issue a decision about whether to uphold or to overturn the decision being appealed. The ALJ usually does not make a decision at the Fair Hearing. Instead, you will receive the hearing decision by mail in the weeks following the hearing.

The Fair Hearing is tape-recorded. The ALJ listens to both sides and can ask questions of both sides. You can represent yourself or have a representative (such as an attorney, family member, friend or other advocate) at the hearing with you. You can have witnesses (such as your doctor) attend in person or by phone to testify in support of your case. You can present the reasons why you disagree with the decision and you can present documents or other information to the ALJ that support your case.

If the ALJ upholds the original decision, you can request Reconsideration from the Secretary of the Department of Human Services (instructions for doing this will be included in the ALJ's decision letter). If you are unsuccessful at that level, you can appeal further to the Commonwealth Court.

Requesting an appeal and going to a Fair Hearing can seem an intimidating process to many people, but it may be worth it to get a good result and have the initial decision changed. If you have questions about filing an appeal or about the Fair Hearing process, or if you want representation in your appeal, please call the Pennsylvania Health Law Project's Helpline at 1-800-274-3258.