

111 CMR: MASSACHUSETTS COMMISSION FOR THE BLIND

111 CMR 1.00: CASE CONFERENCE, ADMINISTRATIVE REVIEW AND FAIR HEARING

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1.01: Statement of Purpose

The purpose of 111 CMR 1.00 is to provide an orderly system for review of agency action where applicants for or recipients of services are dissatisfied with delivery or denial of such services by the Commission for the Blind. 111 CMR 1.00 permits an individual dissatisfied with agency action to participate in a Case Conference, Administrative Review, Fair Hearing and, solely in the case of licensees or applicants of the Vending Facility Program described at 111 CMR 3.00, to participate in an arbitration under certain circumstances.

1.02: Definitions

Administrative Review. A review by a three member panel designated by the Commissioner to assess the correctness of agency action with the ultimate purpose of reversing, modifying or upholding such action.

Administrative Review Panel. The three persons designated by the Commissioner to hold an Administrative Review.

Advisory Board. The Advisory Board of the Commission as set up under M.G.L. c. 6, § 129, also referred to as the Statutory Advisory Board.

Agency Action. Any decision made by an employee of the Commission which affects an individual's eligibility for services from the Commission or the manner of delivery of services to a Commission consumer in any federal, state or combined federal-state program administered by the Commission.

Assistant Commissioner. The Assistant Commissioner for Policy Development at the Commission for the Blind.

Authorized Representative. An attorney, legal guardian or other person authorized by a party to represent him or her in a proceeding described by 111 CMR 1.00.

Case Conference. Refers to the first step in the administrative review process, and involves convening the complainant, his or her authorized representative, if any, the employee whose action is contested and such employee's supervisor(s) with the ultimate purpose of identifying, clarifying or resolving the matter for which review is sought.

Commission. The Massachusetts Commission for the Blind.

Commissioner. The Commissioner of the Massachusetts Commission for the Blind.

Complainant. The consumer contesting the action or failure to act of the Commission.

Consumer. An individual receiving and/or applying to receive services from the Commission.

1.02: continued

Fair Hearing. An adjudicatory appeal of an Administrative Review decision before the Statutory Advisory Board or before an Impartial Hearing Officer with the ultimate purpose of reversing, modifying or upholding the Administrative Review Panel's decision.

Impartial Hearing Officer. An individual who is assigned to conduct a Fair Hearing for a complainant who is receiving or seeking services from the Commission's vocational rehabilitation program or independent living program, provided that the individual assigned shall:

- (a) have knowledge of the delivery of vocational rehabilitation services, the Commission's state plans for vocational rehabilitation and independent living services, the federal and state rules governing such services, and training with respect to performing the official duties of a hearing officer;
- (b) not have been involved in previous decisions regarding independent living services, or the vocational rehabilitation of the consumer who has requested the appeal;
- (c) have no personal or financial interest that would be in conflict with the hearing officer's objectivity;
- (d) not be an employee of the Commission, except that payment by the Commission solely for services as a hearing officer shall not constitute employment by the Commission for the purposes of determining the individual's impartiality or status as "employee";
- (e) not be a member of the State Rehabilitation Advisory Council or the Independent Living Council; and
- (f) be selected from among a pool of qualified individuals who have been identified jointly by the Commission and the state Rehabilitation Advisory Council.

Independent Hearing Officer. An impartial hearing officer.

Presiding Officer. In a Case Conference, the senior-most Commission employee present or his or her designee; in an Administrative Review, the Assistant Commissioner or his or her designee; in a Fair Hearing, the Commissioner or Impartial Hearing Officer, as the case may be; in an Arbitration, the Arbitrator identified by the Arbitrators initially chosen by the consumer and Commission.

Proceedings. Case Conference, Administrative Review, Fair Hearing or Arbitration as described in 111 CMR 1.00.

1.03: General Terms and Conditions

- (1) (a) All information which is relevant to the matter under consideration shall be allowed to be presented at the Case Conference, Administrative Review, Fair Hearing and Arbitration. All evidence, including any records, investigative reports, documents and stipulations to be relied upon in making a decision must be offered and made part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.
- (b) The rules of evidence observed by courts do not apply to these proceedings, but the presiding officer shall observe the rules of privilege recognized by law. The presiding officer shall consider only evidence and testimony which is pertinent and the kinds of evidence upon which reasonable persons are accustomed to relying in the conduct of serious affairs.
- (c) The presiding officer shall exclude unduly repetitious or irrelevant evidence.
- (d) Materials submitted to the presiding officer shall be shared with the parties.
- (e) Proposed and final decisions at every step of the review process shall be based upon substantial evidence.
- (f) The weight attached to any evidence rests within the sound discretion of the presiding officer or panel, as the case may be. The presiding officer may in any case require either party to submit additional evidence on any matter relevant to the proceeding, with appropriate notice to the other party.

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(g) With regard to Fair Hearings associated with vocational rehabilitation or independent living services, the Commissioner may not overturn or modify a proposed decision of an independent hearing officer which proposed decision supports the consumer's position or any part of such a decision unless the Commissioner concludes, based on clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law, including Commission regulations and policies.

(2) The fact that a request for a Case Conference, Administrative Review or Fair Hearing has been filed does not prohibit the parties from making an adjustment in the matters at issue prior to a proceeding. If, as a result of an adjustment, the consumer is satisfied and wishes to withdraw all or part of his or her petition for a Fair Hearing, she or he or the authorized representative shall transmit to the Assistant Commissioner his signed, written withdrawal. However, neither the employee nor the Assistant Commissioner may delay or cancel a Case Conference, Administrative Review or Fair Hearing because of a possible adjustment that is under consideration unless the consumer requests a delay or cancellation.

(3) The provisions of 111 CMR 1.00 and the various applications thereof are severable. If any provision of 111 CMR 1.00 or the application thereof is held to be invalid, such invalidity shall not affect other provisions or their application where not specifically held invalid.

(4) 111 CMR 1.00 supersedes any and all prior regulations in effect at the time of its promulgation to the extent provisions for Case Conference, Administrative Review or Fair Hearing are contained therein.

(5) If the complainant fails to appear at a proceeding, the presiding officer shall notify the complainant in writing that if he or she fails to request a rescheduled hearing and show good cause for the failure to appear within ten days of the notice, the request for case conference, administrative review or fair hearing shall be deemed abandoned. If the presiding officer concludes that the request for a rescheduled hearing does not constitute good cause, the request shall be denied. When such request is denied, the complainant shall have the right to a hearing on the issue of good cause. If the request is approved, the requesting party will be required to establish at the rescheduled hearing good cause for the prior nonappearance. A finding by the presiding officer that good cause has not been shown shall result in dismissal of the matter.

(6) Notice of actions and other communications shall be presumed received upon the day of hand delivery or if mailed, three days after deposit in the U.S. mails.

(7) Unless otherwise specifically provided by law, computation of any time period referred to in 111 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Commission is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Commission is closed shall be excluded in computation.

(8) It shall be within the discretion of the presiding officer, or in the case of a case conference not yet convened, in the discretion of the Assistant Commissioner, for good cause shown, to extend any time limit contained in 111 CMR 1.00 consistent with applicable state or federal law or regulation. All requests for extensions of time shall be made by written request before the expiration of the original or previously extended time period. The filing of such request in writing shall toll the time period sought to be extended until the presiding officer or Assistant Commissioner acts on the request. 111 CMR 1.03(8) shall not apply to any limitation of time prescribed by federal or state law.

(9) Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The presiding officer shall ensure that the conduct of the parties will at all times be orderly.

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- (10) On request, access to effective communication will be provided through provision of auxiliary aids and services consistent with federal and state requirements.
- (11) 111 CMR 1.00 shall be construed to secure a just and speedy determination in every proceeding.

1.04: Continuation of Services or Benefits Pending Review

- (1) Unless the complainant so requests, or, in an appropriate case, a parent, family member, guardian, advocate or authorized representative of such complainant so requests, pending a final determination under 111 CMR 1.00, the Commission shall not institute a suspension, reduction or termination of services being provided under the individualized written rehabilitation program, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct by or on behalf of the complainant.
- (2) With regard to medical assistance:
 - (a) If the Commission receives the request within the timely notice period, assistance shall be continued until the final administrative decision is rendered. If medical assistance has been terminated or reduced prior to a timely request for a hearing, such assistance shall be reinstated.
 - (b) If a change affecting the recipient's medical assistance occurs while the case conference resolution or hearing decision is pending, the Commission shall take appropriate action to implement the subsequent change affecting medical assistance, subject to advance notice requirements and the right to assistance pending a hearing decision.
 - (c) Medical assistance pending a hearing shall not be granted if the Commission has granted assistance on a presumption of eligibility and subsequently determines that the recipient is ineligible, and said determination is the subject of a hearing request.
 - (d) Medical assistance continued pending review in accordance with 111 CMR 1.04(2)(a) and (b) is subject to recoupment by the Commonwealth.

1.05: Participants and Roles

- (1) The consumer and/or authorized representative and the employee and his or her supervisor(s) shall participate in these proceedings.
- (2) The form, duration and extent of participation of other persons is within the discretion of the presiding officer in the interests of achieving timely and fair resolution of the issue or issues in dispute.
- (3) Role of Consumer.
 - (a) The consumer may present his or her own case or may be assisted by an authorized representative.
 - (b) The consumer should be prepared to briefly explain what he or she seeks from the Commission and to offer relevant information.
 - (c) The consumer may make a presentation orally or otherwise and present relevant documents and papers to the presiding officer.
- (4) Role of Employees.
 - (a) The employee whose action or inaction is the subject of the proceeding or his or her supervisor shall present the Commission's case and is responsible for:
 - 1. making an adequate investigation before reaching a decision about eligibility or the provision of services;
 - 2. briefly explaining the decision, action or inaction of the Commission in the complainant's case;
 - 3. ensuring that the case record is available to the presiding officer, as appropriate.
 - (b) The supervisor is responsible for explaining Commission procedures or other matters relevant to the complainant's case.

1.05: continued

(5) Role of Presiding Officer.

(a) The presiding officer is responsible for considering the information presented, defining the issues and reaching a decision to resolve the matter in accordance with relevant law including Commission regulations, and relevant policy including Commission guidelines.

(b) The presiding officer shall:

1. schedule a time or times for reviewing the case;
2. define the issues;
3. receive and consider all relevant evidence and exclude irrelevant evidence;
4. ensure a brief and orderly presentation of the issues and evidence when a meeting of the parties is convened;
5. secure statements, documents and appropriate information relevant to the issues in the proceeding.

1.06: Case Conference

(1) An applicant for or recipient of services from the Commission who is dissatisfied with any specific decision of the Commission with regard to the furnishing or denial of services under any of the programs administered by the Commission may file a request for review and redetermination of that decision by letter addressed to the Assistant Commissioner no later than 30 days after receipt of written or oral notice of that decision.

(2) The letter shall contain the:

- (a) Name, address and telephone number of the person seeking review;
- (b) Specific service claimed to have been denied or furnished in an unsatisfactory manner;
- (c) Name of the Commission employee directly responsible for the decision being grieved; and
- (d) Signature of the individual seeking review or of that person's authorized representative.

(3) When an individual is represented by another party, the letter shall be accompanied by a written statement signed by the complainant identifying the representative and authorizing the Commission to receive all information from relevant entities and to release all information in its possession which relates to the individual requesting the review. No information shall be disclosed by the Commission without such authorization.

(4) Within 15 calendar days of receipt of a request for Case Conference or Administrative Review consistent with 111 CMR 1.06(2), the Assistant Commissioner shall convene a Case Conference which shall include the individual, his or her authorized representative, if any, the employee whose action is contested and the employee's supervisor(s).

(5) The purpose of the Case Conference shall be identification of the area of the individual's dissatisfaction, clarification of the employee's position, and creation of an opportunity for the parties to identify a mutually satisfactory course of action for the delivery of services, or, in the alternative, to provide a clear picture of the matter for which further review is sought.

(6) Failure of a complainant to appear at a Case Conference shall result in waiver of the right to seek Administrative Review and termination of the Administrative Review process.

1.07: Administrative Review

(1) Within 15 days of the completion of the Case Conference, the Assistant Commissioner shall schedule an Administrative Review by convening a three member panel appointed by the Commissioner whose members have not taken direct part in the action under consideration, one of whom, whenever possible, shall be the Assistant Commissioner who shall serve as Panel chairperson.

(2) The complainant and/or his or her personal representative and the Commission's employees shall be entitled to appear and present relevant information orally or in writing, examine witnesses and present arguments relevant to matters under review.

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- (3) Within ten days of termination of the Administrative Review, the Assistant Commissioner shall issue the decision of the Panel including therewith any relevant determination of fact and application of law or policy considered in the ultimate decision of the Review Panel.
- (4) As part of the decision letter, the Assistant Commissioner shall include a copy of the Commission regulations for Fair Hearings and a statement explaining the complainant's right to appeal the Panel's decision by requesting the same in writing within 30 days of the mailing of the final decision of the Administrative Review Panel.
- (5) If the complainant does not appeal the decision within 30 days, it shall become final, and the appropriate employee(s) shall initiate its implementation.

1.08: Fair Hearing

- (1) A complainant who is dissatisfied with the decision of the Administrative Review Panel and files an appeal from that Panel's decision within 30 days from the date of the mailing of that decision to him or her shall be entitled to a Fair Hearing before the Advisory Board and Commissioner, unless the decision involves the Commission's vocational rehabilitation program or independent living program in which case the complainant shall be entitled to a Fair Hearing before an Independent Hearing Officer. Failure to apply for a Fair Hearing within 30 days of the mailing of the decision of the Administrative Review Panel shall make such decision final and binding.
- (2) Within ten days of receipt of a request for a Fair Hearing, the Assistant Commissioner shall mail written notice to the complainant of the time and place of such hearing, at least 30 days in advance of such hearing. The Assistant Commissioner shall also inform appropriate employees of the request for a Fair Hearing, its time and place and the need or opportunity for their attendance.
- (3) Notice to the complainant referenced at 111 CMR 1.06(2) shall inform him or her of the right to be represented at the hearing by counsel or by other authorized representative if the individual so desires, and shall indicate that the Commission will not be responsible for any costs incurred pursuant to the individual's appeal including, without limitation, attorneys fees.
- (4) The Assistant Commissioner shall schedule the Fair Hearing before members of the Advisory Board at its regularly scheduled monthly meeting. Only Advisory Board members who have not taken part in the matter under consideration may participate in the Fair Hearing. In matters involving the vocational rehabilitation or independent living program, the Assistant Commissioner shall schedule the Fair Hearing before an Independent Hearing Officer.
- (5) The complainant and/or his or her personal representative and Commission employees shall be entitled to appear and present relevant information orally or in writing, examine witnesses and present arguments relevant to matters under review.
- (6) Authority to make final decisions based upon the record shall be exercised solely by the Commissioner. Where an Independent Hearing Officer has heard a case involving the vocational rehabilitation or independent living program, the Commissioner may not overturn or modify such Hearing Officer's decision, or part of such decision, that supports the position of the complainant unless the Commissioner concludes, based on clear and convincing evidence, that such decision is clearly erroneous on the basis of being contrary to federal or state law, including policy.
- (7) The verbatim transcript of the testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and reports filed in the proceedings, and the recommendation of the Advisory Board or Independent Hearing Officer shall constitute the exclusive record for a decision and shall be available to the complainant within a reasonable period of time.

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1.08: continued

(8) A final decision shall be made in writing by the Commissioner and shall include a full report of the findings and the grounds for such decision. The Commissioner shall provide a copy of such decision to the complainant within 30 days after the close of hearing. Where a hearing has been re-opened to receive new evidence, a decision shall be rendered within 30 days after the close of the additional session.

1.09: Judicial Review

If the complainant is aggrieved by the Fair Hearing decision, he or she may exercise the right of judicial review in accordance with M.G.L. c. 30A. If the complainant wishes to have judicial review, he or she must file a complaint with the Superior Court in the county where he or she resides or has his or her principal place of business, or in Suffolk County within 30 days after receipt of the Fair Hearing decision. Complainant will be responsible for payment of any court charges and legal fees involved in the judicial review. The Commission shall notify the complainant and his or her authorized representative of this right to seek judicial review and of the time limits for seeking said review.

1.10: Vending Facility Program

Any licensee or program applicant dissatisfied with the results of his or her Fair Hearing regarding matters pursuant to the Vending Facility Program as described at 111 CMR 3.00 may either seek judicial review as described at 111 CMR 1.07 or, if the vending facility is subject to the Randolph Shepard Act 20 U.S.C. c. 6a, § 107, request that an ad hoc arbitration panel be convened under 34 CFR Part 395.13.

REGULATORY AUTHORITY

111 CMR 1.00: M.G.L. c. 6, § 131J; 29 U.S.C. 721, 722(d); 20 U.S.C. c. 6a, § 107.

NON-TEXT PAGE