

651 CMR: DEPARTMENT OF ELDER AFFAIRS

651 CMR 1.00: ADJUDICATORY RULES OF PRACTICE AND PROCEDURE

Section

- 1.01: Scope
- 1.02: Construction
- 1.03: Purpose
- 1.04: Definitions
- 1.05: Time
- 1.06: Initiation of a Request for Review
- 1.07: Initiation of Appeal of a Review Decision
- 1.08: Provision of Services Pending Reviews and Appeals
- 1.09: Dismissals of Appeals
- 1.10: Summary Decision of Appeals
- 1.11: Post Decision Process
- 1.12: Extension of Time
- 1.13: Miscellaneous

1.01: Scope

651 CMR 1.00 is supplementary to the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01, 1.02, 1.03, and in particular to 801 CMR 1.02: *Informal/Fair Hearing Rules*, and 801 CMR 1.03: *Miscellaneous Provisions Applicable to All Adjudicatory Proceedings*.

1.02: Construction

651 CMR 1.00 shall govern whenever there is a conflict or inconsistency with 801 CMR 1.00.

1.03: Purpose

651 CMR 1.00 is intended to be applicable to cases involving the Denial, Termination, or Reduction of Home Care Program Services and any other matter as to which Elder Affairs grants an Appeal or requires a Review and designates 651 CMR 1.00 as applicable.

1.04: Definitions

For the purposes of 651 CMR 1.00, and as a supplement to the definitions in 651 CMR 3.01(2), these terms shall have the following meanings:

Appeal means a process initiated by a Client's or Applicant's claim that a Review decision by an ASAP's Internal Case Review Committee is contrary to 651 CMR 3.00 *et seq.*, which is submitted to Elder Affairs and is resolved by a decision of a Hearings Officer, pursuant to 651 CMR 1.00, 651 CMR 3.03(9), 651 CMR 3.03(10), and 651 CMR 3.00 generally.

ASAP means Aging Services Access Point, as defined in 651 CMR 3.01(2).

Denial means an ASAP's determination made pursuant to 651 CMR 3.03 that an Applicant, as defined in 651 CMR 3.01, is ineligible for Home Care Program Services, as defined in 651 CMR 3.01(2). It shall be deemed a Denial where an Applicant who has been determined to be eligible for Home Care Program Services is not provided with such Services due to the unavailability of funds as described in 651 CMR 3.05(1).

Elder Affairs means the Executive Office of Elder Affairs of the Commonwealth of Massachusetts.

Hearings Officer means the presiding officer, as described in 801 CMR 1.02(10), designated by the Secretary to conduct, schedule, and hold hearings on Appeals, rule on motions, and render decisions on Appeals.

1.04: continued

Reduction means an action of an ASAP which results in a decrease in the number of hours of Home Care Program Service(s) received by a Client, or a change in type of Home Care Program Services which results in a decrease in the number of hours of Home Care Program Service(s) received by a Client, or a change in type of Home Care Program Service where the new Service is not substantially similar to the old Service. Unfilled but authorized Home Care Program Service hours due to a temporary lack of provider availability shall not be deemed a Reduction for purposes of an appeal, as set forth in 651 CMR 3.03(9). A change in service plan due to unavailability of funding as described in 651 CMR 3.05(1) shall be deemed a Reduction for purposes of 651 CMR 3.03(9).

Review means a process initiated by a Client's claim that an action or decision of an ASAP is contrary to regulations. Such claim is addressed by a decision of the Internal Case Review Committee in accordance with 651 CMR 1.06 and may be the subject of an Appeal in accordance with 651 CMR 1.07 if the decision on Review is adverse to the Client.

Substantial Evidence means any evidence on which a reasonable person might, but not necessarily must or will, rely in making a decision or in coming to a conclusion.

Summary Decision means a decision by the Hearings Officer on an Appeal as to all or part of a matter, based on written materials submitted by an Applicant or a Client, the ASAP, or Elder Affairs, if there is no genuine issue as to any material fact.

Termination means the cessation of all Home Care Program Services to a Client, by an ASAP, which results in the closing of a case. For purposes of an appeal, as set forth in 651 CMR 3.03(9), a cessation of Home Care Program Services due to the unavailability of funding, as described in 651 CMR 3.05(1), shall be deemed to be a Termination.

1.05: Time

Notice of actions and other communications from Elder Affairs or ASAP shall be deemed received on the day of hand-delivery, or if mailed three days after deposit in the U.S. mail, except as otherwise provided in 651 CMR 1.00 pursuant to Federal regulations.

1.06: Initiation of a Request for Review

(1) The notice of action regarding a reduction or termination shall provide a period of at least 14 calendar days during which services to the Client shall continue prior to the effective date of the Termination of services as set forth in 651 CMR 1.08(2), or Reduction of services as set forth in 651 CMR 1.08(4). An Applicant or Client may request a Review of an action by an ASAP to deny, reduce, or terminate Home Care Program Services by filing a request for Review with the ASAP within 14 calendar days following his/her receipt of the ASAP's notice of action. Such Review shall be conducted by the ASAP's Internal Case Review Committee.

(2) When an ASAP is notified by an Applicant or Client of a request for Review, the ASAP shall within seven calendar days grant such request and notify the Applicant or Client in writing of the time, date, and location of the Review meeting. Such Review meeting shall be held within 21 calendar days of receipt of the request for Review.

(3) The Applicant or Client, or his/her representative, shall participate in the Review in person or by telephone and shall be strongly encouraged to present all evidence favorable to the Applicant or Client to the Internal Case Review Committee.

(4) At the Review meeting, the parties shall consider information presented by the Applicant or Client including the person's need for Home Care Program Services, Respite Care Services and the ASAP shall fully and clearly explain the reason(s) for the action(s) at issue.

(5) The ASAP shall present information to the Applicant or Client on alternative services which are available in the community and shall take appropriate steps to assist the Applicant or Client in gaining access to such services.

1.06: continued

(6) Within seven calendar days after the meeting, the Internal Case Review Committee shall issue a decision which shall briefly state the relevant facts, the applicable regulation(s), and its conclusions. A copy of the decision shall be forwarded to the Applicant or Client.

1.07: Initiation of Appeal of a Review Decision

(1) An Applicant or Client who disagrees with the decision of the Internal Case Review Committee pursuant to 651 CMR 1.06(6) may Appeal the action of the ASAP by filing a written Appeal with Elder Affairs within 14 calendar days after receipt of the Internal Case Review Committee's decision.

(2) Within seven calendar days of receipt of the Appeal, Elder Affairs shall mail a notice of receipt of the Appeal to the ASAP and to the Applicant or Client.

(3) When the ASAP is notified by Elder Affairs of an Applicant's or Client's Appeal of the Internal Case Review Committee's decision, the ASAP shall within seven calendar days, mail to Elder Affairs a copy of the Review decision, a copy of any written materials which were considered by the Internal Case Review Committee in arriving at its decision, and, where relevant, a copy of the Applicant's or Client's most recent Long Term Care Assessment and Progress Notes.

(4) Elder Affairs shall contact the Applicant or Client and ASAP within 30 calendar days of Elder Affairs' receipt of the Appeal request to offer the Applicant or Client and ASAP a hearing date, where appropriate.

(5) The Hearings Officer or Elder Affairs may, upon a showing of good cause, extend the time period for scheduling or holding a hearing. Notwithstanding the provisions of 801 CMR 1.02(4)(d) and the provisions of 651 CMR 1.12, all requests for such extensions of time shall be made orally or in writing before the expiration of the original or previously extended time period.

(6) If the action being Appealed involves a novel question of interpretation of M.G.L. c. 19A or 651 CMR 3.00 *et seq.*, such question shall be submitted by the Hearings Officer to Elder Affairs for an opinion. Said opinion shall be followed by the Hearings Officer in rendering a decision on the Appeal.

(7) The Hearings Officer's decision shall be rendered within 60 days after the hearing date, unless extraordinary intervening events occur which necessitate an extension of time up to 90 days after the hearing date.

(8) Upon Elder Affairs' receipt of the Hearings Officer's decision, Elder Affairs shall forward a copy of the decision to the ASAP and Applicant or Client and shall inform him/her of his/her rights to further Appeal the matter as set forth in 651 CMR 1.11.

1.08: Provision of Services Pending Reviews and Appeals

(1) Denials. When an Applicant files a request for Review during the 14 calendar day Appeal period from a ASAP decision to Deny Home Care Program Services such Services shall not be provided to the Applicant until a Review or Appeals decision is rendered which is favorable to the Applicant. If the Applicant is determined to be eligible as the result of such Review or Appeals decision, the ASAP shall initiate provision of the appropriate services as soon as possible following notification to all parties of such final adjudicatory decision.

(2) Terminations.

(a) A Client who files a timely request for Review of an ASAP decision to Terminate Home Care Program Services shall continue to receive such Services at the level in effect prior to the ASAP's decision until the occurrence of any of the following events:

1. The Client does not file a timely request for Appeal of a Review decision of the Internal Case Review Committee which Terminates Home Care Program Services; or
2. The Hearings Officer on Appeal upholds the decision of the Internal Case Review Committee to terminate Home Care Program Services; or

1.08: continued

3. The Appeal is dismissed pursuant to 651 CMR 1.09.

(b) If the decision of the Internal Case Review Committee or Hearings Officer is favorable to the Client, Services shall be continued in accordance with the decision. If the decision of the Internal Case Review Committee is unfavorable to the Client, and is not timely Appealed, Services shall be Terminated following the expiration of the Client's 14 calendar day Appeal period to Elder Affairs, or as soon as possible thereafter. If the decision of the Hearings Officer is unfavorable to the Client, Services shall be terminated effective on the date of receipt by the Client and ASAP of such decision, or as soon as possible thereafter, regardless of the further Appeal of such decision by the Client pursuant to 651 CMR 1.11.

(3) Terminations: Exceptions. Notwithstanding the provisions of 651 CMR 1.08(2), a Client who files a timely request for Review of an ASAP decision to Terminate Home Care Program Services shall continue to receive such Services at the level in effect prior to the ASAP's decision only during the 14 calendar day request for Review period, at the end of which Services shall be Terminated, in the following circumstances:

(a) Termination of Home Care Program Services due to the unavailability of funds as defined in 651 CMR 3.05(1); or

(b) Termination of Home Care Program Services based the determination of an ASAP that the Services authorized and/or arranged are deemed inappropriate to safely maintain a Client in his/her home.

(4) Reductions. A Client who files a timely request for Review of an ASAP decision to Reduce Home Care Program Services, including but not limited to an ASAP decision to reduce Services due to unavailability of funding as described in 651 CMR 3.05(1), shall continue to receive such Services at the level in effect prior to the ASAP's decision only during the 14 calendar day request for Review period. Such Services shall be reduced to the level set forth in the ASAP notice of action to the Client following such 14 calendar day request for Review period. If the decision of the Internal Case Review Committee or Hearing Officer is favorable to the Client, Services shall be resumed at the previous level in accordance with such decision. If the decision is unfavorable to the Client, Services shall continue at the reduced level pending the Client's next Reassessment.

1.09: Dismissal of Appeals

(1) Notwithstanding the provisions set forth in 801 CMR 1.02(10)(e), the Hearings Officer or Elder Affairs may dismiss an Appeal upon the second occurrence of either or the occurrence of both of the following:

(a) An Applicant's or Client's cancellation of the hearing date; or

(b) An Applicant's or Client's failure to appear at a scheduled hearing.

(2) Notice of such dismissal, including an explanation of the manner in which such dismissal may be vacated, shall be mailed to the Applicant or Client and to the ASAP within seven calendar days following said second event.

(3) Once an Appeal has been dismissed pursuant to 651 CMR 1.09 or pursuant to 801 CMR 1.02(10)(e), the ASAP's decision to Deny or Reduce Home Care Program Services remains effective. In an Appeal of a decision to Terminate Services, the ASAP shall Terminate Services as soon as possible following receipt of the written notice of dismissal by the ASAP and the Applicant or Client.

(4) An Applicant or Client may make a written request to Elder Affairs or the Hearings Officer to vacate the dismissal within seven calendar days of receipt of the notice of dismissal. The Hearings Officer or Elder Affairs, upon the showing of good cause, may vacate such dismissal and establish a new hearing date.

(5) In an Appeal of a decision to Terminate Services, if the dismissal is vacated pursuant to 651 CMR 1.09 or pursuant to 801 CMR 1.02(10)(e), Services shall be reinstated at the level in effect prior to such dismissal if the Client had a right to such Services under 651 CMR 1.08(2), (3), or (4) pending Appeal.

1.10: Summary Decision of Appeals

- (1) In addition to the provisions of 801 CMR 1.02(7), any party may make a written request to Elder Affairs for a Summary Decision of an Appeal in his or her favor as to all or part of a matter. Summary Decisions are available in matters where no dispute exists between the parties over the material facts. Such request may be made at any time following the filing of an Appeal by the Applicant or Client but prior to the hearing of such Appeal.
- (2) The Hearings Officer may initiate a Summary Decision as to all or part of a matter, whenever in his or her opinion, the record before him or her indicates that no genuine issue of material fact exists in the matter and that a Summary Decision is appropriate as a matter of law. Whenever the Hearings Officer initiates such an inquiry, he or she shall notify Elder Affairs of such fact.
- (3) The Hearings Officer shall consider a recommendation by Elder Affairs in determining whether or not a case is appropriate for Summary Decision.
- (4) Within seven calendar days of Elder Affairs' receipt of a request for a Summary Decision by a party or of a notice of initiation of Summary Decision by the Hearings Officer, Elder Affairs shall acknowledge to both parties and to the Hearings Officer the receipt of such request or notice. Elder Affairs shall also, within seven calendar days of such request or notice, request that the ASAP prepare a written statement setting forth the material facts upon which the action was based and stating that no dispute exists as to any material facts in the matter and that all material facts are set forth in the written statement. Said written statement shall be signed by the ASAP Case Manager and be forwarded to Elder Affairs and to the Applicant or Client within 14 calendar days of the ASAP's receipt of notice of the request for a Summary Decision. The Applicant or Client shall be given seven calendar days to review the written statements and to respond to Elder Affairs.
- (5) If the Applicant or Client agrees with the statements as set forth in the written statement, he or she may sign the written statement and send it to Elder Affairs within seven calendar days.
- (6) If the Applicant or Client disagrees in whole or in part with the written statement as prepared by the ASAP, the Applicant or Client may either:
 - (a) take no action and not sign the written statement; or
 - (b) make corrections and then sign the corrected written statement and send it to Elder Affairs. Upon receiving a corrected written statement, Elder Affairs shall review such written statement and may, in its discretion forward it to the ASAP. Within four calendar days following receipt of said written statement, the ASP shall notify Elder Affairs of whether or not it disputes said corrected written statement. If there is no dispute, Elder Affairs shall then submit the case for Summary Decision.
- (7) A case, in whole or in part, shall not be heard as a Summary Decision if the Applicant or Client:
 - (a) notifies Elder Affairs during the seven calendar day period following receipt of the written statement of facts as prepared by the ASAP, that he/she objects to such written statement of facts and offers no corrected written statement, or
 - (b) remains silent during such seven calendar day period, or
 - (c) submits to Elder Affairs a corrected written statement after reviewing the statement of facts, but Elder Affairs does not submit the statement to the ASAP or, when submitted, the ASAP disagrees with the said written statement.
- (8) A Summary Decision shall be issued as to all or part of a matter only if the Applicant or Client and the ASAP agree to said statement of facts as appears on the original or corrected written statement.
- (9) The Hearings Officer may grant or deny a written request for a Summary Decision in whole or in part. He or she may issue a Summary Decision without a hearing as to all or part of the matter.
- (10) Such Summary Decision shall be based on a finding that no genuine issue of material facts exists and that a Summary Decision is appropriate as a matter of law.

1.11: Post Decision Process

In place of 801 CMR 1.02(10)(o), the following procedure for appeals is established. If the decision of the hearings officer is adverse to an applicant or client, a copy of the written decision shall be transmitted to the party, together with a notice informing the party of a right to appeal to the Division of Administrative Law Appeals any issues of law which he or she contends have been erroneously decided or that the decision was not supported by substantial evidence as shown in the record. The appeal shall be limited to a review of the contested issues of law or the substantiality of the evidence in the record, and there will not be a *de novo* hearing. Such Appeal must be made in writing and mailed to the Division of Administrative Law Appeals, with a copy to Elder Affairs, within 15 calendar days of receipt of the notice. The Hearings Officer's decision shall remain effective unless and until it is overturned by a decision of the Division of Administrative Law Appeals.

1.12: Extension of Time

Notwithstanding the provisions of 801 CMR 1.02(4)(d), it shall be within the discretion of Elder Affairs or the Hearings Officer, for good cause, to extend any time limit contained in 651 CMR 1.00. All requests for extension of time shall be made in writing, unless otherwise stated, and before the expiration of the original or previously extended time period. The filing of such a request shall cause the time period sought to be extended until Elder Affairs or the Hearings Officer acts on the request.

1.13: Miscellaneous

Notwithstanding the provisions of 801 CMR 1.03(2), 651 CMR 1.00 shall take effect upon publication thereof by the Secretary of the Commonwealth. 651 CMR 1.00 may be cited as Supplementary Adjudicatory Rules of Elder Affairs.

REGULATORY AUTHORITY

651 CMR 1.00: M.G.L. c. 30A, §§ 3 and 9.

(PAGES 11 AND 12 ARE RESERVED FOR FUTURE USE)