



SALISH BHO

GRIEVANCES AND APPEALS POLICIES AND PROCEDURES

Policy Name: FAIR HEARING

Policy Number: 6.04

Reference: 42 CFR 438.10, 42 CFR 438.400; 42 CFR 438.402; 42 CFR 438.404; 42 CFR 438.408; 42 CFR 438.420; 42 CFR 438.424; WAC 182-538D-0675; PIHP and BHSC contract

Effective Date: 8/2004

Revision Date(s): 7/2016; 7/2017; 6/2018; 7/2018

Reviewed Date: 7/2016; 7/2017; 5/2018; 7/2018

Approved by: SBHO Executive Board

CROSS REFERENCES

- Policy: Appeal Process
- Policy: Grievance, Appeal, and Fair Hearing General Requirements
- Policy: Grievance
- Policy: Corrective Action Plan
- Policy: Grievance Oversight and Recordkeeping
- Policy: Notice of Adverse Benefit Determination Requirements

PURPOSE

It is the policy of the Salish Behavioral Health Organization (SBHO) to outline a standardized fair (also known as administrative) hearing process and requirements.

DEFINITIONS

Adverse Benefit Determination (ABD) means, in the case of a behavioral health organization (BHO):

- The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit.
- The reduction, suspension, or termination of a previously authorized service;
- The denial in whole or in part, of payment for a service;
- The failure to provide services in a timely manner, as defined by the state; or

- The failure of a BHO to act within the grievance system timeframes as provided in WAC 182-538D-0660 through 182-538D-0670.

Enrollee: A Medicaid recipient who is enrolled in a Pre-Paid Inpatient Health Plan.

Fair (or Administrative) Hearing means a proceeding before an administrative law judge (ALJ) conducted through the auspices of the state Office of Administrative Hearings in accordance with Washington Administrative Code (WAC) 182-538D-0675. A fair hearing gives an individual an opportunity to be heard in disputes about adverse benefit determinations or a decision of the SBHO to deny or limit authorization of a requested non-Medicaid service communicated on a notice of determination.

The term fair hearing is synonymous with administrative hearing.

Individual means a person who applies for, is eligible for, or receives SBHO-authorized behavioral health services from an agency licensed by the state as a behavioral health agency. For the purposes of accessing the grievance and appeal system, and the Fair Hearing process, when another person is acting on the individual's behalf, the definition of individual also includes any of the following:

- a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;
- b) The individual's legal guardian;
- c) The individual's representative if the individual gives written consent;
- d) The individual's behavioral health provider if the individual gives written consent, except that the behavioral health provider cannot request continuation of benefits on the individual's behalf.

Notice of adverse benefit determination (NOABD) is a written notice the SBHO, typically via CommCare, the subcontracted Administrative Service Organization (ASO), provides to an individual to communicate an adverse benefit determination.

Notice of determination means a written notice that must be provided to an individual to communicate denial or limited authorization of a non-Medicaid service offered by the SBHO, typically via the ASO.

Parties to the fair hearing, as applicable, may include:

- The individual;
- The individual's legal guardian;
- The individual's representative, provider, or Behavioral Health Agency (BHA), as identified with individual's written consent;
- The legal representative of a deceased individual's estate.

PROCEDURE

Right to Request a Fair Hearing

1. Individuals and their representatives with signed consent may request an administrative hearing for the following reasons:

- After an individual receives notice that the SBHO upheld an adverse benefit determination;
 - After a non-Medicaid individual receives an SBHO decision to deny or limit authorization of a requested non-Medicaid service communicated on a notice of determination;
 - If the SBHO does not act within the grievance or appeal process timeframes described in WAC 182-538D-0660 and 182-538D-0670. In this case, the individual is considered to have exhausted the appeal process and has a right to request a fair hearing.
2. An individual must first exhaust the appeal process described in WAC 182-538D-0670 before requesting a fair hearing.
 3. Individuals or their representatives may also request an expedited fair hearing when the individual or representative believes that taking the time for standard resolution would jeopardize the individual's ability to maintain or regain maximum functioning.

Where to Request a fair hearing

Parties may request a fair hearing with the Office of Administrative Hearings (OAH) at 1-800-583-8271.

OAH is part of state government that provides fair hearings to social services provided in Washington State.

For assistance in requesting a fair hearing, parties may contact:

- Ombuds at (360) 692-1582 or toll free at 1- 888- 377-8174; or
- SBHO at (360) 337-7050 or toll free at 1-800-525-5637.

Assistance with a fair hearing

1. Ombuds services are made available to advocate and assist individuals throughout the fair hearing process at no cost.
2. Individuals may have a representative who acts on their behalf in requesting a fair hearing.
3. There will be no retaliation against an individual who requests a fair hearing.
 - Individuals or their representatives may contact the SBHO directly if they experience or have concerns about retaliation.

Timelines to File a Fair Hearing

1. An individual requesting a fair hearing must do so within one of the following timeframes:
 - a) If continued services are not requested, a hearing must be requested within 120 calendar days from the date on the written notice of the resolution received from the BHO at the end of the appeal process or 120 calendar days from the date on the notice of determination.

- b) If continued Medicaid services are requested pending the outcome of the fair hearing, all of the following apply:
 - i. The individual appealed a decision on the NOABD for termination, suspension, or reduction of the individual's behavioral health services;
 - ii. The individual appealed the ABD and the SBHO upheld the ABD; and
 - iii. The individual requests a fair hearing and continued behavioral health services within ten (10) calendar days of the date on the written notice of resolution.
- c) The SBHO is not obligated to continue non-Medicaid services pending the result of a fair hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.
- d) If an individual requests an expedited fair hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution or notice of determination. Subsections b) and c) above in this section apply if continued behavioral health services are requested.

Continuation of Services during a fair hearing Process

1. When the criteria above are met for continued services, the SBHO must continue the individual's behavioral health treatment services during the fair hearing process until one of the following occurs:
 - The individual withdraws the hearing request; or
 - The ALJ issues a hearing decision adverse to the individual.
 - If the fair hearing determination is not in favor of the individual, they may be asked to pay for those services provided.

Offered Resolution

1. The fair hearing process is typically completed within ninety (90) days of the date the appeal was initially filed, excluding any time taken by the individual to file for a fair hearing following receipt of the notice of disposition of appeal.
2. The Department must be responsible for the implementation of the hearing decision, even if the hearing decision is not within the purview of the PIHP contract.
3. The Department will notify the SBHO of hearing determinations. The SBHO must be bound by the hearing determination, whether or not the hearing determination upholds the SBHO's decision.

Reversed Resolution of Appeals

1. If the ALJ reverses a decision to deny, limit, or delay services that were not furnished while an appeal was pending, the SBHO or subcontracted ASO must authorize or provide the disputed services promptly, and as expeditiously as the individual's behavioral health condition requires but no later than 72 hours from the date it receives notice reversing the determination.

2. If the state fair hearing officer reverses a decision to deny authorization of services and the individual received the disputed services while the appeal was pending, the SBHO or network provider must pay for those services.
3. If the state fair hearing officer upholds the SBHO appeal ruling/ action, the SBHO may recover the amount paid for the services provided to the individual while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services and in accordance with 42 CFR 431.230.

Additional Requirements for fair hearings

1. For fair hearings that involve appeals, parties to the fair hearing include the SBHO and the subcontracted ASO, the individual and their advocate (this may include but is not limited to family, friends, Ombuds, behavioral health primary care provider, behavioral health agency, or inpatient facility), or the estate representative of a deceased individual.
2. The SBHO will require this cooperation in policy, contracts, and monitor requirement.
3. All fair hearings are to be logged in the Fair Hearing Log contained within the Grievance System Log All spreadsheet kept electronically by the Grievance Manager (or their back-up when needed) at the SBHO.

MONITORING

This policy is a federal statute and contract mandate.

1. The state fair hearing policy and procedures are routinely monitored through:
 - Tracking SBHO appeals notices and review of notices mailed
 - Closely monitoring appeal requests that the ASO, CommCare, handles on the SBHO's behalf
 - Participation (as a party) in all fair hearings
 - SBHO Grievance & Appeals Reports
 - Quality Management Plan activities
2. If a provider/contractor performs below expected standards during any of the reviews listed above a Corrective Action may be required for SBHO approval.