

# ARTICLE 1.1. APPEAL PROCEDURES FOR APPLICANTS AND RECIPIENTS OF MEDICAID

## Rule 1. Administrative Law Judge Hearings

### 405 IAC 1.1-1-1 Purpose

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 1. (a) It is the purpose of this article to establish a uniform method of administrative adjudication for appeals concerning applicants and recipients of Medicaid, in order to determine whether or not any action complained of was done in accordance with federal and state statutes, regulations, rules, and policies. As used in this article, "policies" includes program manuals, administrative directives, transmittals, and other official written pronouncements of state or federal policy.

(b) This article shall be construed in such a manner as to provide all parties with an adequate opportunity to be heard in accordance with due process of law. As used in this article, "party" means:

- (1) a person to whom the agency action is specifically directed;
- (2) the office of Medicaid policy and planning; or
- (3) the county office of the division of family resources.

A contractor of the office of Medicaid policy and planning may act on behalf of the office for purposes of this article.

(c) In the event that any provision of this article is deemed to be in conflict with any other provision of federal or state statute, regulation, or rule that is specifically applicable to the Medicaid program, then such other statute, regulation, or rule shall supersede that part of this article in which the conflict is found. (*Office of the Secretary of Family and Social Services; 405 IAC 1.1-1-1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3377; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; filed Feb 17, 2012, 10:42 a.m.: 20120314-IR-405110724FRA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA*)

### 405 IAC 1.1-1-2 Standing

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 2. (a) In the event that the rights, duties, obligations, privileges, or other legal relations of any person or entity are required or authorized by law to be determined by the office of Medicaid policy and planning or any county office of family and children, then such person or entity may request, as provided for in section 3 of this rule, an administrative hearing under this article. The person requesting the hearing shall be known as the appellant.

(b) Unless otherwise provided for by law, only those persons or entities, or their respective attorneys at law, whose rights, duties, obligations, privileges, or other legal relations are alleged to have been adversely affected by any action or determination by the office of Medicaid policy and planning or county office of family and children, may request an administrative hearing under this article. Any alleged harm to an appellant must be direct and immediate to the appealing parties and not indirect and general in character. (*Office of the Secretary of Family and Social Services; 405 IAC 1.1-1-2; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3378; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA*)

### 405 IAC 1.1-1-3 Filing an appeal; scheduling appeals

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 3. (a) Any party complaining of an action by the office of Medicaid policy and planning or by the division of family resources action in accordance with section 2 of this rule may file a request for an administrative hearing as provided in this section.

(b) Unless otherwise provided for by statute, regulation, or rule, appeal requests by recipients or applicants shall be filed in

writing with the division of family resources or the office of hearings and appeals of the family and social services administration as provided in the notice of agency action. The appeal request must be received by close of business not later than:

- (1) thirty-three (33) calendar days following the effective date of the action being appealed; or
- (2) thirty-three (33) calendar days from the date of the notice of agency action;

whichever is later. Applicant and recipient appeal hearings shall be conducted at a reasonable time, place, and date.

(c) For purposes of this section, "close of business" means 4:30 p.m., local time, on the business day where the appeal is received. If the thirty-third day is a:

- (1) Saturday;
- (2) Sunday;
- (3) state holiday; or
- (4) day the office in which the act is to be done is closed during regular business hours;

the appeal must be received by the close of business the next business day. An appeal request received after close of business on the thirty-third day is untimely and invalid.

(d) A continuance of a hearing will be granted only for good cause shown. An objection to a request for a continuance shall be considered before a continuance is granted or denied. Requests for a continuance shall be in writing and accompanied by adequate documentation of the reasons for the request. Good cause includes the same factors as cause for a continuance in the Supplemental Security Income program (20 CFR 416.1436):

- (1) inability to attend the hearing because of a serious physical or mental condition;
- (2) incapacitating injury;
- (3) death in the family;
- (4) severe weather conditions making it impossible to travel to the hearing;
- (5) unavailability of a witness and the evidence cannot be obtained otherwise; or
- (6) other reason similar to those listed in this section.

If the appellant is represented by counsel, the request for continuance must also include alternative dates for the scheduling of a new hearing. However, the hearings and appeals section may schedule a new hearing without respect to the requested date if such date cannot be accommodated or confirmed with the requesting attorney within a reasonable time of the request.

(e) The office of hearings and appeals, upon application of any party, or in its own discretion, may consolidate appeals to promote administrative efficiency. Hearings and appeals may consolidate hearings only in cases in which the sole issue involved is one of federal or state law or policy.

(f) Any party filing an appeal under this article is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review prior to the filing of an appeal. Any issues not preserved in a timely manner within the interim review procedures are waived and shall not be an issue during the evidentiary hearing.

(g) The office of hearings and appeals will schedule evidentiary hearings and issue notices to the parties regarding the date, time, and location of the scheduled hearing. (*Office of the Secretary of Family and Social Services; 405 IAC 1.1-1-3; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3378; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; filed Feb 17, 2012, 10:42 a.m.: 20120314-IR-405110724FRA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA*)

#### **405 IAC 1.1-1-4 Conduct and authority of administrative law judge**

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 4. (a) An administrative law judge's (ALJ) conduct shall be in a manner that promotes public confidence in the integrity and impartiality of the administrative hearing process. The ALJ who conducts a hearing is prohibited from:

- (1) consulting any party or party's agent on any fact in issue unless upon notice and opportunity for all parties to participate;
- (2) performing any of the investigative or prosecutorial functions of the agency in the administrative action heard or to be heard by him or her or in a factually related administrative or judicial action;
- (3) being influenced by partisan interests, public clamor, or fear of criticism;
- (4) conveying or permitting others to convey the impression that they are in a special position to influence the ALJ;

- (5) commenting publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or
- (6) engaging in financial or business dealings that tend to:
  - (A) reflect adversely on his or her impartiality;
  - (B) interfere with the proper performance of his or her duties;
  - (C) exploit the ALJ's position; or
  - (D) involve the ALJ in frequent financial business dealings with attorneys or other persons who are likely to come before the ALJ.

(b) An ALJ shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, or in which the ALJ's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision. Nothing in this subsection prohibits a person who is an employee of an agency from serving as an ALJ.

(c) The ALJ shall be authorized to:

- (1) administer oaths and affirmations;
- (2) issue subpoenas;
- (3) rule upon offers of proof;
- (4) receive relevant evidence;
- (5) facilitate discovery in accordance with the Indiana rules of trial procedure;
- (6) regulate the course of the hearing and conduct of the parties;
- (7) hold informal conferences for the settlement or simplification of the issues under appeal;
- (8) dispose of procedural motions and similar matters; and
- (9) exercise such other powers as may be given by the law relating to the Medicaid program.

*(Office of the Secretary of Family and Social Services; 405 IAC 1.1-1-4; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3378; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)*

#### **405 IAC 1.1-1-5 Conduct of hearing**

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 5. (a) The administrative law judge (ALJ) shall conduct the hearing in an informal manner and without recourse to the technical common law rules of evidence.

(b) The ALJ shall exclude from consideration irrelevant, immaterial, or unduly repetitious evidence.

(c) Every party shall have the right to submit evidence. In the event that an objection to evidence is sustained, the party proffering the evidence may make an offer of proof. Each party shall have the right to cross-examine the witnesses and offer rebutting evidence. *(Office of the Secretary of Family and Social Services; 405 IAC 1.1-1-5; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3379; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)*

#### **405 IAC 1.1-1-6 Hearing decision**

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 6. (a) Following the completion of the hearing, or after the submission of briefs by the parties (if briefing is permitted by the ALJ), the administrative law judge shall issue his or her decision in the matter concurrently to the parties. The decision shall be final unless a party requests agency review of the decision in accordance with 405 IAC 1.1-2.

(b) The ALJ's decision shall:

- (1) include findings of fact;
- (2) specify the reasons for the decision; and
- (3) identify the evidence and statutes, regulations, rules, and policies supporting the decision.

(c) The findings of fact need not include a recitation of every piece of evidence admitted in the evidentiary hearing. Rather,

the findings should contain the basic facts that have formed the basis for the ALJ's ultimate decision. The decision must demonstrate a rational connection between the basic facts found by the ALJ and the ALJ's ultimate decision. The ALJ's decision must also cite the relevant laws upon which the ultimate decision is based, and relate the facts to the law. (*Office of the Secretary of Family and Social Services*; 405 IAC 1.1-1-6; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3379; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)

## **Rule 2. Agency Review**

### **405 IAC 1.1-2-1 Conduct of agency review**

Authority: IC 12-15-1-10

Affected: IC 4-21.5-3-33; IC 12-15-28

Sec. 1. (a) Any party who is not satisfied with the decision of the administrative law judge may request agency review of the decision within ten (10) days of receipt thereof in accordance with instructions issued with the decision.

(b) After receiving a request for agency review of a hearing decision, the hearings and appeals section of the family and social services administration shall notify all parties when the decision will be reviewed. The agency review shall be completed by the secretary of the family and social services administration or the secretary's designee. All such reviews shall be conducted upon the record as defined in IC 4-21.5-3-33, except that a transcript of the oral testimony shall not be necessary for review unless a party requests that one be transcribed at the party's expense.

(c) No new evidence will be considered during the agency review; however, any party wishing to submit a memorandum of law, citing evidence in the record, may do so pursuant to instructions issued by the hearings and appeals section of the family and social services administration. (*Office of the Secretary of Family and Social Services*; 405 IAC 1.1-2-1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3379; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)

### **405 IAC 1.1-2-2 Decision on agency review**

Authority: IC 12-15-1-10

Affected: IC 12-15-28

Sec. 2. (a) The secretary of family and social services administration or the secretary's designee shall review the administrative law judge's (ALJ) decision to determine if the decision is supported by the evidence in the record and is in accordance with the statutes, regulations, rules, and policies applicable to the issue under appeal.

(b) Following the review of the secretary or designee, the secretary or designee shall issue a written decision:

- (1) affirming the decision of the ALJ;
- (2) amending or modifying the decision of the ALJ;
- (3) reversing the decision of the ALJ;
- (4) remanding the matter to the ALJ for further specified action; or
- (5) make such other order or determination as is proper on the record.

(c) The parties will be issued a written notice of the action taken as a result of the agency review. If the decision of the ALJ is reversed, amended, or modified, the secretary or designee shall state the reasons for the action in the written decision.

(d) The hearings and appeals section of the family and social services administration shall distribute the written notice on agency review to:

- (1) all parties of record;
- (2) the assistant secretary for office of Medicaid policy and planning;
- (3) the ALJ who rendered the decision following the evidentiary hearing; and
- (4) any other person designated by the secretary or the designee.

(*Office of the Secretary of Family and Social Services*; 405 IAC 1.1-2-2; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3380; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed

*Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)*

### **Rule 3. Judicial Review**

#### **405 IAC 1.1-3-1 Judicial review**

Authority: IC 12-15-1-10

Affected: IC 4-21.5-3-33; IC 4-21.5-5; IC 12-15-28

Sec. 1. (a) If the Medicaid applicant or recipient is not satisfied with the final action after agency review, he or she may file a petition for judicial review in accordance with IC 4-21.5-5.

(b) The Medicaid applicant or recipient is required to seek agency review prior to filing a petition for judicial review.

(c) The record of the administrative proceedings shall be that as defined in IC 4-21.5-3-33. (*Office of the Secretary of Family and Social Services; 405 IAC 1.1-3-1; filed Jul 18, 1996, 3:00 p.m.: 19 IR 3380; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: 20071010-IR-405070311RFA; readopted filed Oct 28, 2013, 3:18 p.m.: 20131127-IR-405130241RFA)*)

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