Have You Been Denied a Benefit?
When to Ask for an Administrative Hearing

by Diane Britt, Advocate, Information and Referral

If you believe that you have been unfairly denied a benefit by a state or federal program or agency, you may ask for a hearing. You may also ask for a hearing if a benefit or service has been reduced or terminated. This includes a cut in food stamps, in Medicaid benefits or services, or in benefits such as home health care supports. It could also be for a cut in Social Security Disability (SSDI) or Supplemental Security Income (SSI) benefits. Or perhaps it is a special education case, where the local school district and the parents disagree about providing certain special education services to the student as part of the IEP (Individualized Education Program) or disagree about whether the student is eligible to receive special education services.

What is an administrative hearing?

An administrative hearing gives you the chance to be heard by an impartial decision maker. The hearing is a way to air and iron out differences between you and a state or federal agency and is your right according to state or federal laws. This kind of hearing is not the same as a court hearing where there is a judge, such as in a probate or criminal court. Instead there is an administrative law judge (ALJ) or a hearing officer who officiates and makes a decision based on the evidence. The ALJ or hearing officer will decide who, either you or the agency, has proved their positions or arguments. Hearings of most state and federal agencies are quite similar.

What are the steps leading up to the hearing and what happens after it's over?

Receiving Notice of Negative Action

The state or federal agency must send written notice to you when a service is denied or when the agency plans to stop or reduce a service. This is called a Notice of Negative Action (or similar title). Keep the envelope that the notice comes in because sometimes the date of the letter and the postmark on the envelope are different. Read this notice carefully. It will explain why you've been denied the service or benefit and will tell you how to appeal. Once you know the reason you've been denied, you will know what evidence you'll need to prove that the decision was wrong.

Requesting a hearing

The notice will normally give deadlines that must be met in order to qualify for a hearing. For example, if you get a letter from an agency that has reduced or denied benefits, the letter will state how much time you have to appeal the decision and ask for a hearing. That might be as few as 10 days or as many as 90 days, depending on the agency's appeal process. (If you are asking for a special education due process hearing, the violation you are alleging about your child's special education services must be one that occurred no more than two years from the date you made the request for hearing.)

The request for hearing should be made in writing. Sometimes there is a specific form to use, such as a Social Security hearing through the Social Security Administration. At other times, a letter from you asking for the hearing is enough to start the hearing process. For example, a "Request for Hearing" form is available when you ask for a hearing with the Michigan Department of Human Services (DHS) or the Department of Community Health (DCH). However, a letter from you requesting a hearing is also acceptable. Keep a copy of your request for hearing for your files.

If you are applying for Medicaid or other benefits available through the Michigan DHS, the hearing is usually held within 60 days of the time you file the request for a hearing. The Michigan DCH and its contract agencies handle their hearings through the DCH Administrative Tribunal. The DCH goal is to schedule administrative hearings within 30 days from the date they receive your request for a hearing. They also try to issue decisions and orders within 30 days from the date of the hearing or from the date the hearing record is closed.

In the Summer 2006 *Exchange* we discussed certain types of hearings that are held in the Social Security Administration (SSA) overpayment process, which is one example of a SSA hearing. Sometimes going through all the stages of the SSA hearing process takes months to years. After an initial application for Social Security benefits—such as for SSI or SSDI benefits—it is not unusual for it to take over a year before the hearing is scheduled.

Preparing for the hearing

All of these hearings will require you to produce evidence. This evidence needs to be something that shows that what you say is correct. The administrative law judge (ALJ) or hearings officer will consider whether—and how much—weight should be given to this evidence. This usually means that you will need to have experts support what you say. The expert may be a physician, a behavioral specialist, or a counselor who knows you (or your child, if this is a special education hearing). The expert's testimony can be in writing or in person at the hearing. You may also want other witnesses who are not necessarily experts but who know you or your child and can tell the ALJ about how you were or would be affected by the loss or denial of a service or benefit.

The written evidence may need to be labeled for easy identification, such as: Parents' Exhibit A. The hearing officer should make certain that the other party has plenty of opportunity to review the evidence. Sometimes this will mean the other party must have the evidence at least five days before the hearing, or they might object to that evidence at the hearing. The evidence should be relevant to the current issue being brought to the hearing. There may be specific requirements related to the evidence you will use, such as giving the agency lists of witnesses or copies of evaluations before the hearing date. Ask about the requirements to assure that you comply with them.

You should get a notification in the mail that tells you the date,

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time, and location of the hearing. If you cannot attend the hearing, you can normally postpone it by contacting the hearing officer or ALJ. The notification will usually say if the hearing will be by phone, by video, or in person. You may ask that the hearing with the ALJ be in person. The notification of the hearing will also tell you about your rights in a hearing. You may represent yourself in the hearing or have an attorney, friend, or some other advocate represent you.

Before the hearing date, you and/or your representative can look at your case file that is kept by the agency. You can get copies of everything in your case file that will be used by the agency at the hearing. This includes your child's school file if the hearing is related to special education. You can also add new information by writing a letter that includes your case number and the date of the hearing.

What to expect at the hearing

Bring at least two copies of everything new you want to be considered in the hearing. One copy is for the ALJ and the other is for the person representing the agency. It is also a good idea to have copies of everything arranged so they are easy to find.

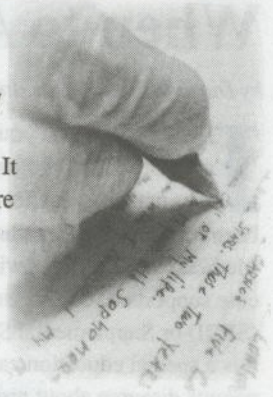
The hearing is usually tape-recorded. It begins with instructions from the ALJ. Each side can make an opening statement. You or your representative will then present your case with records and witnesses. Make sure everything you think is important gets put into the record at the hearing. If it is not, the ALJ will not consider it when making a decision about your case. You may also question the agency's witnesses or records. Both sides are allowed to make closing statements.

Don't try to talk with the ALJ before the hearing, but do get to the hearing on time. Do not interrupt when other people speak in the hearing. Answer all questions as honestly as you can, even if you have to say "I don't know." Stay calm and try not to appear angry.

After the hearing – decision and appeals

The ALJ does not usually give a decision at the end of the hearing; in fact, it may take several months. The ALJ might make a temporary order at the end of the hearing and send the final decision in the mail. If you disagree with the decision, you may appeal. In Medicaid hearings, for example, the appeal must be filed within 30 days from the time you received the final decision. Make sure that you are aware of all the steps available to you in the appeal process. There can be several steps, finally ending in the federal or state courts. You will probably need an attorney to help with any appeals that are heard in court.

This is a summary of the current laws. It is not a substitute for legal advice. For more information you can talk with your lawyer or call Michigan Protection and Advocacy Service at 1.800.288.5923 (toll free) or 1.517.487.1755 (collect).



Looking for an Advocate to Help With Special Education Issues?

by Laurel Isquith, Advocate, Information and Referral

We frequently get calls from parents looking for an advocate to accompany them to an IEPT (Individualized Education Program Team) meeting. We provide parents with information about their child's rights and help them decide how best to meet their child's goals. If more help is needed, we may assign an advocate or refer parents to other agencies that have advocates on staff or as volunteers.

The organizations listed below usually have advocates who can help, although they might not have one for everyone who calls. Some work only on **education problems.** Others may be able to provide advocates for problems such as **treatment planning, juvenile justice problems,** and **accessing services in the community.** Most advocates connected with an organization do not charge for their help, but it is best to ask first.

Association for Children's Mental Health (ACMH)	**888.226.4543**
Autism Society of MI	**800.223.6722**
Citizens Alliance to Uphold Special Education (CAUSE)	**800.221.9105**
Children & Adults with Attention Deficit Disorders (CHADD)	**800.233.4050**
Detroit 360 Project	**888.978.4334**
Learning Disabilities Association	**888.597.7809**
MI Association for Children with Emotional Disorders (MACED)	**248.552.0044**
Student Advocacy Center	**734.222.5443**
UCP of Metropolitan Detroit	**800.827.4843**

Organizations specializing in other types of disabilities may also have advocates or be able to help parents find one. Sometimes, a child's caseworker or therapist can also provide special education advocacy.

Once a meeting has been set, we suggest that parents have only one advocate attend. Parents should talk to the advocate before the meeting to set guidelines. For instance, will the advocate do most of the talking, speak only if a parent becomes upset, or be there primarily as a witness and advisor? What problems does the advocate expect? What should the parents and advocate do if they disagree with each other in the meeting? Should the parents plan to sign the Individualized Education Program (IEP) at the meeting or take it home to review before signing?

Advocates are not usually attorneys, and their authority is no greater than that of a parent. Their greatest strengths are experience, knowledge, and the ability to negotiate. Despite an advocate's abilities, however, his or her presence can sometimes increase tension and defensiveness. Consequently, parents often decide to handle the meeting themselves once they have the necessary information. And that, in the end, is the ultimate goal.