

ABCs of Seeking Judicial Review of a MassHealth Board of Hearings Decision

August 2016

1. Initial filing deadlines

a. Final administrative decision

The decision of the MassHealth Board of Hearings is a final administrative decision absent a request for rehearing. 130 CMR § 610.085.

b. Request for rehearing.

An appellant may make a request for rehearing to the Medicaid Director for “good cause” shown. The request must be received by the Medicaid Director (currently Daniel Tsai, Assistant Secretary of MassHealth) within 14 days of the date of the Hearing Officer’s decision. A request for rehearing stays the time for appeal until the request is denied or until a superseding rehearing decision is issued. G.L. c. 118E, § 47; 130 CMR § 610.091. If benefits are being paid pending appeal, they will continue pending a request for rehearing. When a client was unrepresented at the hearing, a rehearing request is a particularly useful way to raise legal errors, supplement the factual record, and obtain more time to assess the merits of an appeal.¹

c. Complaint for judicial review

A person aggrieved by a final decision of the MassHealth Board of Hearings may file a complaint for judicial review in the Superior Court. G.L. c. 118E § 48, G.L. c. 30A, § 14; 130 CMR 610.092. The complaint must be filed within 30 days after receipt of the final decision of the agency or the denial of a timely request for rehearing. G.L. c. 30A, § 14.

d. Continued benefits pending appeal

If the final agency decision is upholding the termination of benefits, filing a complaint for judicial review does *not* stay the decision. However, the agency or the reviewing court may order a stay “upon such terms as it considers proper.” c. 30A, § 14(3). The plaintiff may seek injunctive relief if there is irreparable injury and a reasonable likelihood of success on the merits. See, Mass. R. Civ. Pro. 65. At least one advocate reports that the court refused to hear her motion for temporary relief but did issue an expedited schedule for deciding the case on the merits.

¹ An appellant or his/her representative is entitled to examine the record at the Board of Hearings and listen to or obtain a copy of the tape recording of the hearing, at a modest price. 130 CMR § 610.074.

2. Preparing the complaint for judicial review

a. Parties.

The defendant in an appeal from an adverse fair hearing decision is the state agency. The Executive Office of Health and Human Services (EOHHS) is the “single state agency” with overall responsibility for administering MassHealth. GL. c. 118E, § 1; c. 6A, § 16. See, 42 CFR § 431.10 (single state agency). For most purposes EOHHS acts through the Office of Medicaid. This has created some confusion about how to name the MassHealth agency. Most people either name the Executive Office of Health and Human Services Office of Medicaid as if it were one agency or separately name the EOHHS and the Office of Medicaid, sometimes adding that it was formerly called the Division of Medical Assistance.²

If adding federal claims under 42 U.S.C. § 1983 (and attorneys’ fees under § 1988) to the G.L.c. 30A claim, the complaint must name individual agency heads in their official capacities. Currently, the Secretary of EOHHS is Marylou Sudders, and the Medicaid Director and Assistant Secretary MassHealth is Daniel Tsai, both with offices at One Ashburton Place, 11th Floor, Boston, MA 02108.

b. Claims and relief under c. 30A

The complaint for judicial review typically consists of the caption, a brief introduction, identification of the parties, a brief statement of facts, the claims and the request for relief. G.L. c. 30A § 14 (7) identifies seven different ways in which the agency’s decision may have prejudiced the plaintiff including that it was based upon an error of law or unsupported by substantial evidence. The court may affirm, remand, set aside or modify the agency decision, or compel action unlawfully withheld or unreasonably delayed. Several examples of complaints for judicial review are posted on the website at masslegalservices.org.

c. Added claims

The plaintiff may want to seek declaratory and injunctive relief and raise federal claims in addition to 30A claims, for example, where a MassHealth regulation violates the Medicaid statute, the plaintiff may want to file an added claim under § 1983. Additional claims may be added to the 30A claim. However, be warned that the Court may refuse to take additional evidence not in the administrative record. The expedited procedures in Superior Court Standing Order 1-96 apply to 30A claims “whether joined with a claim for declaratory relief under G.L. c. 231A or any other claim.” Superior Court Standing Order 1-96: Processing and Hearing of Complaints for Judicial Review of Administrative

² State statutes refer to EOHHS still acting through the Division of Medical Assistance and the DMA name appears on some notices. G.L. c. 118E, § 1. However, in its state plan amendment the state identifies the Office of Medicaid as its “medical assistance unit” under 42 CFR § 431.11, and generally no longer uses the DMA name.

Agency Proceedings. <http://www.mass.gov/courts/case-legal-res/rules-of-court/superior/sup-orders/sup1-96.html>

d. Involuntary discharge from a long term care facility

If the matter on appeal involves a disputed involuntary discharge from a nursing home, the facility as well as the resident has the right to seek judicial review of an adverse decision. 130 CMR § 610.092. In nursing facility discharge cases, the facility resident and the facility may be necessary parties. Residents who seek judicial review may want to add to the 30A claims a claim under consumer protection laws. (M.G.L. c. 93A and 940 CMR 1.00 et seq.). Where an added 93A claim seeks to preserve the plaintiff's stay in the nursing home, as opposed to only seeking damages, the facility must be named properly and plaintiff must serve a 93A demand letter stating the relief sought. Plaintiff may need to seek a temporary restraining order or preliminary injunction to preserve the plaintiff's right to remain in the facility.

3. Filing the complaint

a. Venue

The complaint for judicial review may be filed in the Superior Court in the county where the appellant lives (or has a business) or in Suffolk County Superior Court. G.L. c. 30A, § 14.

b. Filing fees/fee waiver

The fee for filing a complaint in Superior Court is currently \$275. It may be waived on the grounds of indigency. G.L. c. 261, § 27A-27G. There is a court form for the purpose entitled Affidavit of Indigency and Request for Waiver, substitution or state payment of fees and costs. A copy of the form may be obtained from any Superior Court and is posted on <http://www.mass.gov/courts/forms/sc/sc-forms-gen.html>.³ A separate Affidavit and Request will be needed for each named plaintiff.

Individuals who affirm that they receive public assistance, including MassHealth, or whose income is less than 125% of the federal poverty level are deemed indigent and need not fill out the separate Supplemental Affidavit that seeks detailed income and expense information. The Clerk of Court may grant a fee waiver that is complete on its face and seeking only normal fees and costs. Normal fees and costs include filing fees, the cost for the summons and costs of service. If the fee waiver is questionable or seeking extra fees and costs, it may have to go before a judge. Advocates report that in some courts individuals who have to fill out the supplemental affidavit are routinely sent before the judge.

³ Experiment with the court's fillable forms to be sure you do not complete the form and then lose the data when you try to save it. Depending on your software, you may or may not be able to save a fillable form while retaining both the data and the ability to make changes.

c. Cover sheet

A civil action cover sheet must be signed by counsel and filed with the complaint. Superior Court Standing Order 1-83. The form may be obtained from the Superior Court. It is also available online <http://www.mass.gov/courts/forms/sc/sc-forms-gen.html>. Among other things, the form requires the attorney to certify that he or she has informed the plaintiff about Rule 5 of the SJC Uniform Rules on Dispute Resolution (SJC Rule 1:18). An appeal from an administrative agency under G.L. c. 30A is “category E 02” and on the X-track for accelerated processing.

d. Docket number

Once filed, the clerk’s office will stamp the papers with the docket number. This docket number should appear on all papers subsequently served or filed with the court. Typically, summonses are obtained at the time of filing.

4. Serving the summons and complaint

a. Summons

Plaintiff’s counsel must obtain and fill out an original summons available from the court. Mass.R.Civ.Proc. 4.

b. Service

Service on a state agency may be accomplished by mailing a copy of the summons, complaint and cover sheet to the Boston office of the Attorney General and to the office of the state agency by certified or registered mail. Mass. R. Civ. Pro. 4(d) (3). Some advocates also serve a request for a transcript along with the complaint (see below under “Obtaining a transcript.”)

c. Return of service

The plaintiff must file the original summons with a return of service showing that service was completed within 90 days of filing the complaint. The return should be by affidavit and include the signed return receipt. Mass.R.Civ. Pro. 4 (f). Failure to file a return of service within 90 days risks a dismissal of the complaint on that technicality.

5. The record

a. Assembling and filing the record

Pursuant to Standing Order 1-96, the state agency is responsible for filing the original or a certified copy of the record “by way of answer” within 90 days after service of the Complaint. The record consists of either the entire proceedings or, if the parties agree, a portion of the entire proceedings or statement of the case. G.L. c. 30A § 14 (4). The Board of Hearings rule describes the record as all documents submitted during the hearing, identified and admitted as exhibits and a tape recording or transcript of the hearing. 130 CMR § 610.074.

b. Obtaining a transcript

Pursuant to Standing Order 1-96, after the complaint is served, the agency is required to notify all parties of the procedure for acquiring a transcript. If the appellant’s claims were that the agency decision was not supported by substantial evidence, was arbitrary or capricious, or was an abuse of discretion a transcript of the proceedings will be needed by both parties to support or defend such claims. A request for a transcript must be made to the agency within 30 days after service of the Complaint. It is common practice to serve the request with the Complaint. G.L. c. 30A, § 11 (6) provides that the agency may require payment of the costs of the transcript before making it available. Advocates report that it is the practice of the Office of Medicaid to prepare a transcript without demanding advance payment from an indigent appellant. However, any cost for preparing the transcript may be requested from the court as part of the Fee Waiver if necessary.

c. Facts not in the record

Judicial review is confined to the administrative record. The Court may permit corrections or additions to the record “when deemed desirable.” G.L. c. 30A, § 14 (4). Under Standing Order 1-96 motions for leave to present additional evidence pursuant to G.L. c. 30A, §§ 14 (5) or (6) must be served not later than 20 days after service of the record by the agency. Such motions are to be filed in accordance with Superior Court Rule 9A. Section 14 (5) provides for testimony to be taken in court of irregularities in proceedings before the agency not shown on the record. Section 14(6) provides for additional evidence to be taken before the agency if it is material and there was good cause not to have presented it earlier. If so ordered, the agency shall file the additional evidence together with any new findings or decision with the reviewing court. Advocates report that the agency will sometimes agree to a remand when the record is obviously incomplete.

6. Judgment on the pleadings

After the complaint is filed, the court will issue a scheduling order with filing deadlines. Under Standing Order 1-96, a claim for judicial review shall be resolved through a motion for judgment on the pleadings pursuant to Mass.R.Civ.P. 12(c) and Superior Court Rule 9A. The Plaintiff's motion shall be served within 30 days of service of the record, and the defendant's response within 30 days of service of the plaintiff's papers. The Plaintiff is responsible for filing the combined papers. A hearing on the motion will be scheduled unless oral argument is waived. Filing deadlines may be extended by leave of court. Several examples of 30A briefs are posted on the website at masslegalservices.org.

7. 30A Rule 12(c) motion hearing

Counsel must be prepared for a hearing where the Court is fully prepared and familiar with the pleadings, or where the Court has not had the opportunity to review the papers. Counsel should consider offering to submit a proposed judgment.

Please address any questions, comments, additions or corrections to this outline to Vicky Pulos, vpulos@mlri.org, and please send copies of 30A complaints, briefs, and decisions for posting in the health section of masslegalservices.org to Neil Cronin, ncronin@mlri.org