



*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Division of Medical Assistance*  
*Board of Hearings*  
*Two Boylston Street*  
*Boston, Massachusetts 02116*

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Governor

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Lieutenant Governor

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Secretary

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Commissioner

To: Health Law Coalition  
From: Presented by Kim M. Larkin, Director, Board of Hearings  
Date: February 15, 2001  
Re: Practice and Procedure at the Board of Hearings

1. What is an appealable action?

An appealable action is defined as: an action by the Division to deny, reduce, suspend, terminate, or restrict assistance to: (1) an individual receiving or seeking assistance from the Division; or (2) an employer receiving or seeking payment through the Insurance Partnership. No action by a provider will constitute an appealable action, except as otherwise provided herein with regard to a transfer or discharge by a nursing facility (130 CMR 610.004).

2. Who has legal standing to file an administrative appeal?

Dissatisfied applicants, members (or their authorized representatives) and employers (130 CMR 610.001; 610.003).

Applicant is defined as a person or family who has applied or attempted to apply for an assistance program administered by the Division (130 CMR 610.004).

A member is defined as a person or family who is or had been receiving assistance under a program administered by the Division (130 CMR 610.004).

Authorized representative is defined as any person, such as legal counsel, a relative, a provider, or a friend, who is authorized in writing by the appellant to represent him or her at the hearing (130 CMR 610.004). An appellant has the right to be represented at his or her own expense by a person who is authorized by the appellant, in writing, to do so or is present at the hearing with the appellant. Such written authorization will contain the name, address, and telephone number of the representative and the signature of the appellant, or the appellant's court-appointed guardian or conservator, provided that such documentation of court appointment is submitted with the written authorization. Such authorization may be submitted at, or before, the hearing. An authorized representative may exercise on the appellant's behalf any of the appellant's rights under 130 CMR 610.000.

Employer is defined as a business, including a self-employed individual, who has applied for or has been receiving payments under the insurance partnership (130 CMR 610.004).

3. When an appellant dies, must an executor/administrator be appointed to pursue the appeal?

Yes.

4. Filing the appeal.

- (1) Attach a copy of the notice of the Division's action.
  - (a) BoH must determine timeliness, so need date of action; and
  - (b) BoH needs to know the action.
  - (c) Failure to do so can result in delay, either through an enable letter process or scheduling an appeal with the incorrect issue or Division representative.
- (2) State basis for appeal - clear, concise statement for all to be prepared.
- (3) Authorization.
  - (a) if by attorney for appellant, state by, on behalf of, represented by, etc., attach any assignment, etc.
  - (b) if by attorney for durable power of attorney, power of attorney, guardian, administrator, executor, attach evidence of appointment.

5. Scheduling.

- (1) If you know of a conflict within 4-6 weeks of filing state so to BoH in a cover letter;
- (2) Include a statement of am/pm preference, day preference and if you want it telephonic, call to verify once you receive scheduling letter.

6. Complex Issue.

- (1) If the issue is complex and need extra time at hearing, state so on appeal letter;
- (2) If need a pre-hearing conference, request one and state the basis.

7. Resolution of appealed issue, but new issue arises after scheduling.

- (1) Amend in writing to BoH and the Division to protect date of hearing, but all are on the same page for hearing (this should be done at least 10 days before hearing);
- (2) If unable to amend in writing prior to hearing, contact the Division by phone, discuss with the assigned worker that the issue for appeal is the most recent issue and then notify BoH by phone.

8. Presentation at hearing.
  - (1) Chronological presentation - VERY IMPORTANT;
  - (2) Copies of all submissions for H.O. and the Division;
  - (3) Inform/argue to H.O. what the use the evidence should have;
  - (4) Use affidavit only when a witness is not available and make sure the affidavit is the words of the affiant;
  - (5) Link by corroboration of facts, circumstances.
9. Your presentation should be cool, calm and respectful.
10. Ask for record open, reconvene at hearing, after hearing before decision. If after hearing, ask in writing, copied to the Division.
11. Corrected decision - option for errors in spelling, or math calculation. NOT SUBSTANTIVE.
12. Post decision
  - (1) Rehearing/remand;
  - (2) c. 30A review.
13. Board of Hearings resources - Fair Hearing regulations 130 CMR 610.000 et seq.; decisions on line at BoH; hearing file and tape review at BoH.
14. Specialty questions:
  - (1) When and how does the Board of Hearings issue subpoenas?

Any party to a hearing and BoH on its own shall have the right to request a subpoena requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondences, or documents **related to any matter in question at the hearing**. Any party may submit a written request for the issuance of such subpoena. If, in its discretion and in accordance with 130 CMR 610.065(B), BoH allows such a request, a subpoena shall be issued within three business days of receipt of such request (130 CMR 610.052(B)). Petition 130 CMR 610.052(C) and compliance 130 CMR 610.052(D).
  - (2) What evidence is admissible at an appeal hearing?

The rules of evidence observed by the courts do not apply to fair hearings, but the hearing officer shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect **only** if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded (130 CMR 610.071).

15. Who makes up the Board of Hearings?

Director, Hearings Administrator, Appeals Coordinator, Scheduling Officer, Two Administrative Assistance, one receptionist, one data entry, and nine hearing officers.