

THE HOME SERVICES PROGRAM APPEAL PROCESS

THE DEPARTMENT OF HUMAN SERVICES DIVISION OF REHABILITATION SERVICES

CONTACT INFORMATION FOR THE HEARINGS COORDINATOR

Bureau of Hearings
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APPEAL RIGHTS

If you participate in the Home Services Program (HSP), or were denied participation in the HSP, you have the right to appeal any adverse action, or failure to act, and to request a hearing. An appeal is a way for you to ask for a review of any adverse action taken by the Department of Human Services (DHS), Division of Rehabilitation Services (DRS), or any company/agency acting on behalf of DHS. This brochure will explain your rights and responsibilities for the appeal process.

If you are visually impaired, you may either request a reader to read materials provided by the DRS office or Health Plan in preparation for the hearing or request that the materials are provided in Braille, large print, or on an audio recording. Please make your request within five business days after being informed of the date of the hearing.

You can still try to resolve the issues informally with the DRS office or your Health Plan (HP), even after you request an appeal hearing. See the section below entitled "The Informal Resolution Conference" for more information on this. If you cannot resolve the issues, a randomly selected Impartial Hearing Officer will hear your appeal.

If you are appealing more than one issue, the DHS Bureau of Hearings (BOH) may decide to consolidate your issues into a single hearing. The Hearings Coordinator will be your person to contact regarding the hearing. You should contact the Hearings Coordinator (DHS.HSPApeals@illinois.gov) to:

- ✓ request a different hearing date,
- ✓ notify the BOH of who will represent you at the hearing,

- ✓ withdraw your appeal, or
- ✓ send documents for the Hearing Officer to review for the hearing.

CAN THE BOH HEAR MY CASE?

You **can** appeal to the BOH if the DRS office or HP:

- ✓ refuses to provide any service it is authorized to provide,
- ✓ changes any of your current services,
- ✓ ends a service or closes your case without your agreement,
- ✓ determines that you are ineligible for services, or
- ✓ does not take action on your request.

You **cannot** appeal:

- ✓ changes in services or procedures that are beyond the discretion or control of the DRS office,
- ✓ changes in services or procedures that are required by federal or State law or regulation,
- ✓ issues challenging the legality of the DRS rules,
- ✓ issues that were already decided through the appeal process,
- ✓ actions taken by the DRS office which do not affect you,
- ✓ grievances filed under the Americans with Disabilities Act, or
- ✓ a requirement to have a Teletypewriter/Telephone Device for the Deaf as a condition of a contract.

YOUR APPEAL RIGHTS

The DRS or HP will notify you of your rights:

- ✓ when you apply for services,
- ✓ if the DRS denies your application for services,
- ✓ after the initiation of or change in services,
- ✓ when your services end, and
- ✓ when your case closes.

You can choose a representative who may exercise any rights on your behalf. You can choose anyone (a friend, a relative, an advocate, or an attorney). You may only choose one person to represent you at a time. You need to notify the BOH who you are choosing **in writing**. Please do so at least three (3) working days in advance of a hearing. If you do not notify the BOH in advance that you have a representative, then you risk delaying your hearing. Please send mail or an e-mail to the Hearings Coordinator with the name, address, telephone number, and e-mail address of your representative and a written consent to the release of confidential information to your representative.



The Illinois Home Care Ombudsman Program is available to assist you at no cost. The Ombudsman Program can provide information, help you prepare for the hearing, and may represent you at the hearing. The Illinois Home Care Ombudsman Program can be reached at 1-800-252-8966 (voice); 1-888-206-1327 (TTY) or at Aging.HCOProgram@illinois.gov (e-mail).

You may request a foreign language interpreter, a sign language interpreter, or a reader to attend the hearing. Please make your request to the DRS office or HP at least ten (10) business days before the hearing.

All of the scheduled meetings regarding the appeal will be held at a reasonable time, date, and place.

You can review your case file, medical records, and other related documents before and during the hearing. You have a right to:

- ✓ receive an explanation of the appeal process,
- ✓ withdraw your appeal at any time,
- ✓ receive a timely, impartial, and confidential hearing, and
- ✓ question the DRS employees or HP involved in the appealed action during the hearing.

Your services will continue until a final decision is made, **unless**:

- ✓ the services were obtained through your misrepresentation, fraud, collusion, or criminal conduct,
- ✓ the service has been planned but not begun,
- ✓ the customer, or the customer's parent, family member, guardian, advocate, or duly authorized representative requests that the service end.

Your hearing will not be continued for the purpose of continuing services. A service that is the subject of an appeal will not continue if:

- ✓ you caused or requested the change,
- ✓ a service provider other than the DRS caused the change on its own,
- ✓ the service was planned for or authorized, but has not yet started, or
- ✓ there is medical or psychological information in your case record that serves as a reason to withhold a service.

The BOH will record the hearing electronically. This will be the official recording of the hearing. The BOH will provide one copy of the recording to you at no cost if you request it.

If you, a family member, guardian, advocate, or authorized representative believe the selected Hearing Officer is biased against you, a family member, guardian, advocate, or authorized representative, or has a conflict of interest, you may make a written request (by mail or e-mail) to the Hearings Coordinator at least five (5) working days prior to the hearing for assignment of another Hearing Officer. You must include a dated and signed letter that explains why the Hearing Officer is biased or how a conflict of interest exists. The Hearings Coordinator will then decide whether to grant your request.

YOUR RESPONSIBILITIES

You should communicate to the Hearings Coordinator, the Hearing Officer, and the DRS office or HP **in writing** during the pre-hearing stage of your appeal. This makes a clear timeline of the events of your appeal case.

If you are unable to attend a hearing, you must request a new hearing date from the Hearings Coordinator **in writing** by mail or e-mail at least three (3) business days before the hearing date **and** send a copy of your request to the DRS office or HP. Rescheduling the hearing will delay resolution of your appeal. If the Hearings Coordinator does not notify you that your request has been granted, you are expected to appear on the hearing date.

If you do not come to the hearing or refuse to proceed, your appeal will be dismissed unless you show that the reason for your absence was the result of:

- ✓ a death in the family,
- ✓ a personal injury or illness that prohibited you from attending the hearing,
- ✓ a sudden and unexpected emergency, or
- ✓ other circumstances beyond your control that prevented you from attending.

Your cooperation is necessary during the appeal. If you choose to present evidence in addition to the case file to support your case, you must share that information with the DRS office or HP and the Hearings Coordinator at least three (3) business days prior to the hearing. The Hearings Coordinator will get the information to the assigned Hearing Officer.

THE INFORMAL RESOLUTION CONFERENCE

You will only have a few hours to convince a Hearing Officer to find in your favor. However, your DRS counselor or HP has a relationship with you and has personal knowledge of your case, which sometimes has gone on for years. For that reason, you may decide to participate in an Informal Resolution Conference (Conference) at the DRS office rather than have the Hearing Officer make a recommendation based on the evidence presented at a hearing.

The Conference is an informal review of the case with the goal of resolving the issues without a formal hearing. It **will not** delay the overall resolution of your appeal.

You may request a Conference at any time, from when you filed your appeal until the Final Administrative Decision is issued. You can request a Conference by contacting your DRS office. Your representative can also attend the Conference.

The Conference will be led by a DRS supervisor. The supervisor is there to:

- ✓ explain the purpose of the Conference,
- ✓ assist in determining and clarifying the issues,
- ✓ ensure a fair and complete presentation and discussion of relevant information, and

- ✓ discuss possible agreement on a course of action.

If no agreement is reached, the DRS supervisor will explain what happens next in the appeal process.

At the conclusion of the Conference, the DRS supervisor will write up any agreements you make into a document and ask you to sign it. If all of the issues have been worked out, please send a withdrawal notice to the Hearings Coordinator. If some issues are still unresolved, the DRS supervisor will list them on the document.

THE HEARING

The hearing may last the entire morning or afternoon, depending on the amount of information you and the DRS witnesses provide during the hearing. If you need a break during the hearing, make sure you let the Hearing Officer know so that the hearing can formally pause. The hearing will be recorded electronically, so the time of the breaks needs to be stated on the recording. The hearing is confidential and not open to the general public unless you want the hearing open to the general public.

The hearings are scheduled at the local DRS office. You and the DRS witnesses or HP will be present at the local office but the Hearing Officer will conduct the hearing by telephone. However, if you cannot appear at the DRS office because of your disability, you can request to participate by telephone. If you need different accommodations, contact the Hearings Coordinator for other options. Make your request to the Hearings Coordinator by mail or e-mail **at least three (3) days** prior to the hearing. If you participate by phone, please use a landline telephone. If you use a cellular telephone, make sure your battery is charged so that you can participate in the entire hearing.

The hearing will consist of opening statements, witness testimony, admitting documents into evidence, and closing statements.

The Hearing Officer will control the conduct of the hearing to prevent irrelevant or immaterial discussion, decide motions and other matters over the course of the hearing, and ask questions to the witnesses or request additional information from you or the DRS office. Additionally, the Hearing Officer may request you or the DRS office to present further evidence like documents, books, paper, and accounts that are relevant to the appeal.

LEGAL INFORMATION

During the hearing, **you** have the burden to prove by a preponderance of the evidence that the action or inaction by the DRS office or HP:

- ✓ did not follow federal or State laws or regulations,
- ✓ did not follow DRS policy,
- ✓ did not follow your HSP Service Plan, or
- ✓ was inappropriate.

Preponderance of the evidence means the evidence is 51% in your favor. In other words, it is **your responsibility** to tip the scales in your favor.



You and the DRS office or HP may call anyone to testify as a witness and ask the witness questions. There may be some facts that you **and** the DRS office or HP agree to. In that case, you and the DRS office or HP can agree to those facts for the purpose of the hearing. This is called a stipulation of facts. It means that you and the DRS office or HP agree that, if called to testify, a specific witness (this could be you, a DRS employee, or anyone else) would state the facts you agreed to.



The Hearing Officer can consider all of the documents and testimony that you provide and that the DRS witness or HP provides. Whatever documents are provided by DRS should be sent to you three (3) business days before the hearing so you will have the chance to review these documents prior to the hearing. **The Hearing Officer knows nothing about your case except what is presented through documents and testimony during the appeal process.**

The DRS employees directly involved in your case will testify and you can ask them questions during the hearing. However, if a person involved in your case is no longer employed by the DRS office and declines to attend the hearing, the DRS office or HP will have an employee knowledgeable about your case attend the hearing.

After the hearing and upon review of all evidence submitted, the Hearing Officer will recommend a decision to the Secretary of the Department of Human Services (DHS) based on the evidence presented at the hearing and the laws that apply. The Hearing Officer could:

- ✓ recommend a finding for you,
- ✓ recommend a finding for the DRS office,
- ✓ accept a withdrawal of your appeal,
- ✓ accept a settlement agreement between you and the DRS, or
- ✓ recommend some other appropriate relief.

The Final Administrative Decision will be issued by the Secretary of DHS and put into effect within 90 days after the date of your request for a hearing. The 90-day timeline will be extended by the length of any continuance you request or agree to. The Final Administrative Decision is only reviewable by the Circuit Court, which means that no one at DHS has the power to change the decision once the Final Administrative Decision has been issued.