
SECTION 7

Applicant/Client Appeals

XIX. Applicant/Client Appeals

A. Applicant's/Client's Right to Appeal Decisions Affecting the Receipt of Services

1. Section 307(a)(43) of the 1992 Amendments to the Older Americans Act requires that the Division of Aging provide guidelines for carrying out grievance procedures for older individuals who are denied or dissatisfied with services, as provided in Section 306 (a)(6)(P). Applicants and clients (a/c) of aging services provided by the local Department of Social Services (DSS) will file any appeals in keeping with local DSS policy which is based upon state Division of Social Services policy and the North Carolina Administrative Code. Otherwise, all other applicants and clients of aging services forwarded through the Division of Aging shall appeal through procedures stated in this section. Applicants and clients may appeal on the basis of:
 - a. Discrimination in violation of applicable federal or state law on the basis of race, color, national origin, sex, religion or handicap;
 - b. Incorrect eligibility or functional status information recorded by the service authorizing agency;
 - c. Incorrect client services plan, assessment/ reassessment or quarterly review recorded by the service authorizing agency and;
 - d. Performance of a provider in the provision of services to the client.
2. The agency responsible for authorizing client services shall inform the a/c, or their representative, in writing of their right to appeal decisions affecting the receipt of services as a part of (1) client intake and applicable assessment, (2) applicable service reassessment or quarterly review which results in the reduction or discontinuation of services, or (3) any other action which reduces or discontinues a service to a client. Service authorizing agencies shall incorporate the requirements stated in Sections 902.1, 902.2, 902.3 and 902.4 into their current grievance procedures.

B. Notice of Appeal by the Applicant or Client

1. The applicant or client or his representative may, within thirty (30) days of the date stated on the notification from the service authorizing agency, appeal verbally or in writing concerning a decision affecting his receipt of aging services. The thirty (30) day period will be waived if the a/c is not informed of his right to appeal, as specified in Section 902.1(B). Clients may appeal on the basis of service dissatisfaction at any time.

2. The service provider shall document verbal or written notices of appeal in the a/c file upon notification.

C. Administrative Review by Service Authorizing Agency

1. Within ten (10) working days of receiving the notice of appeal from the a/c, the chief administrative officer or designee for the service authorizing agency shall 1) conduct a review of the service decision which includes contacting the a/c or representative to discuss the basis for the appeal and to discuss reasons for the decision, and 2) if appropriate, taking corrective action.
2. If the service authorizing agency is able to resolve issues concerning the appeal at this point, the chief administrative officer shall, within the same ten (10) day period, provide written notification of findings and conclusions to the a/c or his representative. The notification shall indicate the reasons for the initial decision or corrective action taken.
3. Copies of all correspondence and other documentation concerning the administrative review shall be maintained in the a/c file.

D. Hearing by Service Authorizing Agency

1. If a/c appeal issues are not resolved through the administrative review, the chief administrative officer for the service authorizing agency shall, within the ten (10) day period stated in Section 902.3(A), arrange a hearing date with the a/c or his representative and confirm the time, date, and place of the hearing with the a/c or his representative via certified mail.
2. The chief administrative officer for the service authorizing agency shall establish a hearing panel consisting of representation from the county, area agency on aging and the service authorizing agency and appoint a hearing officer from the panel. The hearing officer shall preside over the hearing. The composition of the panel shall provide balanced representation from the county, area agency on aging and service authorizing agency, and local mediation agency, if one exist.
3. The hearing shall be held at a location of mutual convenience to the panel within the county or, in the home of the a/c if necessary.

4. The a/c, or his representative, may review the a/c file, as provided in 10 NCAC 22N. 0208, service standards, criteria for establishing priorities for the receipt of services, and other information pertinent to the appeal.
5. The a/c, county, and service provider may be represented by attorneys or other representation obtained at their own expense.
6. Minutes of the hearing shall be taken and the original copy will be maintained by the service authorizing agency. The area agency on aging shall be provided with a copy of the minutes.
7. Within ten (10) days of the hearing, the hearing panel shall make a decision on the appeal and the hearing officer shall inform the a/c or his representative, of the decision in writing via certified mail. The decision shall state factors, based on documentation presented at the hearing, and shall inform the a/c, or his representative, of the procedures, as provided in Section 902.5(A), to request a review of the decision by the Division of Aging. The hearing officer shall provide a copy of the decision to the county Block Grant administrator, area agency on aging and the community service provider.

E. Division of Aging Review

1. Within fifteen (15) days of receipt of the local decision, the a/c, or his representative, may request a review of the decision by the Division of Aging. The request for review may be verbal or in writing. The request for Division review shall be addressed as follows:

Director
Division of Aging
693 Palmer Drive
Caller Box 29531
Raleigh, N.C. 27626-0531
Phone # (919) 733-3983

2. Within fifteen (15) days of receipt of the request for review, the Division Director shall 1) request a copy of the hearing minutes and supporting documentation from the service authorizing agency, 2) review proceedings of the hearing and facts surrounding the appeal, 3) either confirm or reverse the local decision, and 4) notify the a/c, or his representative and the county Block Grant administrator in writing by certified mail of the Division decision. The written notification shall state the reasons for the decision and provide

instructions, as may be necessary, to carry out the Division decision. The notification shall also provide instructions concerning further appeal to the Office of Administrative Hearings, as specified in Section 902.7.

3. The Division has the discretion, in lieu of steps 3 and 4 above, to make arrangements with the chief administrative officer for the service provider and the a/c, or his representative, for a Division hearing to be held in the county where the appeal originated. The hearing shall be scheduled as expeditiously as possible, taking into account the convenience of the a/c and other parties. The a/c, or his representative, county Block Grant administrator, area agency director, and chief administrative officer for the community service provider shall be notified of the date, time, and place of the hearing by certified mail.

F. Division Hearing

1. The Division hearing officer shall be the Director or his designee. The Division hearing shall conform with the meaning of "informal procedures" as described in G.S. 150B-22. Sworn testimony will not be taken and witnesses will not be cross examined.
2. Minutes of the Division hearing shall be taken and the original copy maintained by the Division hearing officer.
3. The a/c, or his representative, county, area agency on aging, and community service provider will be given the opportunity to provide testimony. Parties to the hearing may have legal representation present at their own expense.
4. Within fifteen (15) days of the hearing, the Division hearing officer shall provide a written decision which will be sent to the a/c, or his representative, county grants administrator, area agency on aging director, and chief administrative officer for the community service provider by certified mail. The notification shall state the reasons for the decision and provide instructions, as may be necessary, to carry out the Division decision. The notification shall also provide instructions concerning further appeal to the office of Administrative Hearings, as specified in Section 902.7.

G. Appeal to the Office of Administrative Hearings

1. As provided in G.S. 150B-23, the a/c, or his representative may initiate an administrative proceeding on the basis that through either the Division review

or hearing, the Division has substantially prejudiced the rights of the a/c and has either:

- a. exceeded its authority or jurisdiction;
 - b. acted erroneously;
 - c. failed to use proper procedures;
 - d. acted arbitrarily or capriciously; or
 - e. failed to act as required by law or rule.
2. Upon filing a petition for administrative proceedings with the Office of Administrative Hearings, the appeal becomes a "contested case" as defined in G.S. 150B-2. The petition shall be filed with the Office of Administrative Hearings within sixty (60) days of the date that the a/c, or his representative receives written notification of the Division of Aging decision.
 3. Contested case proceedings shall be conducted as provided in G.S. 150-B, Article 3.