



## **Medicaid Denied My Request for Services, Now What?**

A Handbook on How to Appeal  
Medicaid Services Denial

Kentucky  
Protection & Advocacy

This handbook gives legal information about how to file a Kentucky Medicaid appeal. But legal information is not the same as legal advice. Everyone's situation is different. If you need specific legal advice, please call Protection and Advocacy at (800) 372-2988 or (502) 564-2967 or talk to an attorney. You are not a client until we've agreed to represent you.

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# Table of Contents

## **Section I. Before the Hearing..... 5**

The Notice of Adverse Action .....	5
How to Ask for a Hearing.....	6
How to Keep Your Services While You Wait for the Hearing .....	7
Maintaining Services.....	7
Reinstatement When Medicaid Sends the Proper Notice .....	8
Reinstatement When Medicaid Sends the Wrong Notice or None at All.....	8
Preparing for the Hearing .....	9
How to “Frame the Issues” from the Notice of Adverse Action .....	9
Pre-Hearing Conference .....	10

## **Section II. At the Hearing ..... 11**

Where Hearings are Held .....	11
Who Goes First .....	11
Medicaid’s Turn .....	11
Your Turn .....	11
Independent Medical Assessment.....	12
Your Exhibits .....	12
Before the Hearing is Over .....	12

## **Section III. After the Hearing ..... 13**

The Recommended Order .....	13
What if I Disagree with the Recommended Order?.....	13

## **Section IV. Final Reminders ..... 15**



# **Kentucky Medicaid Denied My Request for Services, Now What?**

## **A Handbook on How to Appeal a Medicaid Service Denial**

### **Section I. Before the Hearing**

#### **The Notice of Adverse Action**

Kentucky Medicaid denied your request for services. Now what?

You probably learned that Medicaid had reduced or ended your services by receiving a denial notice called a "Notice of Adverse Action," or by your provider telling you about it. The law requires Medicaid or a company that works for it (Medicaid's agent) to send you a denial notice. The notice must go to you or your guardian.

You have a right to notice and a fair hearing if your Medicaid eligibility or your request for a service is

- Suspended
- Reduced
- Terminated
- Not acted upon promptly
- Denied

Sometimes the notice will only go to your Medicaid service provider, such as a case manager or day program.

This is wrong.

The law says Medicaid must send the notice to you or your guardian. If your provider tells you they heard about an adverse action, but you didn't get a copy of the notice, you have the right to ask for one.

Ask your provider to give you a copy of what they received, then call Medicaid to send you a Notice of Adverse Action. Medicaid's phone number will be on the paper your provider gives you.

The Notice of Adverse Action will tell you the action that Medicaid has taken.

- Suspended your services or put them on hold
- Reduced or cut back your services
- Terminated or ended your services
- Denied your claim for services

The notice must tell you what Medicaid intends to do. It must also tell you why. It should list the specific law (regulation) that supports what Medicaid wants to do.

The notice will say how you can ask for a hearing and tell you how to keep your services until the hearing.



## Things to Remember

- Medicaid or its agent should send you or your guardian the notice of adverse action
- The notice should tell you
  - Why you were denied
  - What regulation supports the decision
  - How to request a hearing
  - How to continue Medicaid if you request a hearing

## How to Ask for a Hearing

Who gets the Notice of Adverse Action is important because

- You only have a short time to ask for a hearing
- Not everyone can ask for a hearing



You can ask for a hearing if your Medicaid eligibility or your request for services has been

- Suspended or put on hold
- Reduced or cut back
- Terminated or ended
- Not acted upon promptly
- Denied

In Kentucky, you have 30 days from the date of the notice to ask for a hearing. You can ask for a hearing if you're the one applying for or getting services. Also, your guardian or authorized representative can ask for a hearing.

Your service provider is not your authorized representative unless you specifically designate your provider as such in writing.

Make sure that you, your guardian, or your authorized representative asks for a hearing in writing. The notice will tell you where to mail your request.

## **How to Keep Your Services While You Wait for the Hearing Maintaining Services**

Medicaid must mail the notice to you or your guardian 10 days before the date of adverse action. The date of the adverse action is when your services will be

- Suspended or put on hold
- Reduced or cut back
- Terminated or ended

If you ask for a hearing before the date of adverse action, then Medicaid must let you keep getting your services until the hearing is over and there's a final order in your case unless

- The only issue is federal or state law or policy and
- The agency promptly informs you in writing that services will be reduced or terminated pending the hearing decision

If you lose the appeal, Medicaid may ask you to pay it back for the services you got after the adverse action.

## **Reinstatement When Medicaid Sends the Proper Notice**

Medicaid may also choose to reinstate your services, assuming it has taken action with proper notice, if you request a hearing not more than 10 days after the date of adverse action. Kentucky has chosen to allow recipients to reinstate if their appeal is about paying for these services

- Nursing facility
- Intermediate care facility for the mentally retarded and developmentally disabled
- Home-and-community-based waivers

## **Reinstatement When Medicaid Sends the Wrong Notice or None at All**

Sometimes Medicaid will end or change your services without sending a notice. It might send the notice late. It might send you a notice that has the wrong information in it. It might send you a notice that doesn't tell you why it changed or ended your services. When this happens, Medicaid must reinstate your services.

To get your services reinstated, you must ask for a hearing 10 days after Medicaid finally does send you a notice. If you ask for a hearing within 10 days after you receive the notice, then Medicaid has to start your services up again until you have the hearing and get a final order unless Medicaid determines that the action did not result from the application of Federal or State law or policy. Medicaid can't ask you to pay it back for any services you got after it reinstated your services.



### **Things to Remember**

- Make sure you, your guardian, or authorized representative mails a request for a hearing to Medicaid within 30 days from the date of Medicaid's notice of adverse action
- If you want to keep receiving your services during the hearing process, ask for a hearing within 10 days of the date of adverse action

## **Preparing for the Hearing**

After you ask for a hearing, you'll receive a Notice Scheduling Hearing. The hearing officer assigned to hear your appeal will send you this notice. The Notice Scheduling Hearing will tell you

- When and where your hearing will take place
- That you can contact Medicaid to review your case record (it's a right)
- That either you or Medicaid can ask for the other side's list of witnesses and documents 5 days before the hearing

At the hearing, you'll have to show why you should get the service you want. You can do this by using the information you gave to Medicaid at the time you asked for the service. You should also submit extra information to support your claim. You can use both documents and witnesses.

You should "frame the issues" to decide which documents and witnesses you want to use. Ask yourself: What do I have to prove to win? Look at your notice of adverse action to see why Medicaid denied your claim. Then put together documents and witnesses to show that Medicaid is wrong.

## **How to "Frame the Issues" from the Notice of Adverse Action**

Remember, the Notice of Adverse Action is supposed to tell you

- Why you can't get what you asked for
- Why Medicaid thinks you can't get it

What the hearing is about is limited to the contents of the notice. If the Notice of Adverse Action says Medicaid only denied you physical therapy because you weren't making progress toward a goal, then Medicaid cannot claim at the hearing that it's also denying you because your doctor did not ask that you receive the physical therapy.

If Medicaid denied your claim for physical therapy because you weren't making progress toward your goals, you would want to gather documents and witnesses that show you are making progress. Give the hearing officer your physical therapy notes, progress summaries, and have your physical therapist testify for you.

## Pre-Hearing Conference

If you've read the notice and you can't figure out why Medicaid's denying you services or what regulation Medicaid relied on to deny you, you can ask for a pre-hearing conference. This is a meeting where you can talk about any pre-hearing matters—like adequacy of the Notice of Adverse Action. Hearing officers usually hold pre-hearing conferences by telephone. Either side can ask the hearing officer to hold a pre-hearing conference.



### Things to Remember

- Make sure you know why you did not get what you asked for
- Decide what documents and witnesses will help you support your claim for services

## **Section II. At the Hearing**

Both sides have the right to have an attorney present at the hearing. You can hire your own lawyer or call Protection and Advocacy to ask if we can represent you. While only you, your guardian, or authorized representative can request a hearing, anyone can assist you at the hearing.

### **Where Hearings are Held**

Your fair hearing will most likely take place at your local Department of Community Based Services office or a local library. The hearing is less formal than court proceedings you see on TV. There is no jury and the hearing is at a table in an office rather than a courtroom. The hearing officer will record the hearing.

### **Who Goes First**

If you want Medicaid to give you a service, you will have to prove why you should get it. But if Medicaid is taking away a service, it has to prove why it took the service away from you. Usually, the side that has to prove something presents their evidence first, but most hearing officers will ask Medicaid to go first.

### **Medicaid's Turn**

Medicaid usually has a doctor tell the hearing officer why it took an adverse action against you. Sometimes Medicaid will send one of its attorneys to the hearing. If this happens, then the attorney will ask the doctor questions. If there is no Medicaid attorney, the doctor will explain Medicaid's decision.

### **Your Turn**

Once the Medicaid doctor finishes testifying, you have the right to ask the Medicaid doctor questions. Medicaid based its decision on the information about you it had at the time you asked for a service. You'll want to provide new, extra information to show why you are right. Then you can ask the doctor about any of your new, extra information.

After you finish asking the Medicaid doctor questions, you get to call your witnesses. If Medicaid denied your physical therapy request because you weren't

making progress, then you would want to have witnesses who can talk about how you are still making progress. In this type of case, having your physical therapist testify would be important.

You can have your witnesses testify using the phone if they can't be there in person. This can be helpful in getting your busy doctor to testify. Your doctor might not be able to come to the hearing, but your doctor might be able to testify over the phone.

## **Independent Medical Assessment**

You also have the right to ask Medicaid to pay for an independent medical assessment if the hearing involves medical issues.

## **Your Exhibits**

Documents can also help you with your case. Examples of documents are

- Your physical therapy notes
- Progress summaries
- Records in your case file that you requested from Medicaid

## **Before the Hearing is Over**

You should ask the hearing officer to make your documents an exhibit. The hearing officer will use these exhibits and what the witnesses say to decide if you win or lose your case.

While at the hearing, you can ask the hearing officer to let you submit extra documents after the hearing. You will want to do this if the hearing takes an unexpected turn and you think you have other documents not with you that might help the hearing officer decide in your favor.



### **Things to Remember**

- Bring documents and witnesses to the hearing that will help show why you should get what you asked for
- The Hearing Officer will decide if you win or lose your case

## Section III. After the Hearing

### The Recommended Order

After the hearing, the hearing officer will mail you and Medicaid a written decision. It will have 3 sections.

- Findings of Fact
- Conclusions of Law
- Recommended Order

The Findings of Fact will list the pieces of information the hearing officer relied on in making the decision. The Conclusions of Law will apply the facts to legal rules and tell you if you won or lost. The Recommended Order usually will either reverse Medicaid's decision (you won) or affirm Medicaid's decision (you lost).

### What if I Disagree with the Recommended Order?

If you disagree with the recommended order, you can file written exceptions. The recommended order will tell you how to do this. You have 15 days from the date the recommended order is mailed to file exceptions. Your exceptions should explain why you think you should have won. It is important that you file exceptions if you want to appeal to circuit court. Medicaid can also file exceptions.

The Secretary for the Cabinet for Health and Family Services will review the hearing officer's findings of fact, conclusions of law, recommended order and any exceptions and then issue a final order. If you disagree with the final order, you can appeal to circuit court. You have 30 days to appeal.

The circuit court does not conduct a new hearing. It will just review what happened at your hearing. So it is important to give the hearing officer as much information as you can that supports your side during your hearing. If no one files exceptions, then the circuit court will only review the differences, if any, between the recommended order and final order.



## Things to Remember

- If you disagree with the recommended order, you should file exceptions
- The circuit court does not give you a new hearing



## Section IV. Final Reminders

- You, your guardian, or authorized representative have the right to ask for a fair hearing if Medicaid takes away or will not give you a service.
- If you ask for the hearing within 10 days of the date of adverse action (the date Medicaid will reduce, suspend, or terminate your services), your services should continue until the final order.
- You **must** ask for a hearing within 30 days from the date of the notice of adverse action. After that, it's too late.
- The notice of adverse action should tell you why you did not get the service you asked for and what regulation Medicaid used to deny your request.
- Once you know why Medicaid denied your services, you can gather documents and prepare your witnesses to prove why you should win.
- The hearing officer will decide if you win or lose your hearing.
- You have the right to file exceptions to the recommended order if you disagree with it.
- You have the right to appeal to circuit court if you disagree with the final order.
- Be sure to file exceptions with the hearing officer if you want to appeal to circuit court.

Protection and Advocacy hopes this information has been helpful. Please contact us if you have any questions. Remember, you are not a client of Protection and Advocacy until we have agreed to represent you.







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