

§ 108A-70.9B. (Effective until contingency met – see note) Contested Medicaid cases.

(a) Application. – This section applies only to contested Medicaid cases as defined in this Part. Except as otherwise provided by Article 1A of Chapter 108D of the General Statutes, G.S. 108A-70.9A, and this section governing time lines and procedural steps, a contested Medicaid case commenced by a Medicaid or NC Health Choice recipient is subject to the provisions of Article 3 of Chapter 150B of the General Statutes. To the extent any provision in this section, Article 1A of Chapter 108D of the General Statutes, or G.S. 108A-70.9A conflicts with another provision in Article 3 of Chapter 150B of the General Statutes, this section, Article 1A of Chapter 108D of the General Statutes, and G.S. 108A-70.9A control.

(b) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter 150B of the General Statutes, the chief administrative law judge may limit and simplify the procedures that apply to a contested Medicaid case involving a Medicaid or NC Health Choice recipient in order to complete the case as quickly as possible.

- (1) To the extent possible, OAH shall schedule and hear contested Medicaid cases within 55 days of submission of a request for appeal.
- (2) Hearings shall be conducted telephonically or by video technology with all parties, however the recipient may request that the hearing be conducted in person before the administrative law judge. An in-person hearing shall be conducted in Wake County, however, for good cause shown, the in-person hearing may be conducted in the county of residence of the recipient or a nearby county. Good cause shall include, but is not limited to, the recipient's impairments limiting travel or the unavailability of the recipient's treating professional witnesses. The Department shall provide written notice to the recipient of the use of telephonic hearings, hearings by video conference, and in-person hearings before the administrative law judge, and how to request a hearing in the recipient's county of residence.
- (3) The simplified procedure may include requiring that all prehearing motions be considered and ruled on by the administrative law judge in the course of the hearing of the case on the merits. An administrative law judge assigned to a contested Medicaid case shall make reasonable efforts in a case involving a Medicaid or NC Health Choice recipient who is not represented by an attorney to assure a fair hearing and to maintain a complete record of the hearing.
- (4) The administrative law judge may allow brief extensions of the time limits contained in this section for good cause and to ensure that the record is complete. Good cause includes delays resulting from untimely receipt of documentation needed to render a decision and other unavoidable and unforeseen circumstances. Continuances shall only be granted in accordance with rules adopted by OAH and shall not be granted on the day of the hearing, except for good cause shown. If a petitioner fails to make an appearance at a hearing that has been properly noticed via certified mail by OAH, OAH shall immediately dismiss the contested case, unless the recipient moves to show good cause within three business days of the date of dismissal.
- (5) The notice of hearing provided by OAH to the recipient shall include the following information:
 - a. The recipient's right to examine at a reasonable time before the hearing and during the hearing the contents of the recipient's case file and documents to be used by the Department in the hearing before the administrative law judge.
 - b. The recipient's right to an interpreter during the appeals process.

- c. Circumstances in which a medical assessment may be obtained at agency expense and be made part of the record. Qualifying circumstances include those in which (i) a hearing involves medical issues, such as a diagnosis, an examining physician's report, or a medical review team's decision; and (ii) the administrative law judge considers it necessary to have a medical assessment other than that performed by the individual involved in making the original decision.

(c) Mediation. – Upon receipt of an appeal request form as provided by G.S. 108A-70.9A(e) or other clear request for a hearing by a Medicaid or NC Health Choice recipient, OAH shall immediately notify the Mediation Network of North Carolina, which shall contact the recipient within five days to offer mediation in an attempt to resolve the dispute. If mediation is accepted, the mediation must be completed within 25 days of submission of the request for appeal. Upon completion of the mediation, the mediator shall inform OAH and the Department within 24 hours of the resolution by facsimile or electronic messaging. If the parties have resolved matters in the mediation, OAH shall dismiss the case. OAH shall not conduct a hearing of any contested Medicaid case until it has received notice from the mediator assigned that either: (i) the mediation was unsuccessful, or (ii) the petitioner has rejected the offer of mediation, or (iii) the petitioner has failed to appear at a scheduled mediation.

(d) Burden of Proof. – The recipient has the burden of proof on all issues submitted in a contested Medicaid case to OAH and has the burden of going forward. The administrative law judge shall not make any ruling on the preponderance of evidence until the close of all evidence.

(e) New Evidence. – The recipient shall be permitted to submit evidence regardless of whether obtained prior to or subsequent to the Department's actions and regardless of whether the Department had an opportunity to consider the evidence in making its adverse determination. When the evidence is received, at the request of the Department, the administrative law judge shall continue the hearing for a minimum of 15 days and a maximum of 30 days to allow for the Department's review of the evidence. Subsequent to review of the evidence, if the Department reverses its original decision, it shall immediately inform the administrative law judge.

(f) Issue for Hearing. – For each adverse determination and each adverse disenrollment determination, the hearing shall determine whether the Department substantially prejudiced the rights of the recipient and if the Department, based upon evidence at the hearing, did any of the following:

- (1) Exceeded its authority or jurisdiction.
- (2) Acted erroneously.
- (3) Failed to use proper procedure.
- (4) Acted arbitrarily or capriciously.
- (5) Failed to act as required by law or rule.

(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. The judge shall prepare a written decision and send it to the parties in accordance with G.S. 150B-37. (2010-31, s. 10.30(a); 2011-398, s. 33; 2014-100, s. 12H.27(b); 2019-81, s. 6.)

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