

**Hearings and Appeals FAQs - 3/27/2014**

#	Question	Answer
<b>Bureau of Hearing &amp; Appeals (BHA)-related</b>		
1	Should SCE evidence accumulated for an appeal be provided to BHA before the date of the hearing or presented during the hearing?	According to BHA, it is recommended that the SCE provides evidence at both points in time, and at the minimum, upon the hearing. The SCE shall deem appropriate what types of documents are to be sent to the judge for each case. Regulations require that DPW sends their exhibits to the appellant and the judge prior to the hearing (see 55 Pa. Code § 275.3 - Requirements). The judge may permit the parties to submit the exhibits at the time of the hearing, and even after the hearing, but it is at the judge's discretion (see 55 Pa. Code § 275.4 - Procedures).
2	Will there be a process for expedited appeals?	According to BHA, at this point there is no expedited process for these types of appeals.
3	Questions regarding the Cover Sheet Section V: a) Where are the BHA issue codes located to complete the Agency Appeal Cover Sheet? b) Should we mark down the CIS category code? c) Is "MA 561" the Adverse Action Notice form number? d) What about the Interim Relief Date?	a) See Section II (Program) of the MA 561. The numbers following each program are the issue codes to be entered in Part V of the Bureau of Hearings & Appeals Cover Sheet. b) BHA has indicated the Category Code box can be left blank since the Issue Code already distinguishes the waiver. c) Yes. d) BHA has indicated the Interim Relief Date box can be left blank.
4	Where are appeals to be mailed?	Use the BHA Regions Chart to send appeals to the appropriate regional office: Philadelphia, Harrisburg, or Pittsburgh. Go to the website found in the SC Form Instructions for exact addresses.
<b>Billing</b>		
5	Is the time spent issuing notices and assisting participants SC billable time?	Yes, informing and assisting participants about hearing and appeal rights are billable activities under Service Coordination. Please refer to the Billing Instructions Bulletin (05-13-02, 51-13-02, 54-13-02, 55-13-02, 59-13-02) issued on February 7, 2013.
6	Is the SC permitted to continue to bill during the appeal period in cases where the appeal is for a termination from all services?	If the participant received a notice from the CAO that they are no longer eligible for services, and they did not appeal within 10 days, services will stop on Day 11. If the participant is no longer eligible and enrolled in the waiver program, the SC can no longer bill for services. If the participant appealed within 10 days, services will continue through the appeal process, including SC.
<b>Informational Packet</b>		
7	Is it necessary to hand the participant a copy of the form "Your Appeal and Fair Hearing Rights" at reassessment time when this form is in their information packet upon being approved for program?	Yes, it is necessary to provide a copy of the Waiver Participant Informational Materials – "Your Appeal and Fair Hearing Rights" addition. The informational materials may be updated periodically and the SC needs to ensure the latest version of the document is provided.
8	Why would the SCE need to send "Your Appeal and Fair Hearing Rights" information packet again after an annual re-evaluation?	The Waiver Participant Informational Materials – "Your Appeal and Fair Hearing Rights" addition does not need to be re-sent again after an annual reevaluation. This information is to be provided during the annual reevaluation. Refer to Bulletin 05-13-10, 51-13-10, 55-13-10, 59-13-10.
<b>Level of Care</b>		
9	If the initial enrollment into the waiver is being denied due to LOC, is this appeals process followed or does this only apply to enrolled waiver participants?	This bulletin only applies to SC responsibilities with enrolled waiver participants. For individuals applying for waiver services, they have the right to appeal the LOC determination as part of the overall application and determination process for the waiver. The agency completing the LOC should send the PA 1768 to the CAO. The CAO will issue the PA 162 notice based on both the LOC and financial information provided.
10	If we are denying waiver services at reassessment due to LOC, do we follow this appeals process?	The agency conducting the LOC determination should send the PA 1768 to the CAO and let the CAO provide the appeal notice to the participant. Do not issue the MA 561. If the AAA is not the SC, then the AAA should send a copy of the PA 1768 to the SC.
<b>MA 561 Form Issues</b>		
11	In Section II - Program: Act 150 does not have a program code following. Is there one?	BHA does not have an issue code for Act 150. The SC can utilize the Attendant Care issue code (860), or leave the box blank, but the SC must indicate Act 150 somewhere on the BHA Cover Sheet (e.g., place note in Comments section or Adverse Action Notice box).
12	Does the MA 561 replace the MA 689?	Refer to Bulletin 51-13-12, 55-13-12, 59-13-12, Hearings and Appeals. The PA 1299 and PA 689 are rescinded and replaced by the MA 561.
13	How specific does the "Reason for Service Determination" in Section II need to be?	The "Reason for Service Determination" will include information at the discretion of the SC, as each situation is different. If the appeal reaches the hearing phase, it will be important for the SC to have a justifiable reason readily available from a waiver, PA Code, or other applicable policy.
<b>Participant Issues</b>		
14	How would a participant get information on an ombudsman representative if an appeal is in demand?	Contact the local Area Agency on Aging (AAA) to obtain more information on the ombudsman representative(s) in your area.
15	If a participant is restricted to the agency model due to immediate health, safety, and/or welfare, can the participant appeal this restriction? What if the reason is suspected fraud?	Refer to Appendix E of the waivers for more information on Involuntary Termination of Participant Direction. Participants or personal representatives who demonstrate the inability to self-direct their services will be required to transition to provider managed services. The participant has the right to an Appeal and Fair Hearing when involuntarily terminated from participant direction. The SC is required to provide the MA 561 to the participant. Cases of suspected fraud must be reported to the DPW Bureau of Program Integrity. See OLTL Bulletin 05-11-04, 51-11-04, 52-11-04, 54-11-04, 55-11-04, 59-11-04 Program Fraud and Financial Abuse.
16	In an instance where we no longer wish to be the SC agency because we cannot ensure the participant's health and safety, are we to send the MA 561?	The MA 561 is not required in this situation because the participant will continue to receive the same level and type of service. The SC will work with the participant to find another provider. The SC must send written notification to the participant at least 30 days before services cease, and the SCE must cooperate with the Department, new providers of services, and participants with transition planning to ensure the participant's continuity of care. See 55 Pa. Code Ch. 52.61 Provider Cessation of Services.
17	What happens when the participant disagrees with new additions to the ISP and wants an increase in services or hours? What about permanent or temporary increases?	If a participant requests an increase of hours, and the SCE determines there is no justification for the increase, then it would be considered a "Denial" of services. Send out the MA 561. This applies for requests of temporary and permanent increases.
18	Does a participant uphold the right to appeal a MA 561 that was issued due to exceeding 180 days in a NF?	Yes, the participant has the right to appeal a denial, reduction, or termination of services, regardless of the reason for the decision. The only exception to this is when the action taken was solely by state or federal law or regulation requiring a change in the type of services available under the waiver program. See Section III of the MA 561.

<b>Pre-Hearing Conference</b>		
19	If the SCE requires assistance from an OLTL regional supervisor to be involved with a pre-conference hearing, how would OLTL prefer the SCE make that request?	Call OLTL Bureau of Participant Operations at 717-787-8091.
20	Who from the SC agency attends the pre-hearing conference? Does the OLTL regional supervisor attend the meeting?	Each SC agency should determine who will participate in the pre-hearing conference. The OLTL regional supervisor will participate only if the SC requests their participation.
<b>Service Notification</b>		
21	Is the MA 561 used for approvals?	The SC provides notice of the approved plan by giving the participant a copy of the service plan. The SC provides notice of revisions involving the denial, reduction, termination, or suspension of a service by issuing the MA 561.
22	Do we provide an appeal form when we set up the initial care plan? What if they don't agree with what services are offered to them?	If during the set up of the initial service plan, the SC is denying services requested by the participant, then, yes, the MA 561 should be issued.
23	Does an MA 561 form need to be sent to a participant when there is a voluntary termination or reduction of a service?	The SC should have a conversation with the participant to discuss all options, but if the decrease is at the request of the participant, then the MA 561 is not needed. Make the appropriate edits in the ISP.
24	On annual recertifications, if there are no changes, do we still give a MA 561?	If there are no changes and the participant has not requested an increase or change to the services, the SC is to provide a copy of the ISP to the participant. The MA 561 is not required.
25	Is the MA 561 sent if OLTL denies a home modification or assistive device?	Yes, this is considered a denial of service.
26	Is the CAO required to issue a PA 162 notice to participants after they receive the PA 1768 from an SCE notifying them of the termination date for a waiver participant? Is there any need to send an MA 561 to the participant?	The SC should issue the MA 561 only when <u>services</u> are denied, reduced, or terminated. If there are changes in the individual's circumstances that result in a change in <u>program eligibility</u> , the notice must come from the CAO, not the SC. The CAO sends the PA 162 notice after receiving the PA 1768 from the SC.
27	If the participant provides verbal notification of intent to appeal before the 10 days, but was unable to postmark/deliver the documentation until after the deadline, would services still be able to continue?	Yes, verbal notification is considered "received" by the 10-day deadline.