

**Issue Alert**  
**14-02-03**

<b>Program Area:</b>	All Department of Human Services (DHS)-administered public assistance programs	
<b>Issue Summary:</b>	DHS has revised their policy for the administrative hearing process for appealing adverse DHS decisions	
<b>Persons Affected:</b>	People requesting DHS administrative hearings on all issues in all DHS programs	
<b>Date:</b>	2/25/14	
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**BACKGROUND**

DHS must provide an opportunity for an administrative hearing by an independent hearing officer to people who are affected by DHS decisions to deny, reduce, or terminate assistance or benefits, or who suffer an unlawful delay in getting benefits. The basic right to a hearing comes from the Due Process Clause of the Fourteenth Amendment to the United States Constitution. There are a number of other state and federal laws, and implementing rules and regulations, which define the individual's right to a hearing in benefits programs administered by DHS.

**WHAT'S HAPPENING?**

DHS issued a new Hearing Policy in Bridges Policy Bulletin 2014-006, available online currently at <http://www.mfia.state.mi.us/OLMWeb/exf/BP/Public/BAM/600.pdf>. (This policy is currently in the "Future Policy" section of DHS manuals, and simply will be under "BAM (Bridges Administrative Manual) 600" in the "Current Policy" section of DHS manuals after the effective date of March 1, 2014.) The changes to BAM 600 for March 1, 2014 stem from a hearings pilot program in Genesee County in 2013 that featured a more intensive "prehearing conference" procedure for administrative hearing requests, and a two-level local and state administrative hearings process.

Under the changes to BAM 600, the prehearing conference and hearing process:

- Must be more "meaningful" (i.e., attempt to resolve clients' hearing requests at the conference),
- Has more DHS staff involvement,

- Has specific timelines, e.g., the local offices have *21 days* instead of *15 days* to do the initial processing of the hearing request including scheduling the prehearing conference,
- Has more documentation and notice procedures on the part of DHS so that the reasons for the hearing request and for any withdrawal are clearly stated,
- Allows clients to withdraw hearing requests in person at the prehearing conference (with a new written withdrawal form), but only if all of the client's issues are resolved,
- Requires each local office to designate a hearings facilitator to serve as the local hearings expert and present DHS cases at administrative hearings (the client's DHS specialist is not required to attend the hearing, but there are a number of DHS representatives who may attend as witnesses depending on the nature of the issue),
- Requires the Attorney General's office to represent DHS at hearings when there is an attorney representing the client, and
- Expands the ability of DHS and its attorneys to request rehearing and reconsideration of hearing decisions issued by the Michigan Administrative Hearing System.

The two-tiered hearing aspect of the Genesee County Hearing Pilot is NOT being adopted for the statewide changes to BAM 600. It appears the new policy will be used for hearings REQUESTED on or after March 1, 2014 but that is not clearly stated.

CCJ had a number of concerns about the legality of the Genesee County Hearing Pilot policy – on which the current changes are based – which have been shared with both DHS, the Department of Community Health (which is responsible for administration of the Medicaid program in Michigan), and the USDA Food and Nutrition Service (which regulates the federal Food Assistance Program).

The Genesee County Hearing Pilot led to a dramatic drop in the number of hearing requests that actually resulted in hearings. It appears this resulted from DHS's institution of a self-described more "meaningful" prehearing conference. However, it has been unclear whether the sharp increase in hearing request withdrawals was the result of resolutions in favor of the client, whether non-meritorious cases were identified and settled, or whether clients were pressured to withdraw their hearing requests. Now that the "meaningful" prehearing conference provisions are being implemented statewide, it is expected that the number of hearings actually occurring will also decrease statewide. CCJ and MPLP would like to hear from advocates about what happens to clients, especially unrepresented clients, in the prehearing process.

Note: DHS policy BAM 600 says that the Administrative Hearing Representative may not suggest that the client withdraw the hearing unless all issues are resolved, and the Hearing Summary must state the issues and how they were resolved. A DHS supervisor must review any hearing withdrawal (which is required to be in writing) to make sure the issues and resolution are properly documented. DHS is not to mail out a hearing withdrawal form unless it is requested by the client. It is not clear whether the client can request reinstatement of the hearing if it turns out that DHS has not followed the requirements of BAM 600.

## **WHAT SHOULD ADVOCATES DO?**

1. Educate clients and community organizations about the new hearings policy.
2. Make sure the clients know the importance of reading their notices carefully and attending prehearings and hearings, requesting any needed alternate dates in advance.
3. Take care to be sure clients do not get pressured to withdraw their hearing requests at the prehearing conference or otherwise. Inspect Hearing Summaries and withdrawals to make sure that DHS has provided all the information about the client's issue and how it was resolved, which are required by BAM 600.
4. Encourage affected individuals to contact their local free legal services office.
5. Help clients request and present information at prehearing conferences and administrative hearings when appropriate and to seek legal help when necessary.
6. Contact MPLP or CCJ if you think that your local office is not following the procedures in BAM 600.

## **WHAT SHOULD CLIENTS DO?**

1. Seek legal help from your free legal services office if you receive notice that you have been denied benefits, or your benefits are terminated or reduced by DHS, and you disagree with the decision.
2. Read your notices carefully. If some or all of your benefits are ending, you have the right to request a hearing. If DHS receives your hearing request within the deadline given in your notice, you will continue to receive benefits at the current level (but if you lose, will owe DHS any assistance you were not entitled to). Seek legal help if you request a hearing.
3. Be sure to attend all conferences and hearings. If you need an alternative date, arrange for it as soon as possible, and before the day of the conference or hearing.
4. If you feel pressured to withdraw your hearing request at the prehearing conference or otherwise, tell your advocate or attorney. If you do not have one, get one.
5. Be sure to review your Hearing Summary and copy of your hearing withdrawal, if any, to make sure that DHS has provided all correct information about the your issue and how it was resolved. If not, get legal help.

## **FINDING HELP**

Most legal aid and legal services offices handle these types of cases, and they do not charge a fee. You can locate the “free” legal services or legal aid office that serves your county on the Michigan Legal Help Web Site <http://www.michiganlegalhelp.org/>, by looking in the yellow pages under “attorneys,” or by calling the toll-free lawyer referral number, (800) 968-0738.