DEPARTMENT POLICY

All Programs

This item applies to all assistance programs including Summer EBT (SEBT)

Clients have the right to contest a Michigan Department of Health and Human Services (MDHHS) decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. MDHHS provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing.

Efforts to clarify and resolve the client's concerns must start when the hearing request is received and continue through the day of the hearing.

NOTICE REQUIREMENTS

All Programs

The application forms and each written notice of case action must inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses.

The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed, it must specify:

- The action being taken by the department.
- The reason(s) for the action.
- The **specific manual item(s)** that cites the legal base for an action, or the regulation, or law itself; see Bridges Administrative Manual (BAM) 220, Case Actions.

Exception: **Do not** provide a notice of case action when implementing a hearing decision or policy hearing authority decision. The decision serves as notice of the action.

Medicaid (MA) Only

A client and the client's community spouse are each entitled to an explanation of specific factors in the determination. Follow instructions in Bridges Eligibility Manual (BEM) 402. Special MA Asset Rules.

HEARING REQUESTS

All Programs

All clients have the right to request a hearing. The following people have authority to exercise this right by signing a hearing request:

- An adult member of the eligible group; **or**
- The client's authorized hearing representative (AHR).

Requests for a hearing must be made in writing and signed by one of the persons listed above. The request must bear a signature. Faxes or photocopies of signatures are acceptable. Michigan Office of Administrative Hearings and Rules (MOAHR) will deny requests signed by unauthorized persons and requests without signatures.

Exception: For Food Assistance Program (**FAP) only**, a hearing request may be written or oral. If oral, complete the DHS-18, Request for Hearing, note on the DHS-18 the request was oral. Also note on the hearing summary that the request was oral.

A hearing request with a client signature may name an AHR who is authorized to stand in for or represent the client in the rest of the hearing process.

Dissatisfaction with a department action may be expressed, orally or in writing, without specifically requesting a hearing. Determine whether there is actually a desire to request a hearing. If so, ensure that the request is put in writing. The DHS-18, Request for Hearing, available from MDHHS, may be used. Note the date of receipt of the original written request on the form/notice.

All hearing requests **must** be recorded in Bridges, on the Hearing Restore Benefits screen; see *Timely Hearing Requests* in this item.

Requests Signed by an AHR

All Programs

The appointment of an AHR must be made in writing. An AHR must be authorized or have made application through probate court **before** signing a hearing request for the client.

Verify the AHR's prior authorization unless the AHR is the client's attorney at law, parent or, for **MA only**, spouse. Relationship of the parent or spouse must be verified only when it is questionable. MOAHR will deny a hearing request when the required verification is **not** submitted; see *Local Office and MOAHR Time Limits* in this item.

The following documents are acceptable verification sources:

- Probate court order or court-issued letters of authority naming the person as guardian or conservator.
- Probate court documentation verifying the person has applied for guardian or conservatorship.
- Authorization signed by the client authorizing this person to represent the client in the hearing process.
- Birth or marriage certificate naming the person as parent or spouse or adult child.

Note any known information about the identity of the person who signed the request (for example, a spouse) on the DHS-3050, Hearing Summary. Attach a copy of any required verification document to the DHS-3050 and forward to MOAHR.

Process requests signed by someone whose AHR status is questionable or unverified according to standard hearings procedures, including restoration of benefits, if appropriate. If MOAHR denies the request, reimplement the disputed case action and recoup the restored benefits; see *Recouping Program Benefits* in this item.

When the AHR is an Attorney

All Programs

A DHS-1216-AP, Request for Attorney General Representation, must be completed if a client will be represented by an attorney at the hearing. Submit the DHS-1216-AP form to the Bureau of Legal Affairs (BLA) at MDHHS-AGrepresentation-AP@michigan.gov at the earliest of:

- The date that the DHS-3050, Hearing Summary, is sent to MOAHR, or
- Within 24-hours of learning an attorney will be representing the client, where the DHS-3050 has already been sent to MOAHR.

The Bureau of Legal Affairs (BLA) will review the request for appropriateness and completeness, and if approved, BLA will forward the DHS-1216-AP to the Office of the Attorney General for assignment.

The Attorney General's Office requires a two-week notice prior to the date of the hearing. If there is less than two weeks' notice, make a request for adjournment to M0AHR for the purpose of arranging legal representation; see *Request for Adjournment* in this item. Make a request for representation even if a **hearing date is not received.**

Adjournment is putting off a scheduled administrative hearing until a later date.

Note: Request attorney general representation using the process in this item if it is beneficial to the department to have attorney general representation for example, a complex issue in dispute; client representation by a third-party organization, etc.

Communication with Assigned Assistant Attorney General

Direct all routine communications to the assigned assistant attorney general (AAG), not to MOAHR. This directive does not pertain to communications that only MOAHR can address. (For example, dismissal of a case when a client requests to withdraw a request subsequent to the meaningful prehearing conference.)

Under no circumstances should any local office or policy unit send an email to the AG-HEFS mailbox. That email address is **only** for the BLA requests for representation and the email notice from the attorney general of the assignment of an AAG. Any other communication to that mailbox will cause confusion and delay in obtaining the representation of the MDHHS by the attorney general's office. Any communication about a case prior to the

assignment of an AAG can be directed to the MDHHS-AGrepresentation-AP@michigan.gov mailbox.

Prehearing Conferences

AAGs do not generally participate at meaningful prehearing conferences held by the department. Do not delay the scheduling of a prehearing conference for the assignment of an AAG. Be certain however, to share any documents and/or communication received at the prehearing conference with an AAG, once one is assigned.

Department Requests

All Programs

The department may request a hearing to establish an intentional program violation, a disqualification, or a debt; see BAM 720, IPV Hearing.

Usually Office of Inspector General (OIG), the OIG Overpayment Establishment Analysts (OEA) make these requests. Referral suspected IPV to OIG.

Granting a Hearing

All Programs

MOAHR may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For **FAP** and CDC, the current level of benefits or denial of expedited service.

MA Only

MOAHR may grant a hearing about any of the following:

- Community spouse income allowance.
- Community spouse's income considered in determining the income allowance.

- Initial asset assessment (but only if an application for MA has actually been filed for the client).
- Determination of the couple's countable assets or protected spousal amount.
- Community spouse resource allowance.

Where to File a Hearing Request

All Programs

Instruct clients or AHR's to deliver, mail, or fax the hearing request to their local MDHHS office labeled, *Attention Hearings Coordinator*. The hearings coordinator receives the request on behalf of the department. Route all hearings-related material through the coordinator without regard to whom it is addressed.

All hearings requests received must be date-stamped and forwarded immediately to the hearings coordinator. If the hearing request is received by a local office that is not responsible for the disputed action, date-stamp the request and forward it immediately to the correct local office labeled, *Attention Hearings Coordinator*.

Exception: For hearing requests about Medical Services Administration (MSA) determinations, follow procedures in MSA HEARINGS in this item. The administrative tribunal ensures that the request is properly processed.

Deadlines for Requesting a Hearing

All Programs

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days; see *Where to File a Hearing Request,* found in this item.

Exception: SEBT groups have 90 days from the date of the written notice of case action to request a hearing. The request must be received in writing by MDHHS within the 90 days, see BEM 619, Summer EBT Program.

Note: Unless otherwise stated elsewhere, computation of time for the purposes of administrative hearings is determined as follows:

- Time is measured in calendar days.
- The computation of time begins on the day after the act, event, or action occurs. (The day on which the act, event, or action occurred is **not** included.)
- The last day of the time period is included, unless it is a Saturday, Sunday, State of Michigan holiday, or day on which the State of Michigan offices are closed. (In such instances, the last day of the time period is the next business day.)
- The last day of the time period runs through the normal close of business.

Example: A notice of case action is issued on August 1st. Under BAM 600, the client has 90 days to request an administrative hearing. In computing this time period, August 1st, the date on which the action was taken, is not counted. The client must file a request for hearing by the close of business on October 30th (unless that day is a weekend, holiday, or non-working day, in which case the request must be filed by the close of the next business day.)

Exception: For **FAP only**, the client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period.

See Timely Hearing Request in this item if a request is received:

- Within the pended negative action period.
- Within 11 days of the effective date of an immediate negative action (such as with adequate notice).

For requests that do **not** meet the definition of a timely hearing request; see *Untimely Hearing Request* in this item.

Denial of a Hearing Request

All Programs

For hearing requests about MSA determinations; see *MSA Hearings* in this item.

For all inappropriate requests and/or requests filed more than 90 days from the date of the notice of case action, do the following:

- Complete a DHS-3050, Hearing Summary, stating either of the following:
    - State with some specificity why the request should not be heard.
    - The request was received after 90 days from the date of the notice of case action (attach a copy of the notice).
- If there is no resolution at the meaningful prehearing conference, send by US postal mail or ID mail the hearing request and summary to MOAHR.

MOAHR will inform the client (referred to by administrative hearings as the claimant), the AHR and the hearings coordinator if the request is denied.

MOAHR will **not** grant a hearing regarding the issue of a mass update required by state or federal law **unless** the reason for the request is an issue of incorrect computation of program benefits or patient-pay amount. Central office may issue separate instructions regarding deletion of pending negative actions and forwarding of hearing requests to MOAHR for disposition.

Supplemental Security Income (SSI)-Related MA Only

MDHHS **cannot** conduct hearings regarding the issue of disability/blindness when the Social Security Administration (SSA) made the determination, and that determination is the only issue. These appeals must be filed at SSA. If the request includes other issues that MDHHS must hear, do the following:

- Refer the client to SSA to appeal the SSA disability/blindness determination.
- For all remaining issues, follow standard procedures outlined in this item. Document the referral to SSA on the hearing summary.

STANDARDS OF PROMPTNESS

All Programs

Final action on hearing requests, including implementation of the decision and order (D&O), must be completed within 90 days. The standard of promptness begins on the date the hearing request was first received by any local MDHHS office or MDHHS central office.

For **FAP only**, final action on hearing requests involving only FAP or FAP and any other program (for example, State Disability Assistance (SDA), MA, Child Development and Care (CDC) must be completed within 60 calendar days of receipt of the written or oral request.

Exception: When a hearing request is for Family Independence Program (FIP) and FAP ONLY, the FIP timeliness standard of 90 days may be applied.

Local Office Time Limits

All Programs

Local offices have **21** days from receipt of a hearing request to do all of the following:

- Log the request.
- Obtain and submit to MOAHR verification of the AHR's prior authorization, if needed.
- Contact partners 24 hours within receiving DHS-18.
- Schedule a meaningful in-person prehearing conference with a first-line supervisor no later than the 11th calendar day from the receipt of the request for hearing. Include all appropriate staff and partners. (for example, first-line supervisor, Office of Child Support (OCS) or prosecuting attorney's office (PA), Office of Quality Assurance (OQA) auditors, Partnership. Accountability. Training. Hope. (PATH) representative, Family Independence Specialist/Eligibility Specialist (FIS/ES) or OIG).

  Exception: A prehearing conference is not completed for SEBT.

Note: When the 11th day falls on a non-workday, the prehearing conference must be scheduled by the next workday. Do not schedule a meaningful prehearing conference for Disability Determination Service (DDS) disputes.

- Determine the nature of the complaint.
- If the issue(s) raised in the request for hearing is not resolved at the meaningful prehearing conference, ID mail or send by US postal mail all the following to MOAHR:
  - DHS-18, Request for Hearing.
  - Any required verification of authority to represent.
  - DHS-3050, Hearing Summary, to include, but not limited to the following:
    - Clear, concise statement of the case action(s) taken, including all programs involved in the case.
    - Chronological summary of events, containing facts that led to the action(s) taken.
    - Identification of any verifications supporting the action(s) taken.
    - Citation of policy that supports the action(s) taken.
    - Correct address of the client and the AHR.
  - Complete hearing packet to include, but not limited to, the following:
    - DHS-1605, Notice of Case Action.
    - DHS-1606, Health Care Coverage Determination Notice.
    - A narrative of the meaningful prehearing conference offer and outcome and the DHS-1560, Notice of Prehearing Conference.
    - A copy of all documents the Department intends to offer as exhibits at the hearing.

- Numbering of the hearing packet in the lower right corner of each page.

Note: MOAHR must receive the hearing summary and hearing packet by the 21st day.

For hearing requests disputing:

- Determinations made by the DDS.
- Determinations made by MSA; see *MSA Hearings* in this item.
- Determinations made by the OCS or a (PA) office, a copy of the request for hearing **must** be faxed to the office that initiated the adverse action within 24 hours of receipt. The fax cover sheet **must** include:
  - Title "Administrative Hearing-Time Sensitive."
  - Contact information for the hearing coordinator, MDHHS specialist and the Family Independence Manager (FIM)/Assistance Payments (AP) Supervisor.
  - Date and time of the prehearing conference.

The local office has **10** days from the date the decision was mailed from MOAHR to complete the DHS-1843, Administrative Hearing Order Certification, which certifies compliance.

MOAHR Time Limits

MOAHR has 59 days to schedule and conduct a hearing, render a decision and mail it to the local office, the client and the AHR.

Exception #1: For **MA** community spouse resource allowance requests **only,** MOAHR has 15 days to schedule and conduct a hearing and 50 days to render and mail a decision.

Exception #2: For **FAP only**, MOAHR has 29 days to schedule and conduct a hearing, render a decision and mail it.

Local Controls

All Programs

A DHS-1940, Hearing Request Record, or its equivalent must be maintained by the hearings coordinator. The coordinator is

responsible for tracking the progress of the hearing request from receipt through disposition.

Note: A copy of the Hearing Request Record must be made available to the Business Service Centers or central office upon request.

Expedited Hearings

All Programs

Request an expedited hearing when unusual circumstances exist. A local office supervisor or hearings coordinator may request an expedited hearing by calling the MOAHR director or designee.

Do all of the following within **two** workdays of receiving the hearing request:

- Complete the DHS-3050. Include an explanation about why an expedited hearing is needed; see *Hearing Summary* in this item.
- Write “Expedited Hearing” at the top of the hearing request.
- Forward the hearing request and the summary to MOAHR.

Note: The hearing itself is conducted in the same manner as any other hearing.

FAP Only

Request an expedited hearing if a migrant group plans to leave the state within 60 days.

Requests for Adjournment

All Programs

The client, AHR, or local office may request an adjournment of a scheduled hearing. Instruct the client or AHR to call MOAHR to request an adjournment. All requests for adjournment should be in writing to MOAHR and must include a specific reason for the request unless exception #1 or #2 below applies. **Only** MOAHR can grant or deny an adjournment. MOAHR will notify the hearings coordinator **if** the adjournment is granted. When the hearing is

rescheduled, a new notice of hearing is mailed to everyone who received the original notice.

If the adjournment is granted at the request of the client or AHR, the standard of promptness is extended for as many days as the hearing is adjourned. However, adjournment of a telephone hearing to schedule an in-person hearing does **not** extend the standard of promptness.

Adjournments requested by the local office and MOAHR initiated adjournments do **not** extend the standard of promptness.

Exception #1: For **FAP only**, MOAHR **must** grant one adjournment of a scheduled hearing requested by the client or AHR. It **cannot** exceed 30 days unless good cause is shown.

Exception #2: For **FAP-intentional program violation only**, MOAHR **must** grant an adjournment of a scheduled hearing **if** the client or AHR makes the request at least 10 days in advance of the hearing. It **cannot** exceed 30 days and MOAHR may limit the number of adjournments to one.

COMMUNITY ACTION AGENCY (CAA) AND LIMITED PURPOSE AGENCY (LPA) HEARINGS

CAAs LPAs Only

Community Action Agency (CAA) and Limited Purpose Agency (LPA) administer several programs that are funded through MDHHS. These programs vary depending on locality and funding availability, but generally include weatherization assistance, emergency assistance and programs that promote self-sufficiency.

All CAAs and LPAs have internal appeals processes for clients who receive their services.

If the CAA/LPA internal appeals process has been exhausted and fails to resolve the issue, and the program is a MDHHS-funded program, either the client or the CAA/LPA will forward a hearing request to the MDHHS Bureau of Community Action and Economic Opportunity.

The bureau will review the hearing request, complete a DHS-3050, Hearing Summary, and forward the request to administrative hearings.

Administrative hearings will handle the hearing request according to current procedures.

Role of MDHHS Local Office Staff-CAA and LPA Hearings Only

When the local MDHHS office receives a hearing request disputing services received by a CAA or LPA, the local hearings coordinator does the following:

- Faxes a copy of the hearing request to MDHHS Bureau of Community Action and Economic Opportunity:

  Fax: 517-335-5042
  Phone: 517-373-3550

  Be sure that the fax clearly identifies that it is a CAA or LPA hearing request.

- Sends the original hearing request and any supporting materials within three workdays to:

  MDHHS Bureau of Community Action and Economic Opportunity
  235 S. Grand Ave. Ste. 204
  PO Box 30037
  Lansing, MI 48909

The MDHHS Bureau of Community Action and Economic Opportunity will communicate the hearing decisions to the CAA/LPA.

MSA HEARINGS

MA Only

Michigan Office of Administrative Hearings and Rules (MOAHR) for the Michigan Department of Health and Human Services conducts administrative hearings regarding MSA determinations; see *MSA Determinations* in this item. The tribunal also conducts hearings regarding the following MSA determinations:

- Medical transportation.
- Level of payment for home help services.
- Denial or reduction of specific home help services related to activities of daily living.

The administrative tribunal has the same authorities and responsibilities MOAHR has for MDHHS hearings. These include:

- Granting/denying a hearing request.
- Scheduling/rescheduling the hearing.
- Notifying all parties of the time/place of the hearing.
- Processing requests for in-person hearings.
- Granting/denying requests for adjournments.
- Issuing administrative subpoenas.
- Reimbursing clients for hearings-related expenses.
- Holding the hearing.
- Issuing a decision and order.
- Granting/denying a rehearing/reconsideration request.

Note: Medicaid Recipients enrolled in a managed care health plan, Community Mental Health Services Program- Pre-Paid Inpatient Health Plan (CMHSP-PIHP), or MI Choice Waiver Agency who disagree with an adverse benefit determination made by the health plan/ CMHSP-PIHP/MI Choice Waiver Agency must first exhaust the internal appeal process with that organization prior to being eligible to request a state fair hearing from MOAHR. An adverse benefit determination includes, but is not limited to, the denial or limitation of a requested service or the denial, reduction, suspension of termination of a previously authorized service. Beneficiaries who have questions about the internal appeals process should be directed to call the organization who took the action (health plan/CMHSP-PIHP/MI Choice Waiver Agency) first. They can also be directed to the Beneficiary Help Line at 1-800-642-3195, TTY users call 1-866-501-5656.

MSA Determinations

MA Only

MSA determinations include all the following:

- Denial of prior authorization.

- Denial of payment for a service, appliance or prosthesis.
- Restricted utilization of the client's mihealth card.
- Determination of program enrollment type (PET) code (long-term care or MIChoice waiver).
- Enrollment in managed care, including requests for exemption.
- Denial of CHILD's waiver services.
- Reduction of services.
- Authorization of MA for a newborn under; see BEM 145, Newborns.

Role of MDHHS Staff

Role of MDHHS Local Office Staff, Appeals Review Office Staff and MSA Policy Staff or MOAHR Staff

MA Only

When the local MDHHS office receives a hearing request disputing a MSA determination, the local office hearings coordinator does all the following:

- Logs the hearing request.
- Faxes a copy of the hearing request to MOAHR at 517-763-0146.
- Sends the original hearing request within three workdays to:

  Michigan Office of Administrative Hearings and Rules
  PO Box 30763
  Lansing, MI 48909

MDHHS local office staff will provide a room for the hearing.

Exception: See BAM 825, Medical Transportation, for MDHHS and Medical Services Administration (MSA) responsibilities when MDHHS receives a hearing request on medical transportation.

Role of MSA Staff or MDHHS Appeals Review Office Staff

MA Only

MSA staff or MDHHS appeals review office staff have responsibility to do all the following:

- Arrange an internal review of the appeal to identify appropriate staff involved and whether issue can be resolved.
- Complete the hearing summary and send it to the client/representative and to MOAHR in advance of the hearing
- Notify the client/representative, MOAHR, other MSA staff and local MDHHS if all issues raised in a hearing request are resolved prior to the hearing.
- MSA staff or Appeals staff will represent MDHHS during the hearing by explaining the action taken by MDHHS as well as provide the policy that supports the action.
- Department representatives such as ARO or MSA staff, will assist in distributing the decision and order to the appropriate department participants to facilitate compliance to the order in a timely manner. MSA staff will complete and send to MOAHR within 10 days, an order of certification of ALJ Order, if any.

Michigan Office of Administrative Hearings and Rules (MOAHR) for the Department of Health and Human Services (MDHHS) staff have responsibility to do all the following:

- MOAHR will send a notice of hearing to the client/representative, the appeals review office and local MDHHS hearings coordinator email box when a hearing is scheduled.
- MOAHR will send the decision and order to the client/representative, other MSA staff, the appeals review office and local MDHHS hearings coordinator email box.

LOCAL OFFICE REVIEW

All Programs

Resolve disagreements and misunderstandings quickly at the lowest possible level to avoid unnecessary hearings.

On receipt of a hearing request, the hearings coordinator must schedule a meaningful in-person prehearing conference with the client and AHR and a first-line supervisor no later than the 11th calendar day from the receipt of the request for hearing. When the 11th day falls on a non-workday, the prehearing conference must be scheduled by the next workday.

The client or AHR is **not** required to phone or meet with any department staff in order to have a hearing.

Exception: For DDS **disputes**, do **not** schedule a prehearing conference unless the client or AHR requests one.

Supervisory Review

All Programs

Upon receipt of the hearing request from the hearings coordinator, the first-line supervisor:

- Reviews the disputed case action for accuracy according to policy and fact; see *Corrected Case Action* in this item.
- Determines if the request is timely; see *Interim Program Benefits Pending The Hearing* in this item.

Meaningful Prehearing Conference

All Programs

The department must assure that clients receive the services and assistance for which they are eligible. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or AHR rather than through a hearing.

The spokesperson for the local office at the prehearing conference may be anyone from the county director to a first-line supervisor.

Whoever is assigned this function, however, acts on behalf of the county director or district manager.

A DHS-1560, Prehearing Conference Notice, **must** be generated and mailed to the client and AHR upon receipt of a hearing request, unless the issue in dispute pertains solely to a DDS decision.

A meaningful prehearing conference must be scheduled no later than the 11th day from the date MDHHS receives the request for hearing, unless the client and AHR chooses not to attend the prehearing conference.

Note: When the 11th day falls on a non-workday, the prehearing conference must be scheduled by the next workday.

All appropriate staff and partners (for example, first-line supervisor, support specialist (SS) or PA, PATH representative, FIS/ES or OIG) **must** participate in the prehearing conference.

Exception #1: When the disputed case action involves a MSA determination, MSA staff **must** participate in the prehearing conference.

Exception #2: When a meaningful prehearing conference is requested on a DDS dispute, the medical consultant does **not** participate in the conference.

Exception #3: When the disputed case action involves a fleeing felon decision, OIG does not participate in the conference.

A meaningful prehearing conference includes **at a minimum**, performing **all** of the following:

- Determine why the client or AHR is disputing the MDHHS action.
- Review any documentation the client or AHR has to support his/her allegation.
- Explain the department's position and identify and discuss the differences.

If the dispute cannot be resolved, do all the following:

- Provide the client and AHR a copy of the DHS-3050, Hearing Summary, and all evidence the department used in making the

determination that is in dispute. Complete the DHS-1520, Proof of Service.

- Mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing; see *Reimbursement for Transportation and Child Care* in this item.

State-funded Family Independence Program (FIP) and SDA Only

Contact the local office Interim Assistance Reimbursement (IAR) liaison when the disputed action involves computation by central office payment reconciliation staff of the amount of retroactive SSI benefits recovered from a state-funded FIP or an SDA recipient who signed a repay agreement (Interim Assistance Recovery). The liaison **must**:

- Obtain documentation supporting the calculations from payment reconciliation staff.
- Arrange for payment reconciliation staff to participate in the prehearing conference.

FAP and CDC

For a denial of **expedited service only**, inform clients or authorized representatives that they may request a prehearing conference if they do **not** agree with the MDHHS decision. The conference must be held within **two** workdays of the expedited request, **unless** the client requests that it be scheduled later. The following persons must attend the conference:

- Specialist's supervisor and/or the local office director or designee.
- Client, authorized representative or AHR.

The specialist is **not** required to attend but may attend at local office option.

Corrected Case Action

All Programs

If the local office determines that the case action needs correction, do the following:

- Update Bridges with the corrected information, including corrected Circumstance Start Change Date (CSCD) dates. Any benefits owed will be issued when Eligibility Determination and Benefit Calculation (EDBC) and certification is completed. This will result in a new Notice of Case Action being generated to the client. Ensure notices are provided to the AHR.
- For **Interim Assistance Recovery disputes**, central office payment reconciliation staff will process corrective payments.
- For **state SSI payments,** central office SSI Payments Unit staff will process corrective payments.
- If the action taken does not resolve the issue include a short summary of the actions the local office took to correct all the client's concerns on the DHS-3050, Hearing Summary. Include a copy of the Notice of the Meaningful Prehearing Conference.
- At the meaningful prehearing conference, explain the action taken and provide the AHR and the client a copy of the new notice of case action. Be sure to obtain a signature on the DHS-18M.

  Note: Once MOAHR receives a request for hearing, a hearing will be scheduled unless the client or AHR signs a DHS-18A, Written Withdrawal; see *Withdrawals Not In-Person* in this item.

MA Only

If a MDHHS denial is overturned on appeal by MDHHS, an Administrative Law Judge (ALJ) or a court, send or give the client a DHS-334, Reimbursement Notice.

Hearing Summary

All Programs

Complete a DHS-3050, Hearing Summary, prior to the meaningful prehearing conference. In the event additional space is required to complete the DHS-3050, Hearing Summary, attach a word document to the DHS-3050 and number the word document accordingly. All case identifiers and notations on case status must be complete.

The hearing summary must include all the following:

- A clear statement of the case action, in chronological order, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the client and the AHR.
- Description of the documents the local office intends to offer as exhibits at the hearing.

Number the document copies consecutively in the lower right corner; begin numbering with the hearing summary.

Exception #1: For hearing requests disputing state SSI payments, see *State SSI Payment* in this item.

Exception #2: For hearing requests disputing MSA determinations, see *MSA Hearings* in this item.

Exception #3: For DDS ***disputes do all the following:***

- Complete all identifying information at the top of the DHS-3050.
- Write a brief description of the case action, including all programs involved in the case action.
- Explain the status of any SSI application.
- Conclude with the statement “See attached medical packet.”

Number the document copies in the medical packet consecutively in the lower right corner, attach them to the hearing summary and forward to the hearings coordinator.

Exception #4: For hearing requests disputing OCS/PA actions:

Attach a supplemental hearing summary completed by OCS/PA detailing actions taken and all evidence provided by the OCS/PA.

State-funded FIP and SDA Only

For **Interim Assistance Recovery (IAR) disputes**, prepare the hearing summary using documents obtained by the local IAR liaison from central office payment reconciliation staff. Attach copies of those and any other supporting documents to the hearing summary and forward to the hearings coordinator.

MA Only

When a hearing request based on a Medicaid denial is received, send or give the client a DHS-333, Retroactive Period/Corrective Action Eligibility Notice. This notice explains the potential for reimbursement of paid medical expenses after a MDHHS denial that is overturned on appeal by MDHHS, an ALJ or a court. To be eligible for reimbursement, the payment must be for a Medicaid-covered care or service that is provided on or after February 2, 2004. If the client is to be notified of an overturned Medicaid eligibility decision, send or give the client a DHS-334, Reimbursement Notice.

A client may be eligible for reimbursement of medical expenses paid to providers for a retroactive eligibility period Medicaid-covered care or service. A medical payment for care or services received in a client's retroactive period may be reimbursable if it is made between a MDHHS denial and 10 days after the date an eligibility determination is issued as a result of the hearing request.

A client may also be eligible for corrective action reimbursement of medical expenses paid to providers for care or services received after the MDHHS application. The corrective action period covers medical expenses paid to providers between the date a MDHHS administrative hearing request is filed and 10 days after the date an eligibility determination is issued as a result of the hearing request. The client must show that the original denial was incorrect for corrective action reimbursements.

Example: A client submits his income and expense information but forgets to include proof of health insurance premiums or child

support payments and is denied due to excess income. If the client appeals the MDHHS denial and provides the missing information, this could allow the initial denial, correct when issued, to be overturned. If the care or service for which the client made the medical payment was received after the client's application that resulted in the MDHHS denial, the payment would not be eligible for reimbursement.

Example:

- 2/20/06 application for Medicaid and retroactive Medicaid is received by MDHHS.
- 4/5/06 the application is denied.
- 5/3/06 a hearing request is received in the local MDHHS office.
- 6/7/06 the ALJ overturns the denial and determines the client is eligible for Medicaid.
- 6/14/06 the specialist processes the Medicaid opening.

If the medical payment was for care or services received in the retroactive period, the client is eligible for reimbursement for payments between 4/5/06 (the original denial date) and 6/24/06 (10 days after the second eligibility notice is mailed).

If the medical payment was for care or services after the retroactive period, the corrective action period covers payments made between 5/3/06, (the date the hearing request was received by MDHHS) and 6/24/06, (10 days after the second eligibility notice was mailed).

Hearing Packet

All Programs

A copy of the hearings packet must be ID mailed or sent by US postal mail to:

1. The client, if not presented at the prehearing conference.
2. AHR, if not presented at the prehearing conference.
3. MOAHR.

Administrative Review

All Programs

The second-line manager or designee must review all hearing requests which are **not** resolved by the first-line supervisor. The purpose of the review is to assure that local office staff has done the following:

- Applied MDHHS policies and procedures correctly.
- Explained MDHHS policies and procedures to the client and AHR.
- Explored alternatives.
- Offered appropriate referrals to the client.
- Considered requesting a central office policy clarification or policy exception, if appropriate.

By signing box 4 on the DHS-3050, Hearing Summary, the second-line manager must certify:

- The date the DHS-1560, Notice of Prehearing Conference, was sent to the client and AHR, if any.
- The reason the hearing request could not be resolved.
- That eligibility was properly determined for this case.
- That the hearing request cannot be resolved, except through a formal hearing and the reason(s) why.

The managerial certification does not replace the hearing process. The hearing must be held as scheduled unless the hearing request is withdrawn using a DHS-18A, Hearing Request Withdrawal.

The second line manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, strength of the department's case, and administrative alternative.

MA Only

If, before a pending hearing, the local office overturns a Medicaid denial, see *Implementing the Decision and Order* in this item.

CONTINUATION OF PROGRAM BENEFITS PENDING ADMINISTRATIVE HEARING

Denial at Application

All Programs

The client is **not** entitled to benefits pending the hearing when the reason for the hearing request is a denial at application or, for **FAP only**, a denial at redetermination. For **FAP and CDC**, when the hearing request disputes a denial of expedited service, continue to process the application according to normal processing standards.

Timely Hearing Request

All Programs

A **timely hearing request** is a request received by the department within 10 days of the date the notice of case action was issued. When the 10th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday.

While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action.

For MA ONLY the department must maintain benefits if a beneficiary requests a hearing before the effective date of the action. For example, if a beneficiary is provided notice their Medicaid eligibility will be terminated effective 01/01/19, the beneficiary has until 12/31/18 to file a request and maintain their benefit.

For **FAP only**, these actions apply **only** if the benefit period has **not** expired.

Exception #1: For **all programs**, do **not** restore benefits reduced or terminated due to a mass update required by state or federal law

unless the issue contested is that the benefits were improperly computed.

Exception #2: For **all programs**, do **not** restore program benefits when the client or AHR specifically states in writing that continued assistance pending the hearing decision is **not** requested.

Exception #3: For **FAP only**, if a client or AHR disputes the computation of supplemental benefits, issue the supplement as originally computed.

Untimely Hearing Request

All Programs

If a client or AHR files an untimely hearing request, program benefits continue at the current level.

Exception: For **FAP only**, benefits must be restored to the former level **if** either:

- The delay in filing the request was for good cause (for example, client hospitalized).
- The change was the result of a mass update **and** the issue being contested is that FAP eligibility or benefits were improperly computed **or** that federal law/regulation is being misapplied/misinterpreted.

SSI Disability/ Blindness Denials

SSI-Related MA Only

MA negative actions based on SSI disability/blindness denials **can-not** be deleted if MOAHR schedules a hearing regarding other issues raised in the hearing request.

However, if a hearing request is filed at SSA regarding the disability/blindness issue within the pended negative action period, follow the instructions in this item under Timely Hearing Request.

MDHHS can **never** delete the negative action if the SSI disability/blindness denial is final as defined in BEM 260, MA Disability/Blindness.

When Changes Occur Pending the Hearing

All Programs

Pending the hearing decision, restored benefits must **not** be reduced or terminated **unless**:

- A change **not** related to the hearing issue occurs that affects the recipient's eligibility or benefits; **and**
- The recipient or AHR fails to request a hearing about the change after the subsequent notice of negative action.

Note: For FIP only, the client must continue participation with the Partnership. Accountability. Training. Hope. (PATH) program unless the hearing request was the result of non-cooperation.

FAP Only

Pending the hearing decision, restored benefits must **not** be reduced or terminated **unless**:

- The benefit period expires.

  Note: The client may reapply and be determined eligible for a new benefit period and amount based on a new application.

Recouping Program Benefits

All Programs

If a hearing request is filed timely and program benefits are restored, recoup overissuances if:

- The request is later withdrawn.
- MOAHR denies the request.
- The client or AHR fails to appear for the hearing **and** MOAHR issues an order of dismissal.
- The hearing decision upholds the department's action.

Calculate the overissuance from the date the negative action would have taken effect until the date the negative action is subsequently implemented.

If an administrative recoupment is processed to recover an overissuance due to a hearing, send a timely notice of case action. In this situation, the client is entitled to a hearing solely on the issue of the recoupment amount.

If a **cash** repayment is sought to recover an overissuance, requests for a hearing will **not** be granted **except** in FAP cases. Complete a DHS-3050 describing the current facts. Forward the hearing request and the summary to MOAHR. MOAHR will inform the client and AHR that a hearing will **not** be granted.

WITHDRAWALS

All Programs

When any issue is still in dispute, do **not**:

- Suggest that the client or AHR withdraw the request; **or**
- Mail a withdrawal form to the client or AHR unless it is requested.

When correcting a case action, follow procedures in the Corrected Case Action section of this item. Do **not** ask for a withdrawal based on an action that will be taken in the future; MOAHR cannot grant a withdrawal based on an action that has not been completed.

If the client has an AHR, the AHR must sign the withdrawal request. The client may not withdraw the hearing request without first providing the department with a written, signed notice stating they wish to revoke the AHR's authorization to represent the client. The authorization to represent must be revoked by the client before the client signs the hearing request withdrawal.

Withdrawals Requested In-Person at the Meaningful Prehearing Conference

All Programs

At any time during a meaningful prehearing conference the client or AHR may choose to withdraw his/her request for hearing. If the client has an AHR, the AHR must sign the withdrawal request. The client may not withdraw the hearing request without first providing the department with a written, signed and dated notice stating they wish to revoke the AHR's authorization to represent the client. The authorization to represent must be revoked by the client before the client signs the hearing request withdrawal. When such a request is made, complete a DHS-18M, Hearing Request Withdrawal In-Person*,* form.

The DHS-18M, Hearing Request Withdrawal In-Person, form is **only** used when the client or AHR **attends the meaningful prehearing conference in-person** and chooses to withdraw his/her request for hearing **while at the local MDDHS office.**

This form should never be mailed or given to a client to mail back to MDHHS. Do not send the signed DHS-18M form to MOAHR.

Once the form has been completed:

- Provide a copy to the client and AHR.
- Keep the original in the case record in the hearings packet.
- Dispose of the request in Bridges.
- Notify the hearings coordinator to dispose of the request on the hearings log.
- Notify any MDHHS partners of the withdrawal and disposition.
- Close out the request for hearing in this matter and take no further action.

Withdrawals Not In-Person

All Programs

When the client or AHR requests a hearing request withdrawal form outside of the Meaningful Prehearing Conference setting, the DHS-18A, Hearing Request Withdrawal, **must** be used. If the client has an AHR, the AHR must sign the withdrawal request. The client may not withdraw the hearing request without first providing the department with a written, signed and dated notice stating they wish to revoke the AHR's authorization to represent the client. The authorization to represent must be revoked by the client before the client signs the hearing request withdrawal.

DHS-18A, Hearing Request Withdrawal, forms received by MDHHS **must** be faxed to the Michigan Administrative Hearing System (MOAHR) for disposition at 517-763-0155.

1. Withdrawal requests received **prior to** submitting the DHS-3050, Hearing Summary, and hearing packet to MOAHR, ID mail or send by US postal mail all the following to MOAHR:

   - DHS-1605, Notice of Case Action.
   - DHS-18, Request for Hearing (or equivalent).
   - Signed DHS-18A, Hearing Request Withdrawal.

2. Withdrawal requests received **after** submitting the DHS-3050, Hearing Summary, and hearing packet to MOAHR, ID mail send by US postal mail all of the following to MOAHR:

   - Signed DHS-18A, Hearing Request Withdrawal.
   - Copy of the DHS-3050, Hearing Summary, previously submitted. (A copy of the DHS-3050 will allow MOAHR to match the withdrawal with the correct request for hearing.)

3. Withdrawal requests received from client by telephone. Ask the caller to promptly mail or drop off a signed written request for withdrawal to the local office. The client may obtain and complete a DHS-18A at the local office or online at: www.michigan.gov/dhs-forms in the other category.

   When the request for withdrawal is received, mail a copy to MOAHR. File the original in the case record.

   If the withdrawal is received within seven business days of the scheduled hearing, fax the withdrawal to MOAHR.

MOAHR will review the hearing request withdrawal and:

- If approved, send an Order Dismissing Request for Hearing Pursuant to Withdrawal to all parties.
- If denied, an administrative hearing will be scheduled.

4. Withdrawal requests received at the time of hearing. When a client comes to the local office for a hearing, and while at the local office, decides to withdraw the request, contact MOAHR to advise of the withdrawal request. The assigned ALJ must have an opportunity to discuss the withdrawal request with the client and AHR or review the signed withdrawal request that may be faxed. **Do not** send the client away until MOAHR has reviewed the withdrawal request and made a determination whether to grant or deny the request. If the withdrawal request is denied, the hearing will take place as scheduled while the client is present in the local office.

5. If a withdrawal fails to dispose of all issues (partial withdrawal), MOAHR may accept the DHS-18A on the identified program and a hearing will be conducted on unresolved issues.

STATE SSI PAYMENT (SSP)

SSPs are made for only those months the recipient received a regular monthly federal benefit. This is shown on State On-Line Query (SOLQ) as a recurring payment dated the first of the month. **SSPs are not issued for retroactive or supplemental federal benefits.**

The client or AHR may request a hearing when the client receives a DHS-430, Benefit Reduction Notice, stating that the SSP is being reduced or terminated; see BEM 660, State SSI Payment.

Handle these hearing requests in the same manner as all other benefit hearing requests.

When a hearing request (usually a DHS-430) is received, do all the following:

- Log the receipt of the hearing request on Bridges. A timely hearing request will delete the negative action and issue a warrant equal to the previous quarterly payment.

Note: The cutoff date for entering the receipt of a timely hearing request for the State SSI payment program is the payroll run date for case digit ending in 9; see Reference Schedules Manual (RFS) 106. If a hearing request was received timely but was not entered on Bridges by this date, send a copy of the hearing request to the State SSI Payment Unit at SSI-Bridges-Coord@michigan.gov. The State SSI Payment Unit will issue a supplemental payment.

- Prepare a DHS-3050, Hearing Summary. The hearing summary must include the information that the specialist views on materials obtained from SSA. Example SDX or SOLQ.
- Do **not** include a SOLQ within the hearing packet. Contact the State SSI Payment Unit at SSI-Bridges-Coord@michigan.gov for assistance if the SOLQ fails to explain the action taken.
- Represent the department at the hearing.
- If the hearing decision reverses the action taken by the department, issue a supplemental payment.

Prepare for the hearing under the guidance of the SSI Payments Unit staff, as needed. SSI Payments Unit staff will **not** participate in the hearing but are available for consultation regarding:

- Preparation of the hearing summary, and
- Presentation of the case at hearing.

If the SSI Payments Unit determines the disputed case action should be reversed, it will take all actions required. Inform MOAHR of the reversal in writing. MOAHR will then dismiss the hearing request.

EVIDENCE

Client Access to the Case Record

All Programs

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. Send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client **and** AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose.

Exception #1: Do **not** disclose the identity of any person who has reported information relating to an alleged program violation.

Exception #2: MDHHS **cannot** provide access to case records restricted by law or specific orders of a court; see BAM 310, Confidentiality and Public Access to Case Records.

Exception #3: Access to certain mental health records is restricted; see BAM 310.

Subpoenas

All Programs

Request a subpoena if the specialist, the client or AHR requires either of the following:

- A person outside MDHHS to come to a hearing to testify.
- A document from outside MDHHS to be offered as evidence at a hearing.

Send a memo requesting the subpoena to MOAHR. Attach a copy of the notice of hearing, (or other indication of date, time and place of hearing) if available. Allow adequate time to mail or hand-deliver the subpoena. The memo must include all the following:

- Name and address of the person whose testimony is required.
- What document is to be subpoenaed.
- Why the person's presence and/or the document is needed at the hearing.
- How the person's testimony or the document relates to the hearing issue.

The requester is responsible for serving the subpoena and must pay the attending witness $12 per day or $6 per half-day plus the state travel rate per mile from and to the person's residence in Michigan.

MDHHS employees are expected to participate in hearings without a subpoena when their testimony is required; Employee Handbook, **SUBPOENAS ISSUED IN ADMINISTRATIVE MATTERS.**

If the specialist, the client or AHR requests that a MDHHS employee (for example, from another county or central office)

participate in the hearing and that participation cannot be arranged, send a memo to MOAHR giving all the following:

- The name and location of the employee.
- Why the employee's participation is needed.
- How the employee's testimony relates to the hearing issue.

MOAHR will decide whether to require the employee's participation.

NOTICE OF HEARING

If the case action involved actions taken by MDHHS partners fax or email a copy of the Notice of Hearing to the partner within 24 hours of receipt.

THE HEARING

All Programs

A hearing will take place if the local office and the client or AHR have been unable to resolve the issue(s) which prompted the hearing request.

MOAHR must give advance written notice of the time, date and place of the hearing. For **FAP only**, advance notice is specifically defined as the 10-day period preceding the date of the hearing. However, less advance notice may be requested to expedite the hearing.

Clients have the right to all the following:

- Representation by legal counsel or other person of choice at the client’s expense.
- Barrier-free access to the hearing site.
- Interpreters: see BAM 105, Rights and Responsibilities.
- Child care and transportation costs as necessary to ensure that full participation in the hearing process is possible.

Reimbursement for Transportation and Child Care

All Programs

Clients may request reimbursement of transportation and child care costs at the hearing. Clients must make the request on the hearing record and provide the ALJ the following information:

- Their name and address.
- For **transportation expense reimbursement**, the number of miles traveled round-trip for the hearing.
- For **child care expense reimbursement**, the provider type (for example, child care center) and a signed and dated receipt from the provider showing the full names and ages of all children for whom care was provided.

MOAHR will issue the reimbursements when the total combined cost exceeds $3.

Note: Reimbursements are computed using the least costly travel rate.

Telephone Hearings

All Programs

MOAHR schedules a telephone hearing for most cases. However, at the request of the client or AHR, MOAHR must schedule an in-person hearing. In exceptional circumstances the local office may request an in-person hearing by calling MOAHR and explaining the reason for the request.

Telephone hearings are conducted from the assigned ALJ's office. Speaker phones are used to communicate with participants at the local office.

Requests for In-Person Hearings

All Programs

The client or AHR may indicate in the hearing request the desire for an in-person hearing. The notice of hearing also instructs the client and AHR to call MOAHR to request an in-person hearing.

In-person hearings are conducted in the local office that serves the client.

Late Arrival for the Hearing

All Programs

Hearings will be held on the scheduled date if the client or AHR arrives within 15 minutes of the scheduled time.

If the client or AHR arrives **more** than 15 minutes late, do **not** send the person away. Immediately call MOAHR for direction on how to proceed. Whenever possible, the hearing will be held on the scheduled date if MOAHR determines good cause exists for the late arrival.

Failure to Appear for the Hearing

All Programs

Contact MOAHR if the client or AHR does **not** appear for the hearing within 15 minutes of the scheduled time. Do **not** take negative action until written authorization from MOAHR has been received. If the client or AHR later contacts MDHHS to have the hearing rescheduled, tell the person to do one of the following:

- Write MOAHR at P.O. Box 30639, Lansing, MI, 48909-8139.
- Call MOAHR at the toll-free number included on the notice of hearing.

Persons at the Hearing

All Programs

An AHR may appear at the hearing with or without the client. Attendance of support person(s) is allowed, unless the ALJ

determines that space limitations prohibit multiple persons in attendance.

The local office that initiated the case action that leads to the hearing request must present the case. If the client moved to another county, the county where the client resides must host the client, however, the office that took the action must present the case.

Interim Assistance Recovery

State-funded FIP and SDA Only

For **Interim Assistance Recovery disputes**, the local office IAR liaison must arrange for central office payment reconciliation staff to participate in the hearing by telephone.

Presentation of the Case

All Programs

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. In most cases, the client or AHR and local office staff will be together in the hearing room and will speak into a speaker telephone. The ALJ will be on the other end of the phone line.

Following the opening statement(s), if any, the ALJ directs the MDHHS case presenter to explain the position of the local office. The hearing summary, or highlights of it, may be read into the record at this time. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the department's position. Always include the following in planning the case presentation:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.

- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The MDHHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights.

Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence.

Hearings Facilitator

All Programs

The MDHHS case must be presented by a hearings facilitator or backup facilitator. A hearings facilitator and backup facilitator must be a person familiar with MDHHS programs, policies and systems and is designated to present **all** cases to the ALJ.

The facilitator or backup facilitator must review the case prior to the administrative hearing for correct case action and reasonable fairness.

Individuals in this position will present the department's case and be able to knowledgeably and completely answer the ALJ's program, policy and case-specific questions during the administrative hearing.

Admission of Evidence

All Programs

The ALJ will follow the same evidentiary rules used in circuit court to the extent these rules are practical in the case being heard. The ALJ may admit and give probative effect to evidence of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The ALJ must ensure that the record is complete, and may do the following:

- Attempt to ensure all necessary information is presented on the record.

- Be more lenient than a circuit court judge in deciding what evidence may be presented.
- Refuse to accept evidence that the ALJ believes is:
  - Unduly repetitious.
  - Immaterial.
  - Irrelevant.
  - Incompetent.

Note: The ALJ may not act as an advocate for either party.

Either party may:

- State on the record its disagreement with the ALJ's decision to exclude evidence and the reason for the disagreement.
- Object to evidence the party believes should **not** be part of the hearing record.

When refusing to admit evidence, the ALJ must state on the record the nature of the evidence and why it was not admitted. The ALJ may allow written documents to be admitted in place of oral testimony if the ALJ decides this is fair to both sides in the case being heard.

SDA and Medicaid Only

When requested evidence is received, the ALJ will review the evidence for completeness and responsiveness and determine whether the evidence is material and relevant.

The client is responsible for providing evidence to support his or her claim. If the client does not provide medical or other evidence the ALJ needs and requests, the ALJ will generally make a decision based on the evidence in record, including evidence the ALJ has obtained directly. To document that the ALJ has made an attempt to fully and fairly develop the record, the ALJ will document all attempts to obtain the evidence as an exhibit(s) in the record.

HEARING DECISIONS

All Programs

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether

MDHHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- The ALJ believes that the applicable law does **not** support MDHHS policy.
- MDHHS policy is silent on the issue being considered.

In that case, the ALJ recommends a decision, and the policy hearing authority makes the final decision.

Exception: For **MA client eligibility only**, if a presiding ALJ believes an MA policy at issue in a given case does **not** conform with federal or state law, all of the following occur:

- The ALJ issues a recommended decision within 20 days of the hearing date.
- Copies of the decision are sent to the client, AHR, MDHHS policy hearing authority, MDHHS local office and chief executive officer (CEO) of MDHHS-MSA, all of whom may file exceptions with the ALJ.
- The recommendation and exceptions are forwarded by the MDHHS Legal Affairs Administration to the MDHHS CEO through the Michigan Administrative Hearings System for the Department of Community Health.
- The MDHHS CEO makes the final decision regarding all recommended decisions.
- For Medicaid disability determinations, the ALJ will review the evidence for completeness and responsiveness and generally make a decision based on the evidence admitted into the record as to disability, including evidence the ALJ has obtained directly.

MOAHR mails the final hearing decision to the client, the AHR and the local office. In most cases, the client has the right to appeal a final decision to circuit court within 30 days after that decision is received.

Community Spouse Income Allowance

MA Only

The ALJ may raise the total allowance used to calculate the community spouse income allowance to an amount greater than provided for in BEM 546 to provide such additional income as is necessary due to exceptional circumstances resulting in significant financial duress.

The fact that a community spouse's expenses for goods and services purchased for day-to-day living exceed the total allowance provided by policy does **not** constitute exceptional circumstance. Goods and services purchased for day-to-day living include:

- Clothing.
- Drugs.
- Food.
- Shelter (for example, mortgage, taxes, insurance, rent, maintenance).
- Telephone.
- Trash pickup.
- Doctor's services.
- Entertainment.
- Heat.
- Utilities.
- Taxes.
- Transportation (for example, car payments, insurance, maintenance, fuel, bus fare).

Employment expenses do **not** constitute exceptional circumstances.

An example of exceptional circumstances is the need for the community spouse to pay for supportive and medical services at home to avoid being institutionalized.

Significant financial duress does **not** exist if the community spouse could meet expenses using their assets. This includes assets protected for the community spouse's needs as the protected spousal amount.

The ALJ may also grant a greater protected spousal amount (BEM 402, Special MA Asset Rules) when necessary to raise the community spouse's income to the total allowance for the community spouse. The community spouse's income for this purpose includes the maximum amount the long-term care facility and/or hospital (L/H) client could make available to their community spouse per BEM 546.

When the ALJ grants a greater amount in the above circumstances, the final decision specifies:

- The amount of the protected spousal amount; see BEM 402, Special MA Asset Rules.
- The total allowance in BEM 546, Post-Eligibility Patient-Pay Amounts, used for the community spouse when determining the community spouse income allowance.
- The assets to be transferred for use by the community spouse.
- When another hearing will be held to review the exceptional circumstances.

If exceptional circumstances no longer exist before the case is due for the follow-up hearing, send the information to MOAHR. Be sure to include the register number of the last D&O. MOAHR will then decide whether to reschedule that hearing.

Additional Low-Income Medicare Beneficiaries (ALMB)

MA Only

The ALJ cannot order prior months of ALMB eligibility when the prior month(s) is before January of the current calendar year.

Example: A client applies in December 2004 and the specialist determines eligibility in January 2005. The MA begin date is January 2005. There is no eligibility for December 2004 because it is before January of the current year.

Notifying Partners

If a MDHHS partner was involved in the hearing, a copy of the hearing decision **must** be faxed, mailed, or emailed (use their preferred mode of communication) to the partner within 24 hours of receipt.

Implementing the Hearing Decision

All Programs

All hearing decisions **must** be recorded in Bridges, on the Hearing Restore Benefits screen.

Some hearing decisions require implementation by the local office. Implement a decision and order within 10 calendar days of the mailing date on the hearing decision. **Do not provide a notice of case action. The hearing decision serves as notice of the action.** If implementation requires a redetermination, send a notice of case action on the redetermination action.

Implement the hearing decision pending a court appeal unless a circuit court or other court with jurisdiction issues an order requiring a stay.

Note: Specialists will be notified by the Legal Affairs Administration if MDHHS is **not** to implement a hearing decision because of a court stay. If such an order is received from the client, AHR or a court, or if there are any questions, contact Legal Affairs Administration; see Administrative Policy, APL 410, Freedom of Information Act (FOIA).

If unable to determine what action is required, contact the policy clarification mailbox. Policy staff will clarify the situation with the appropriate supervisory ALJ.

If a hearing decision or a local office review results in Medicaid eligibility, send or give the client a DHS-334, Reimbursement Notice. This notice explains the procedure for a client to follow to request reimbursement of paid medical bills from the Michigan Department of Health and Human Services (MDHHS).

Send a copy of the DHS-334, Reimbursement Notice, that was sent to the client to:

Michigan Department of Health and Human Services
Medical Services Administration
Eligibility Quality Assurance Section/Reimbursement
400 S. Pine St., 5th floor
Lansing, MI 48913

The following hearing decisions are **not** implemented by the local office:

- Decisions about MSA determinations are implemented by MSA.
- Decisions about Interim Assistance Recovery disputes are implemented by central office payments reconciliation staff.

Note: See BEM 660 for instructions on implementing decisions about state SSI payments.

Certifying Implementation of the Hearing Decision

All Programs

When a decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification, is sent with the hearing decision.

Complete the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. Complete and mail the DHS-1843 to MOAHR to certify implementation and place a copy of the form in the case file.

If it is impossible to implement the hearing decision as written within 10 calendar days, a local office manager or hearings coordinator should call MOAHR at 517-335-7519 and speak with the supervisor of the ALJ who issued the hearing decision. The supervisor will offer advice on how to proceed. A local office manager or hearings coordinator is responsible to follow-up to ensure implementation of the hearing decision is completed.

REHEARING/ RECONSIDERATION

All Programs

A **rehearing** is a full hearing which is granted when either of the following occur:

- The original hearing record is inadequate for purposes of judicial review.
- There is newly discovered evidence **that existed** at the time of the original hearing that could affect the outcome of the original hearing decision.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/ Reconsideration Requests

All Programs

The department, Office of the Attorney General, MDE, client or AHR may file a written request for rehearing/reconsideration. Request a rehearing/reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision, which led to a wrong conclusion.
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The department, the Office of the Attorney General, the client or AHR must specify all reasons for the request.

Local Office Requests

A written request from the local office for a rehearing/reconsideration must be sent to Economic Stability Administration (ESA) program policy in central office or to the Michigan Department of Lifelong Education, Advancement, and Potential/CDC Policy for a recommendation. The written request must include all the following:

- A copy of the decision and order.
- A copy of the hearing summary and all evidence presented at the hearing.
- Explanation of why a rehearing/reconsideration is appropriate.

Email to the appropriate policy email box, per BEM 100, Introduction.

CDC

Send requests to:

Michigan Department of Lifelong Education,
Advancement, and Potential
Child Development and Care
PO Box 30008
Lansing, MI 48909

Email Policy-CDC@michigan.gov.

If the field program policy or CDC policy supports the local office request, the request shall be made a part of the record. The request will be sent to all parties including: MOAHR, the client, AHR, and the requesting local office.

Office of the Attorney General Requests

A written request made by the Office of the Attorney General must be mailed to MOAHR as follows:

The written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639

Lansing, MI 48909-07322

The Office of the Attorney General will notify MDHHS field operations and the Legal Affairs Administration and provide a copy of the request to the client and AHR.

Client or AHR Requests

A written request for rehearing or reconsideration must be either faxed or mailed to MOAHR as follows:

The written request must be faxed to 517-763-0155 and labeled as follows:

Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

All Requests

MOAHR will not review any response filed to any rehearing/reconsideration requests.

A request must be received by MOAHR within 30 days of the date the hearing decision is mailed.

Granting a Rehearing/ Reconsideration

All Programs

MOAHR will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing.

Exception: MOAHR will **not** grant a rehearing involving FAP-IPV.

If MOAHR grants a reconsideration, a reconsideration decision will be issued.

If a rehearing is granted, MOAHR will schedule and conduct the hearing in the same manner as the original.

Implementation Pending a Rehearing

All Programs

Pending a rehearing or reconsideration request, implement the original decision and order unless a circuit court or other court with jurisdiction issues an order which requires a delay or stay.

Note: If such an order is received by the client, MOAHR, the court or the Legal Affairs Administration and Policy, or if there are questions about implementing the order, see Administrative Policy Manual Legal (APL) 403, How to Obtain Legal Services Lawsuits, Litigation, Legal Documents and Forms.

LEGAL BASE

All Programs

MCL 400.9
MCL 400.37
MCL 24.271- 24.287
Mich Admin Code, R 400.901 *et seq.*
42 CFR 438.400-438.424.

FIP

45 CFR 205.10

RCA

45 CFR 400.54

CDC

The Child Care and Development Block Grant (CCDBG) Act (42 USC § 9858 et seq.), as amended by the CCDBG Act of 2014 (Pub. L. 113-186).
45 CFR Parts 98 and 99.
Social Security Act, as amended 2016.

SDA

Current Annual Appropriations Act
Mich Admin Code, R 400.3151 - 400.3180

MA

42 CFR 431.200-.250
42 USC 1396r-5

FAP

7 CFR 273.15