

# MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH ELIGIBILITY APPEALS

Prepared by the Mental Health Legal Advisors Committee  
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## **How does an individual appeal a determination that clinical criteria have not been met?**

The first step in the appeal of an eligibility determination relative to clinical criteria is an informal conference with the DMH Area Director or designee. This conference may be requested within 10 days of receipt of the denial letter.<sup>1</sup>

This step may be waived by agreement between the individual or legally authorized representative and the Area Director or designee, in which case the individual or representative may submit a request for reconsideration.<sup>2</sup>

Within 10 days of receipt of a request for an informal conference, the DMH Area Director or designee shall hold a resolution conference.<sup>3</sup> The individual may bring any other person to the conference.<sup>4</sup> If the issue not resolved at the conference, DMH must notify the individual or representative that a written request for reconsideration may be submitted to the DMH Area Medical Director.<sup>5</sup>

An individual may submit a request for reconsideration to the Area Medical Director within 10 days of the informal conference or the agreement to waive such a conference.<sup>6</sup> The notice of appeal must indicate the basis of the request for reconsideration and include any additional information that the individual wishes DMH to consider.<sup>7</sup>

The DMH Area Medical Director must issue a written decision within 20 days of receipt of the request, unless this time frame is extended by mutual consent.<sup>8</sup> If the denial is sustained by the Area Medical Director, DMH must issue a written decision letter.<sup>9</sup> If the denial is reversed, DMH must issue a written decision and the Area Director must proceed with a determination of need for DMH services.<sup>10</sup>

Individuals may appeal denials of services, whether the denial be based on clinical criteria or another appealable matter listed in 104 CMR 29.16(2)(a) to the Commissioner for a fair hearing.<sup>11</sup> An individual must submit the petition for a fair hearing in writing within 20 days after receiving the Area Medical Director's decision regarding clinical criteria or within 20 days of completion or the waiver of the resolution conference.<sup>12</sup>

## **What are an appellant's rights in the fair hearing process?**

The DMH regulations set out the rights regarding the fair hearing process. The DMH Commissioner or his or her designee appoints a hearing officer within 10 days of receiving the appeal petition. The Hearing Officer then schedules a hearing date agreeable to both parties.<sup>13</sup>

Fair hearing governed by informal fair hearing rules of standard adjudicatory rules of practice and procedure at 801 CMR 1.02.<sup>14</sup>

The hearing officer must be impartial, although he or she may be a DMH employee. However, the Hearing Officer may not be under the supervision of any facility or office within the DMH service area in which the individual applying would be served or is currently being served.<sup>15</sup>

The individual has the right to bring an attorney or another representative, at his or her own expense.<sup>16</sup>

The appealing party can present any relevant evidence and may call and examine witnesses.<sup>17</sup> The appealing party can examine all records held by DMH pertaining to the client.<sup>18</sup>

The hearing is not open to the public. The individual may invite whoever he or she chooses to attend.<sup>19</sup>

Within 20 days of the close of the hearing, the hearing officer prepares and submits to the DMH Commissioner a recommended decision which shall include a summary of the evidence presented, findings of fact, proposed conclusions of law, a recommended decision, and reasons for the decision.<sup>20</sup>

While the findings of fact are binding, the Commissioner may modify the conclusion of laws and decision for certain reasons.<sup>21</sup> The Commissioner must issue a decision within 15 days of receipt of the material and that decision is final.<sup>22</sup>

Rehearing is allowed for certain grounds.<sup>23</sup>

The standard of proof is a preponderance of evidence, which means that 51% of the evidence favors the conclusion. The burden of proof is on the individual found ineligible for DMH services – to prove that he or she is, in fact, eligible.<sup>24</sup>

If the Commissioner concludes that the individual is ineligible for services, the individual has a right to judicial review pursuant to Mass. Gen. L. ch. 30A, § 14.<sup>25</sup> Chapter 30A sets out certain limited bases on which an appeal may be pursued.

**If an individual is found ineligible at some point in the appeal process, is it worth pursuing a fair hearing?**

There is always the possibility that an appeal may be successful so proceeding to fair hearing should always be at least considered. To mount a successful appeal it is important to provide clinical documentation (and, sometimes, expert testimony) in support of one's position. New evidence may be presented at the fair hearing stage (but should be shared with DMH prior to hearing). It may be worth consulting with a mental health advocate regarding the merits of the case when trying to decide whether to proceed to fair hearing.

One may want to exhaust through the fair hearing stage when the applicant is a young adult with a severe disability who may be eligible upon graduation from high school or turning 22, whichever comes first, to habilitative services from one or more state human services agencies under Chapter 688 of the Acts of 1983. EOHHS reviews the cases of such youth who have been denied by all EOHHS agencies and in rare instances assigned agency responsibility. However, this process only occurs if the individual has exhausted the agency appeal processes.

### **Where can I find DMH eligibility decisions?**

The Mental Health Legal Advisors Committee (MHLAC) has posted DMH eligibility decisions from between 2000 and 2009 on [www.masslegalservices.org](http://www.masslegalservices.org), the resource and research web site for legal services attorneys in Massachusetts. The decisions are available for public review. Each redacted decision is visible in its entirety, as well as a detailed summary of the decision. The decisions also are coded by keyword, so one may search them by topic. To access the decisions:

- Go to [masslegalservices.org](http://masslegalservices.org). (you don't need to login to access the decisions)
- On the left hand column, click on Disability Rights and Services.
- On the left hand column, click on Mental Health.
- On the left hand column, click on DMH Eligibility Decisions.
- Links to the decisions appear in the center of the screen.
- You may sort by date, author, or title.
- To view decisions on particular topics, you can click on the "User Generated Tags" at the bottom of the left column.
- You can also search for a keyword by entering the word in the top white box in the middle (Search Library box), click "Search" and decisions will appear below.

### **What do the DMH eligibility decisions tell us?**

Many fair hearing decisions focus on whether or not the individual has a qualifying mental illness diagnosis. Often, the individual has also been diagnosed with a pervasive developmental disorder, such as an autism spectrum condition. The eligibility decision often turns on whether the symptoms displayed are those of PDD or those of the mental health diagnosis. Similarly, the decision may turn on whether experts are able to attribute the symptoms to substance abuse or head injury as opposed to a mental health diagnosis.

A hearing officer will give credit to experts who do extensive evaluation and to those who know the individual well. The hearing officer will also credit a history of consistent diagnoses and documentation of symptomatology. It is important to be accurate as to what the eligibility criteria are (for ex., hospitalizations are not required, persistent unemployment not required).

## ENDNOTES

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- <sup>1</sup> 104 CMR 29.16(3)(a).
- <sup>2</sup> 104 CMR 29.16(3)(a)(2).
- <sup>3</sup> 104 CMR 29.16(3)(b).
- <sup>4</sup> 104 CMR 29.16(3)(b)(1).
- <sup>5</sup> 104 CMR 29.16(3)(b)(2).
- <sup>6</sup> 104 CMR 29.16(3)(c).
- <sup>7</sup> 104 CMR 29.16(3)(c)(1).
- <sup>8</sup> 104 CMR 29.16(3)(c)(3).
- <sup>9</sup> 104 CMR 29.16(3)(c)(4).
- <sup>10</sup> 104 CMR 29.16(3)(c)(5).
- <sup>11</sup> 104 CMR 29.16(5)(a).
- <sup>12</sup> 104 CMR 29.16(5)(b).
- <sup>13</sup> 104 CMR 29.16(5)(b)(1).
- <sup>14</sup> 104 CMR 29.16(5)(b)(1).
- <sup>15</sup> 104 CMR 29.16(5)(b)(3).
- <sup>16</sup> 104 CMR 29.16(5)(b)(4).
- <sup>17</sup> 104 CMR 29.16(5)(b)(5).
- <sup>18</sup> 104 CMR 29.16(5)(b)(6).
- <sup>19</sup> 104 CMR 29.16(5)(b)(7).
- <sup>20</sup> 104 CMR 29.16(5)(b)(8).
- <sup>21</sup> 104 CMR 29.16(5)(b)(9).
- <sup>22</sup> 104 CMR 29.16(5)(b)(10).
- <sup>23</sup> 104 CMR 29.16(6)(a).
- <sup>24</sup> 104 CMR 29.16(7).
- <sup>25</sup> 104 CMR 29.16(8).