



## **APPEAL PROCESS FOR PERSONS WITH A SERIOUS MENTAL ILLNESS**

### **A Self-Advocacy Guide**

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The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you need further information.

- This guide is available in alternative formats upon request.

# APPEAL PROCESS FOR PERSONS WITH A SERIOUS MENTAL ILLNESS

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## **The Appeal Process for Persons with a Serious Mental Illness**

If you have applied for or been determined Seriously Mentally Ill (SMI), you have a right to dispute decisions made by Tribal and Regional Behavioral Health Authorities (T/RBHA). You may dispute decisions concerning behavioral health services, assessment reports, treatment or discharge plans, certain clinical team findings, fees or waiver of fees, payments, and access to or delays in service. You also may dispute a determination that you are not SMI, and therefore, not eligible for SMI services.

There are two appeal processes for persons with SMI. One process is for anyone with SMI, and the other process is for persons with SMI who are eligible for AHCCCS health insurance. If you have been determined SMI and you are eligible for AHCCCS health insurance, you may follow the appeal process for persons with SMI (Section V below) or you may follow the appeal process for persons with SMI who are eligible for AHCCCS health insurance (Section VI below).

## **I. Notice**

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The T/RBHA must tell you about your right to appeal when you apply for services and when they make decisions in your case. The T/RBHA must give you a written “notice” when they make a decision that affects your SMI eligibility or behavioral health services. The T/RBHA must give you a written notice denying your SMI eligibility within three days of the denial. These notices must explain your right to appeal, how to appeal or ask for a hearing, the decision, the reason for the decision, and the specific laws and rules that support the decision. The notice must explain your right to represent yourself or be represented by an attorney or other appropriate person in the appeal. Also, the notice must explain that, under most circumstances, you may continue to receive behavioral health services while the appeal or hearing is pending. If the T/RBHA has not given you a written notice, you should ask for one. If the T/RBHA will not give you a written notice, you can still appeal a denial or change to your services without the notice.

## **II. Informal Complaint**

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There are several ways to dispute a decision or action by your behavioral health provider. You may make an *informal complaint* by speaking to a staff member and/or supervisor who works for your behavioral health services provider. This is a good idea only if the problem can be fixed quickly. It is not a good idea if the staff is not willing to listen or fix the problem or if the same problem keeps happening over and over again.

## **III. Formal Complaint**

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You may make a *formal complaint* orally or in writing with the T/RBHA’s Customer Service Department. The T/RBHA has 90 days to make a decision on your complaint. If you do not agree with the T/RBHA’s decision, you can ask the Arizona Department of Health Services’ Division of Behavioral Health Services (DBHS) to review the decision. If it is the kind of decision that can be appealed or grieved, you may ask for a *grievance* or an *appeal* of the decision made in the formal complaint process (See Sections IV and V below).

## **IV. Grievance or Request for Investigation**

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If your rights have been violated or if you want a dangerous, inhuman or illegal condition to be investigated, you may ask for a grievance or request an investigation orally or in writing with the RBHA’s Customer Service Department or the RBHA’s Office of Grievance and

Appeals within 12 months of the violation. The investigator should interview you and others and review the clinical records to make a decision. This process may take several months. If the investigator finds a violation, the RBHA must develop a plan to correct it. If no violation is found, you may file an *appeal* within 30 days of the decision. The DBHS Deputy Director will review the decision. If you do not agree with the Director's decision, you may request a hearing within 30 days of the Director's decision.

## **V. Appeal Process for Persons with a Serious Mental Illness**

### **A. What kinds of decisions can you appeal?**

You may appeal decisions that affect your eligibility or services. This includes decisions about your SMI eligibility, behavioral health services, assessments, evaluations, treatment plans, payments, fees, decisions that are the result of a request for a grievance or investigation, as well as the failure to provide timely services. The RBHA must give you a notice at least 30 days before there is a change to your services, unless a qualified clinician determines the change is necessary to avoid a serious or immediate threat to you or others.

### **B. Who can file an appeal?**

You or your guardian, designated representative or service provider (with your consent) may ask for an appeal on your behalf.

### **C. How do you appeal a decision?**

Within 60 days of the date of the decision, you may file an appeal orally or in writing with the RBHA's Customer Service Department or the RBHA's Office of Grievance and Appeals. Your appeal should include your name and address and the reason you want an appeal. If you receive SMI services from a Tribal RBHA, you must file your appeal with DBHS' Office of Grievance and Appeals. DBHS will process the appeal for the Tribal RBHA.

### **D. Can you file a late appeal?**

The RBHA may accept a late appeal if you can show you have a good cause reason for filing it past the 60-day deadline. The RBHA must give you a written denial if it does not accept the late appeal. Within 10 days of the denial, you can ask the DBHS Deputy Director to review the denial. The Deputy Director must make a decision within 15 days. If the late appeal is accepted, the appeal process will move forward.

## **E. Do your services continue during the appeal?**

If your appeal involves a change to your current behavioral health services, the services will continue during the appeal, unless a qualified clinician determines your services must change or stop to avoid a serious or immediate threat to your (or others) health or safety. You or your guardian also may ask for the services to change or stop.

## **F. What if you need a decision quickly?**

An appeal can be expedited (done quickly) if the appeal involves crisis, emergency or inpatient psychiatric services, and you can show a good cause reason to expedite the appeal. If your appeal is expedited, the timeline for each step is shortened by several days. If your request for an expedited appeal is denied, you can ask DBHS to review the denial within three days. DBHS must give you a final decision within one day. If DBHS accepts your request for an expedited appeal, your appeal moves forward using the expedited appeal process. If not, the standard appeal process timelines are followed.

## **G. Can you review the records related to the appeal?**

If you ask, the RBHA must allow you to review all the documents and records the RBHA will use at informal conferences or the administrative hearing. The RBHA can prohibit you from reviewing certain clinical records, as permitted by the law. You can ask for copies of these documents to prepare for your appeal or hearing.

## **H. What are the Steps in the Appeal Process?**

### ***1. Informal Conference with RBHA***

Within seven days of asking for an appeal, the RBHA must hold an informal conference to discuss the appeal with you, your guardian or representative, your case manager and other persons involved in your case. You can participate in the informal conference by phone or in person. If the problem is fixed, the RBHA must give everyone a written notice that explains the issue and describes how and when it will be fixed. If the problem is not fixed or if you missed the informal conference with the RBHA, you may ask for an informal conference with DBHS (number 2 below) or an administrative hearing (number 3 below) if your appeal concerns services. If your appeal involves your SMI eligibility, you may only ask for a hearing (number 3 below). Within three days, the RBHA must forward your request to DBHS to continue the appeal or hearing process.

## **2. *Informal Conference with DBHS***

Within 15 days of receiving your request, the DBHS Office of Grievance and Appeals must hold an informal conference with the same people that attended the RBHA's informal conference in step number 1 above. DBHS must send you the date, time and place of the informal conference. You can participate by phone or in person. If the problem is fixed, DBHS must give everyone a written notice that explains the issue and describes how and when it will be fixed. If the appeal is not fixed or if you missed the informal conference with DBHS, you may ask DBHS for an administrative hearing (number 3 below).

## **3. *Administrative Hearing***

If you ask for a hearing, DBHS will notify the Office of Administrative Hearings (OAH) about your hearing request. A notice of hearing with the date, time and place of the hearing is sent to all the parties involved in the hearing. A hearing officer, called an Administrative Law Judge (ALJ), conducts your hearing. The hearing is in Phoenix, but you can ask to attend the hearing by telephone from any place.

Before the appeal, you should review and copy the RBHA and DBHS records that relate to your appeal. You should give the ALJ records and other documents that support your appeal before or at the hearing. You must give copies of these documents to the other parties. At the hearing, you and your witnesses can testify on your behalf. You may question the RBHA's witnesses and documents. Before the hearing ends, the ALJ should give you a chance to explain why the RBHA's decision is not correct and why you should receive the services you are requesting.

After the hearing, the ALJ sends a recommended decision to the DBHS Director. The DBHS Director can accept, reject, or change the ALJ's recommended decision. Within 30 days of the ALJ's decision, the DBHS Director must send a written administrative decision to you and the other parties at the hearing.

### **I. *What if you do not agree with the Director's decision?***

If you do not agree with the DBHS Director's decision, you may ask the Director to review the decision. If you disagree with the Director's decision after the review, you may appeal the decision to Superior Court. You do NOT have to ask the Director to review the decision. You may appeal the decision directly to Superior Court without first asking for the review.

If you are eligible for AHCCCS health insurance and your appeal involves services covered by AHCCCS health insurance, you may appeal the DBHS Director's decision to the AHCCCS Administration within 15 days of the decision. You can ask the AHCCCS Administration to review the decision or you can ask for a new hearing.

## **VI. Appeal Process for Persons Determined SMI and Eligible for AHCCCS Health Insurance**

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If you have been determined SMI and you are eligible for AHCCCS health insurance, you may appeal decisions about your behavioral health services to your RBHA using the process described below. This is also called the "Title XIX SMI" process.

### **A. What is a Notice of Action?**

Under most circumstances, the RBHA must give you a written "notice of action" at least 10 days before your services are suspended, reduced, or stopped. If you or your provider requested prior authorization of a specific behavioral health service, the RBHA must send you a written notice either denying or approving the request within 14 days. The RBHA's notice of action must explain the decision and how to appeal it.

### **B. How do you appeal?**

You, your representative or your behavioral health provider may ask for an appeal orally or in writing within 60 days of the date of the RBHA's notice of action. If the RBHA denies your request for an appeal because it is late, you may ask DBHS to review the denial within 10 days. DBHS must make a final decision within 15 days of your request. If DBHS finds in your favor, the appeal will go forward.

### **C. What if you need an appeal right away?**

If the RBHA decides that taking the time for the standard appeal process could "seriously jeopardize your life or health, or your ability to attain, maintain, or regain maximum function," your appeal may be expedited (done quickly). You should give the RBHA documentation from your behavioral health provider that supports your need for an expedited appeal. If your request for an expedited appeal is approved, the RBHA must review your case and send you a decision (Notice of Appeal Resolution) within three working days. If your request for an expedited appeal is denied, the RBHA must promptly tell you and then process your appeal under the standard appeal timeframes.

#### **D. Will your services continue during the appeal?**

Your services will continue during the appeal if: (1) you appeal and ask for continuing services within 10 days of the notice of action or within 10 days of the effective date of the reduction or termination of your services; and (2) the services to be continued were previously authorized by the RBHA or your behavioral health provider states that the continuing services are necessary. If you do not win the appeal, the RBHA may ask you to pay back the cost of these services.

#### **E. What happens after you appeal?**

The appeal is a “paper review.” The RBHA must review all the records and documents in your case that are related to your appeal. You should give the RBHA additional information or documents that support your appeal. The RBHA must consider all of the relevant information before making a decision.

#### **F. How long does the RBHA have to make a decision?**

The RBHA has 30 days from the date you asked for an appeal to make a decision. This 30-day period can be extended 14 days if you or the RBHA need more time to gather information for the appeal. If the RBHA does not send you a written decision within these timeframes, the appeal is considered denied and you may ask for a hearing.

#### **G. How does the RBHA tell you about the decision?**

When the RBHA makes a decision on your appeal, they must send you a Notice of Appeal Resolution. The notice must explain the factual and legal reasons for the decision, your right to ask for a hearing, and that you may ask for continuing services. It must explain that you may be responsible for the cost of the services you received during the hearing, if you do not win the hearing.

#### **H. How do you ask for a hearing?**

You may ask for a hearing by sending a written request for a hearing to the RBHA within 30 days of the RBHA’s written decision (Notice of Appeal Resolution). You may ask that your services continue while the hearing is pending.

#### **I. What is the hearing process?**

The Office of Administrative Hearings (OAH) holds the hearing. The OAH hearing process is described above in number 3 of Section V, except the *AHCCCS* Director reviews the ALJ’s recommended decision and sends you a final administrative decision.

## VII. Tips for a Successful Appeal and Hearing

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- Read your notices carefully.
- If you have not received a written notice, ask your RBHA to give you one.
- Make sure you understand the reason for the decision. If you don't understand the reason or the RBHA doesn't give you a reason, ask the RBHA to give you a more specific reason in writing.
- Carefully note deadlines to make sure you do things on time.
- Always ask for your appeal or hearing request *in writing* and *on time*. Keep a copy of your request for your records.
- Give the RBHA documents and other information that supports your appeal.
- Read the notice of hearing and carefully follow the hearing instructions.
- If you need to attend the hearing by telephone, you must fill out a form called a Request for Telephonic Testimony, which should be included with the notice of hearing. You can also get this form at [www.azoah.com](http://www.azoah.com). You must send the Request to the ALJ at least 10 days before the hearing.
- Write to your RBHA to ask for copies of the documents in your case file related to your appeal or hearing and for copies of "guidelines" or "manual sections" they relied on to make a decision in your case.
- Ask your doctor or behavioral health provider to help you with the appeal or hearing by giving you a letter explaining why you need the service and/or by giving you records that will help you.
- If you can, send copies of the documents, records or evidence that you want to be considered in the appeal or hearing to the RBHA and the ALJ by fax or by certified mail with a return receipt. Keep a copy of all the documents and write down how and when they were sent to the RBHA and the ALJ.
- Plan your argument for the hearing by outlining why the RBHA's decision is not valid and why you should get the services based on the records and evidence that supports your appeal.
- On the day of your hearing, make sure you have all of your appeal documents, any other evidence that supports your appeal, a list of points you want to make at the hearing, questions you may want to ask the RBHA, and paper to take notes.
- Relax and allow the ALJ to guide you through the hearing process. The ALJ will give you the opportunity to present your case and to question the other party.
- *You will receive a hearing decision in writing a few weeks after the hearing.*

## VIII. Other Helpful Information about the Appeal Process

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- Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS)
  - ✓ Appeal information at <http://www.azdhs.gov/bhs/ohr.htm>
  - ✓ Provider Manuals at <http://www.azdhs.gov/bhs/provider/index.htm>  
(See member disputes in Section 5.0)
- ADHS/DBHS Policy and Procedures Manuals at <http://azdhs.gov/bhs/index.htm>
  - ✓ Policy GA 3.5 Notice and Appeal Requirements for SMI and Non-SMI/Non-Title XIX/XXI
  - ✓ Policy GA 3.3 Title XIX Notice and Appeal Rights
- Arizona Revised Statutes at <http://www.azleg.gov/ArizonaRevisedStatutes.asp>
  - ✓ A.R.S. § 36-3407 – SMI related services
  - ✓ A.R.S. § 36-3413 – Grievance and Appeals Process for behavioral health
- Arizona Administrative Code, R9-21-401 to 410: Appeals, Grievances, and Requests for Investigations for Persons with SMI at [http://www.azsos.gov/public\\_services/table\\_of\\_contents.htm](http://www.azsos.gov/public_services/table_of_contents.htm)
- Arizona Center for Disability Law
  - ✓ Self advocacy guides at <http://www.acdl.com/selfguides.html> under Mental Health Guides section
- Office of Administrative Hearings (OAH) Brochure at [www.azoah.com](http://www.azoah.com)