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Date: May 1, 2019

RE: Responses to comments received from the public for GCR 18-126: Health Benefits Eligibility & Enrollment (HBEE) Rule Update – HBEE Part Eight: State Fair Hearings and Expedited Eligibility Appeals

A summary of comments received on the proposed rule and the Agency of Human Services' responses to those comments is included below. Comments were received from Vermont Legal Aid, Inc.

80.04 Request for a State fair hearing (b)(4)

Comment:

VLA is concerned about the proposal to allow AHS to take up to 15 days to review an individual's appeal before referring the request to the Human Services Board (HSB). Although it may be efficient for AHS to review the fair hearing requests prior to sending them to the HSB, the 15 day time frame is too long, and will extend the fair hearing process. Under 45 CFR 155.520(d)(3), AHS must transmit the appeal "upon receipt" of the request. VLA proposes that AHS transmit the fair hearing request to HSB while it engages in a 10 day internal review period. AHS can simultaneously review the appeal internally while the case is docketed at the HSB. The fair hearing rules also already provide for agency review of a pending case under 1000.3(G).

Response:

The State is finalizing this rule as proposed. We appreciate this comment and note that this process does not delay transmittal to the HSB where the case cannot be resolved informally. Rather, DVHA prepares the case file as expeditiously as possible while also reviewing it to ensure it has addressed all issues it can in the customer's favor. 15 days is an outer limit. The State feels strongly that customers should benefit from prompt resolution of their issue wherever possible and without expending resources and time on the formal fair hearing process.

Comment:

In addition, the applicable regulation, 45 CFR §155.520, also provides two rights that should be included in the rule. These are the 1) right for appellant to cure a defective request for a Fair Hearing, and 2) a "good cause" permission for the appeal to go forward if the request for the Fair Hearing is submitted late. VLA requests that these important protections be included in this section of the rule.

Response:

The rules for requesting a fair hearing are outside the scope of this rulemaking with the exception of the informal resolution provision at 80.04(b)(4). However, the State agrees that petitioners have the right to cure a defective request for fair hearing and for an appeal to advance for good cause even if submitted late. In practice, neither DVHA nor the HSB rejects any appeal submitted, including on the basis of timeliness.

80.05 AHS Secretary's decision and further appeal

Comment:

The proposed language does not reflect the statutory changes to 3 V.S.A. 3091(h)(1)(A)(ii). The proposed regulation should copy the new statutory language:

(ii) the decision or order *misinterprets or misapplies* State or federal policy or rule

The regulation should be revised in light of this change to Vermont law.

Response:

The State is revising the rule to align with 3 VSA 3091(h)(1)(A)(ii).

80.07 Expedited eligibility appeals; expedited internal appeals and expedited State Fair Hearings

80.07(c)(5) No right to State fair hearing on denial

Comment:

This language is confusing. We believe it would be clearer to say: "A denial of a request for an expedited eligibility appeal is not an *independent* basis for review by the Human Services Board."

Response:

The State is revising the rule as the commenter has proposed.

80.07(e)(1)(iii) Procedures

Comment:

While many of these rights are preserved in the non-deleted part of 80.07 (e)(1)(iii), the opportunities to see the documents and records relied upon by the agency in making its initial denial has not been preserved in the internal agency review. This is an essential due process right.

Response:

The State agrees that the opportunity to see the documents and records relied upon by the decision-maker is an important due process right. This opportunity has been preserved at 80.07(e)(1)(iv) which states that AHS will provide the individual with the opportunity to

review the appeal record, including all documents and records considered by the decision-maker.

Comment:

Also, the right to have witnesses and present evidence has also been deleted, and only replaced with the right to “present facts”. It should be made clear to the appellant that they can provide written documents, and witnesses as scheduling permits.

Specifically, 45 CFR 155.535 sets out requirements for a hearing, which includes the right to review documents and present witnesses.

Response:

The State agrees that an appellant may present witnesses and provide written documents as part of the QHP appeal meeting. We have reinstated the deleted language at 80.07(e)(1)(iii) to permit an individual to present oral and written evidence.

Comment:

The appellant should also have the option to attend in person and not by phone.

Response:

The proposed rule does not prohibit in-person participation in the QHP appeal meeting. The State revised the rule to emphasize the provision of a phone number because, in its experience, petitioners prefer a phone meeting in light of the short timeframes for expedited review. In fact, DVHA has never had a petitioner request an in-person meeting in this context.