

Texas Passes Judicial Review of Medicaid Denials

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Medicaid applicants and recipients have long had the right to appeal an unfavorable Medicaid eligibility case decision, such as a denial or termination of benefits. The right of appeal is fundamental to due process. An appeal is started by contacting anyone (verbally or in writing) at the Texas Health and Human Services Commission ("HHSC"), the state Medicaid agency. The appeal is handled by an HHSC hearing officer, who need not be an attorney. Nevertheless, the hearing officer is a disinterested party who was not involved in making the original case decision. Because the hearing officer has no vested interest in the outcome of the appeal, it is assumed that he/she will apply the agency's rules correctly and impartially. But what happens when the hearing officer's decision is also unfavorable?

Until recently, the only recourse available, after the hearing officer rendered a decision, was to request an administrative review of the decision by an HHSC attorney. The results of the attorney's administrative review were final. Unlike all other 49 states, Texas law did not permit a review of the hearing decision by the courts (referred to as "judicial review"). The only other recourse available was to file a lawsuit against the state in federal court, which could be a lengthy and expensive process.

Fortunately, the 80th Texas Legislature recognized this problem and closed the gap in due process by enacting House Bill 75, effective September 1, 2007, which finally allows for judicial review of Medicaid and food stamp case decisions. A long time crusader for this change is Bruce Bower, an attorney with the Texas Legal Services Center in Austin, who worked with the Texas Legislature to get judicial review enacted into law. State Representative Elliott Naishtat of House District 49 (Travis County) authored the bill and Speaker Pro Tem Sylvester Turner of District 139 (Harris County), was a joint author.

The significance of judicial review is that it improves accountability in Medicaid eligibility determinations. Mr. Bower says that, "this law will allow persons who have exhausted the eligibility procedures to have a state judge review the file to determine if there is a valid reason for the denial of Medicaid or food stamps. It is expected that attorneys who represent elderly persons and those who represent persons with disabilities will provide legal services to persons using House Bill 75's right of state court judicial review."

The process and time frames for requesting judicial review are as follows:

- The individual appeals the agency's Medicaid or food stamp case decision.
- A fair hearing is held before an HHSC hearing officer.
- If the hearing officer's decision is unfavorable, the individual may (within 30 days) request an administrative review.
- Within 10 days of receiving the request for an administrative review, HHSC assigns a staff attorney to perform said review.
- The HHSC attorney has 15 days to uphold or reverse the fair hearing decision.
- If the outcome of the administrative review is unfavorable, the individual may (within 30 days) file for judicial review of the case decision with a district court in Travis County, Texas.

- The district court then reviews the case decision and makes a final ruling.

The elder-law community welcomes the opportunity for judicial review. We believe the new law provides an additional layer of protection for Medicaid applicants and recipients. Chuck Bauman, the current President of the Texas Chapter of the National Academy of Elder Law Attorneys said, "Texas NAELA believes House Bill 75 is a critical improvement for Texans of our public benefit laws. Low-income and poor Texans now have the opportunity residents of every other state have when they are denied Medicaid or food stamps - to appeal a denial of benefits to an impartial Texas state court for judicial review."

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