

Michelle G. Fry, J.D., Ph.D.
State Director
Janet Brock Priest
Associate State Director
Operations
Lori Manos
Associate State Director
Policy
Constance Holloway
General Counsel
Harley T. Davis, Ph.D.
Chief Administrative Officer
Nancy Rumbaugh
Interim Chief Financial Officer
Greg Meetze
Chief Information Officer



3440 Harden Street Extension
Columbia, South Carolina 29203
803/898-9600
Toll Free: 888/DSN-INFO
Home Page: www.ddsn.sc.gov

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Title of Document: Appeal and Reconsideration of Decisions

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Applicability: All DDSN Divisions; DDSN Regional Centers; DSN Boards and Contract Service Providers

I. INTRODUCTION:

This directive establishes policies and procedures for reconsideration or appeal of decisions concerning eligibility for and services either solely state-funded by the South Carolina Department of Disabilities and Special Needs (DDSN), ~~Disabilities and Special Needs Boards, and Contracted Providers~~ or Medicaid-funded by the South Carolina Department of Health and Human Services (SCDHHS). Authority for ~~this~~ these procedures is set forth in S.C. Code Ann. § 44-26-80 (2018) relating to the rights of individuals receiving services from DDSN, in S.C. Code Ann. Regs. 88-705-715, and in 42CFR 431.10. This directive establishes the procedures for the reconsideration of decisions made by DDSN and/or its network of providers that affect the receipt of Medicaid services by Medicaid participants and for the appeal of decisions for applicants seeking eligibility for solely state-funded DDSN services or when such solely state-funded services are denied, suspended, reduced or terminated.

II. POLICY:

It is the policy of DDSN that each applicant or service recipient has the right to appeal or request reconsideration of decisions made by DDSN, DSN Boards, or Contracted Service Providers. DDSN, DSN Boards, and Contracted Service Providers shall ensure that all concerns of applicants and service recipients are handled appropriately and in a timely manner.

DDSN utilizes funding appropriated by the South Carolina General Assembly to support those going through DDSN's eligibility process and for those found eligible for the agency's services. For some

DDSN services, the funding appropriated by the South Carolina General Assembly is the only source of funding. However, in order to maximize the appropriated funding, DDSN also partners with the ~~South Carolina Department of Health and Human Services (SCDHHS)~~ to utilize and earn Medicaid as a source of funding for services. Therefore, DDSN has final authority over some decisions, but when Medicaid funding is used or affected, SCDHHS, the State's Medicaid Agency, has final authority over the decision.

A. **DDSN Decisions:** DDSN has the final authority over decisions that are solely state-funded by DDSN (i.e., not funded by Medicaid) and those solely within its established authority. Appeals procedures for adverse decisions solely state-funded by DDSN are outlined in S.C. Code Ann. Regs. 88-705-715. These procedures are outlined in Attachment C: Process for Appeal of DDSN Decisions.

B. **SCDHHS Decisions:** SCDHHS, ~~the Medicaid Agency,~~ has final authority over decisions made regarding programs and services funded by Medicaid. In the context of this document, these decisions will be referred to as “**SCDHHS decisions.**” While the final authority for Medicaid decisions rests with SCDHHS, because DDSN operates Medicaid Home and Community Based Services (HCBS) Waivers on behalf of the SCDHHS and is a provider of Medicaid-funded services, SCDHHS allows DDSN to reconsider decisions made by DDSN or its network of providers before providing a Fair Hearing to a Medicaid participant. The reconsideration by DDSN is allowed to ensure that established Medicaid policy and procedures were followed and appropriately applied when the decision was made.

SCDHHS decisions that may be reconsidered by DDSN include, but may not be limited to:

- Denial of Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care.
- Denial of Nursing Facility (NF) Level of Care when reevaluated.
- Other:
 - Denial of Placement on an HCBS Waiver waiting list
 - Denial of ID/RD Waiver Reserved Capacity
 - Denial of HASCI Waiver Reserved Capacity
 - Denial of Community Supports (CS) Waiver Reserved Capacity
 - Denial, suspension, reduction or termination of a HCBS Waiver funded service
 - Denial, suspension, reduction or termination of a Medicaid State Plan service authorized by a Waiver Case Manager
 - Denial of the choice of HCBS Waiver service provider

III. DEFINITIONS:

Applicant:

- a. One who has contacted DDSN (via the toll-free telephone number) to seek a determination of eligibility for DDSN services or by proxy, contact was made by the applicant's legal guardian.
- b. One who has contacted DDSN or a DDSN qualified Case Management provider to seek enrollment or one for whom enrollment is sought by a legal guardian in one of the Home and Community Based Services Waivers operated by DDSN.
- c. One who has contacted their Case Management provider or DDSN to seek a determination of ICF/IID Level of Care or one for whom a determination is sought by a legal guardian.

Service Recipient:

- a. One who has been determined by DDSN to meet the criteria for eligibility for DDSN services, or by proxy, his/her legal guardian.
- b. One who is enrolled in a Home and Community Based Services Waiver operated by DDSN or by proxy, his/her legal guardian.

Representative:

- a. One, who with the consent of an individual who is not adjudicated incompetent, assists the applicant or service recipient.
- b. One, who with the consent of an individual's legal guardian, assists the applicant or service recipient.

Appeal:

A procedure by which a party dissatisfied with a decision, determination or ruling may refer the matter to a higher authority for review. In the context of this document, an appeal is a request by a DDSN applicant to reverse a decision regarding DDSN eligibility or a service or program solely state-funded by DDSN. Procedures for appeal of adverse decisions solely state-funded by DDSN are outlined in S.C. Code Ann. Regs. 88-705-715. Refer to Attachment C: Process for Appeal of DDSN Decisions for an outline of this process.

Reconsideration:

A review of a decision to ensure the decision comports with applicable Medicaid policy or procedures. In the context of this document, a reconsideration is a review by DDSN of a decision made by DDSN or its network of service providers to ensure that applicable Medicaid policy and/or procedures were appropriately applied when making the decision. If dissatisfied with the outcome of the reconsideration, the Medicaid participant may request a Fair Hearing from the Division Office of Appeals and Hearings at SCDHHS.

IV. RECONSIDERATION OF SCDHHS DECISIONS:

A. ICF/IID Level of Care

An adverse decision regarding an initial determination or an annual re-determination of ICF/IID Level of Care made by or upheld by the DDSN Eligibility Division may be reconsidered if relevant information not previously considered is available. Requests for reconsideration must be made in writing by the applicant/representative within 30 calendar days from receipt of written notification of the of the adverse decision. Written requests for reconsideration may be sent to the State Director of DDSN by email to appeals@ddsn.sc.gov or by mail to 3440 Harden Street Extension, Columbia, SC 29203. ~~(See Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS).~~ Reasonable accommodations to assist with communication will be provided upon request.

The State Director or a designee will issue a written decision within 10 business days of receipt of the written reconsideration request. The written decision will be mailed to the participant, legal guardian or representative. If the State Director upholds the decision/action, the reason(s) for upholding shall

be specifically identified in the written notification. (See Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS)

If after reconsideration, including consideration of new information, the determination remains unchanged, the applicant may appeal to SCDHHS-Division Office of Appeals and Hearings. An appeal request to SCDHHS is valid if filed electronically, emailed, faxed or mailed no later than the 30th calendar day following receipt of the DDSN reconsideration notification. The participant, legal guardian, or representative must file the appeal electronically at www.scdhhs.gov/appeals, by mail to SC Department of Health and Human Services, Office of Appeals and Hearings, P.O. Box 8206, Columbia, SC 29202-8206 (postmarked no later than the 30th calendar day from the date of the receipt of notice), by email to appeals@scdhhs.gov or by fax to 803-255-8206. Unless a valid appeal request is made to SCDHHS, the DDSN reconsideration decision will be final and binding. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)

NOTE: For those applying for Medicaid through the Tax Equity and Fiscal Responsibility Act (TEFRA), appeals of adverse ICF/IID Level of Care decisions must be made directly to SCDHHS-Division Office of Appeals and Hearings using any one of the four methods noted above. DDSN cannot reconsider these decisions.

B. Nursing Facility Level of Care Re-Evaluations

An adverse decision regarding an annual re-evaluation of a Nursing Facility Level of Care ~~by a Waiver Case Manager~~ will automatically be reviewed by staff of DDSN's Head and Spinal Cord Injury (HASCI) Division prior to the expiration of the current Level of Care determination. A written request to DDSN for reconsideration is not required.

If the adverse decision is upheld by HASCI Division staff, an appeal may be made by the waiver participant to SCDHHS-Division Office of Appeals and Hearings. An appeal request to SCDHHS is valid if filed electronically or mailed postmarked no later than the 30th calendar day following receipt of the DDSN reconsideration notification. The participant, legal guardian, or representative must file the appeal electronically at www.scdhhs.gov/appeals or mailed to SC Department of Health and Human Services, Office of Appeals and Hearings, P.O. Box 8206, Columbia, SC 29202-8206. Unless a valid appeal request is made to SCDHHS, the DDSN reconsideration decision will be final and binding. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)

C. Other SCDHHS Decisions

Written requests for reconsideration may be sent to the State Director of DDSN by email to appeals@ddsn.sc.gov or by mail to 3440 Harden Street Extension, Columbia, SC 29203. Actions to suspend, reduce or terminate HCBS Waiver services may be halted while those actions are being reconsidered. In order to halt the action, thereby allowing the HCBS Waiver service to continue while the decision is being reconsidered, the participant, legal guardian or representative must specifically request that the action be halted, the services continue, and the decision be reconsidered. The request must be made in writing and submitted within 10 calendar days of receipt of written notification of the decision/action. If, upon completion of the DDSN Reconsideration and SCDHHS Appeal, the SCDHHS decision is upheld, the participant or legal guardian may be required to repay the cost of the HCBS Waiver services received during the pendency of the reconsideration/appeal.

~~A formal request must be made in writing within 30 calendar days of receipt of notification of the adverse decision.~~ If not requesting that actions to suspend, reduce or terminate HCBS Waiver services be halted, a request for DDSN reconsideration of a SCDHHS decision must be made in writing within 30 calendar days of receipt of written notification of the decision/action. A copy of the written notification of the adverse decision must be submitted along with the basis of the complaint, previous efforts to resolve the complaint, and the relief sought. If the decision was the denial of a request to exceed a waiver service limit, documentation justifying the need for the amount in excess of the limit must be submitted. The request must be dated and signed by the Medicaid ~~participant/representative~~ participant, legal guardian, or representative. Reasonable accommodations to assist with communication will be provided upon request. The State Director or a designee will issue a written decision within 10 business days of receipt of the written reconsideration request. The written decision will be mailed to the participant, legal guardian or representative. If the State Director upholds the decision/action, the reason(s) for upholding shall be specifically identified in the written notification. (See Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS)

If, after reconsideration, the decision is upheld, a Fair Hearing may be requested by the Medicaid participant to SCDHHS-~~Division~~-Office of Appeals and Hearings. An appeal request to SCDHHS is valid if filed electronically, emailed, faxed, or mailed postmarked no later than the 30th calendar day following receipt of the DDSN reconsideration notification. The participant, legal guardian, or representative must file the appeal electronically at www.scdhhs.gov/appeals or mailed to SC Department of Health and Human Services, Office of Appeals and Hearings, P.O. Box 8206, Columbia, SC 29202-8206. Unless a valid appeal request is made to SCDHHS, the DDSN reconsideration decision will be final and binding. (See Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS)

~~Barry D. Malphrus~~ Eddie L. Miller
~~Vice Chairman~~ Chairman

~~Stephanie M. Rawlinson~~ Michelle Woodhead
~~Chairman~~ Vice Chairman

To access the following attachments, please see the agency website page “Current Directives” at: <https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives>

- Attachment A: PROCESS FOR RECONSIDERATION OF SCDHHS DECISIONS
- Attachment B: SCDHHS MEDICAID FAIR HEARING PROCESS
- Attachment C: PROCESS FOR APPEAL OF DDSN DECISIONS

Related Policies:

- 535-08-DD: Concerns of People Receiving Services: Reporting and Resolution
- 700-02-DD: Compliance with Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990, Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 and Establishment of a Complaint Process