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**ENERGY PROGRAMS  
EP-135 APPEALS AND HEARING PROCESS**

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**EP – 135 APPEALS AND HEARING PROCESS**

**CHANGE #2-2024**

**March 15, 2024**

**135.01 NOTICE**

The County Office will issue notices on both approved and denied cases.

**135.02 HEARINGS PROCESS**

**Applicant's/Recipient/s (A's/R's) Rights**

- A. An A/R has the right to appeal when:
  - 1. Denied the right to apply for benefits.
  - 2. Benefits are denied.
  - 3. A decision is not made on the application in a timely manner.
  - 4. Believes the payment was figured incorrectly.
  - 5. Not satisfied with the decision made on the case.
- B. The A/R may request an appeal either orally or in writing.
- C. Requesting the Local Hearing
  - 1. The A/R has 60 calendar days from the notice date to request a local hearing.
  - 2. Local hearings must be held within five calendar days of the hearing request.
  - 3. A/R's who can establish good cause as defined in section D below have until the 90<sup>th</sup> calendar day of the notice to request a hearing.
- D. Good Cause Reason for Not Requesting a Hearing Timely
  - 1. Acceptable good cause reasons for the A/R not requesting the hearing within 60 calendar days are:
    - a. Failure of the A/R to receive the notice; or
    - b. Extended hospitalization of the A/R or spouse, child, or parent of the A/R; or
    - c. Failure of a representative, acting on the A/R's behalf, to meet the time frames; or
    - d. Illness which results in the incapacity of the A/R; or
    - e. County caseworker does not assist the A/R in filing an appeal; or

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- f. County caseworker gives no information, incomplete, or incorrect information on appeal rights. For example, the county caseworker did not inform the A/R of his appeal rights during the interview; or
    - g. County caseworker discourages the A/R from filing a request for an appeal.
  - 2. Acceptable verification to substantiate a good cause reason may include but is not limited to:
    - a. Doctor's statement; or
    - b. Hospital bill; or
    - c. Written statement from the individual knowledgeable about the situation.

If the A/R establishes good cause, conduct the hearing. If the A/R does not establish good cause, deny the request for a hearing.
- E. Follow the procedures in Section 264 of the Work First Manual on conducting the local hearing.
- F. Requesting a State Hearing
  - 1. The A/R has a right to request a state hearing only after a local appeal hearing has been held and a decision has been rendered. The A/R must request a state appeal within five calendar days from the date of the local hearing decision unless good cause is established. (See D. above for good cause reasons.)
  - 2. If the A/R does not request the State hearing within five calendar days from the date of the local hearing decision, he must:
    - a. Request the hearing no later than 90 calendar days from the date on the energy check; and
    - b. Show good cause. (See D. above for good cause reasons.)
  - 3. When an A/R requests a state hearing after five calendar days, determine whether the request is within 90 calendar days from the date on the energy check.
    - a. If the request is not within 90 calendar days, deny the request for a hearing.
    - b. If the request is within 90 calendar days, you must establish whether the A/R has good cause. (See D. above for good cause reasons.)

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- G. The State hearing officer will follow procedures in Work First Manual Section 264 for conducting a State hearing and has 15 calendar days to render a decision.
- H. If the A/R is not satisfied with the final State hearing decision, a petition for judicial review in superior court may be filed within 30 calendar days.
- I. A/R has a right to be represented at the hearings by the person of his choice, including an attorney obtained at his expense or free legal services. The A/R can call DHHS Customer Service Center at 1-800-662-7030 for the number for legal services information.

**135.03 RESPONSIBLE COUNTY IF APPLICANT MOVES**

An A/R who moves to a new county of residence can request a hearing regarding LIEAP. The new county of residence will be responsible for conducting the hearing. Contact the first county to obtain all records.

**135.04 DSS-1473 STATE APPEAL REQUEST FORM INSTRUCTIONS**

DHHS Hearings and Appeals Section has provided the following information and requirements regarding all state hearings and appeals requests. County staff **must** follow the guidance in this policy for all state hearings and appeals requests.

**UPDATE: Due to Medicaid Expansion, the DSS-1473 has been updated to include a check block for the program type of “MXP” on page 2 of the DSS-1473 form.**

If the needed program type is not listed on page 2, then the “Other:” block should be checked and the program name inserted in the “Other:” blank (for example LIHWAP, MAF-BCCM, Guardian Assistance, etc.)

Counties **must** access the DSS-1473 State Appeal Request and Addendum forms by going to the DSS Forms Website for the most current version of the forms. [Forms — Policies and Manuals \(ncdhhs.gov\)](#)

**All** e-mails to the Hearings & Appeals Section **must** be sent through the **DHHS ZixMail portal** (*Zix Secure Email Message Center*) which encrypts the information in the body of your e-mail. The subject line is **not** encrypted; therefore, do **not** put any client identifying information in the subject line of the e-mail.

**First Time User:** To send an encrypted email message to the Hearings & Appeals Section’s service email address ([Medicaid.DSS.State.Appeals@dhhs.nc.gov](mailto:Medicaid.DSS.State.Appeals@dhhs.nc.gov)) or to a State Hearing Officer’s email address, a first time user should use this link (<https://web1.zixmail.net/s/login?b=ncdhhs>) and click the “Register” button to create an account. From the first screen, you may sign in, reset your password, register, and receive detailed user Help information. This screen also provides an email address for technical support regarding the message portal. If you have your own

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ZixMail license, you may send ZixMails directly and do not need to use the ZixMail portal (*Zix Secure Email Message Center*).

**All** ZixMailed messages sent to [Medicaid.DSS.State.Appeals@dhhs.nc.gov](mailto:Medicaid.DSS.State.Appeals@dhhs.nc.gov) receive a confirmation reply email from a Hearings & Appeals Office Assistant indicating that your email message was received by the Hearings & Appeals Section. If you do **not** receive a confirmation reply email within 1 business day, then your e-mail was **not** successfully sent, and you **must resend** it. Failed attempts are usually due to file attachments being too large and you will need to split the information into multiple ZixMails.

The North Carolina Administrative Code (10A NCAC 21A .0304) **requires** the appellant (applicant/beneficiary [a/b]) to select their mode of hearing (i.e., in-person, by phone, or by video) at the time the appeal is requested. A county worker **cannot** make the choice for the a/b. The mode of hearing **must** be the **a/b's choice**.

An a/b requesting a state appeal **must** be given the following mode options:

1. **In-person hearing at the county DSS office** (State Hearing Officer and all parties are present at the DSS for the hearing)
2. **Remote phone hearing** (State Hearing Officer participates by phone and a/b chooses to participate by using their own phone **or** by notifying the DSS that they will come to the DSS to participate with the county when the county connects by phone for the hearing)
3. **Remote video hearing using Microsoft TEAMS** – the a/b must include an e-mail address for this option (State Hearing Officer participates by video and a/b chooses to participate by connecting to Microsoft TEAMS [must have internet access, camera capability, and microphone capability] **or** by notifying the DSS that they will come to the DSS to participate with the county when the county connects to TEAMS for the video hearing - **All** parties must be on camera for a video hearing)

**If the a/b cannot be reached** to choose a mode of hearing, the county worker **must check the phone hearing block** (default mode) **and check the block indicating that attempts to reach the a/b were unsuccessful**.

If the a/b does **not** have a preference in mode of hearing, **the default mode of hearing is a phone hearing**, and the county worker **must check the phone hearing block**.

If the a/b chooses a video hearing, the a/b's e-mail address **must** be given or if the a/b wants to go to the county DSS for the video hearing then indicate on the e-mail address line: "a/b wants to participate at the DSS."

**NOTE:** The county worker **must** explain to the a/b that they **must** have internet access, camera capability, and microphone capability to have a video hearing. If the

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a/b chooses to go to the county DSS for the video hearing, then the county **must** be prepared with internet access, camera capability, and microphone capability for both the a/b and the county worker(s) participating in the hearing. **All parties must** be on camera for a video hearing.

The DSS county worker **must** use the **DSS-1473 (Rev. 04/01/2022)** when submitting a state appeal request. Prior versions of the DSS-1473 or an incomplete form **cannot** be accepted by the Hearings & Appeals Section.

County workers should follow-up with the Hearings & Appeals Section if a “Notice of Hearing” has not been received within 30 days of submitting the State Appeal request.

DSS-1473 related questions and status questions on State appeals may be sent to [Medicaid.DSS.State.Appeals@dhhs.nc.gov](mailto:Medicaid.DSS.State.Appeals@dhhs.nc.gov)

DSS 1473 Form website difficulties should be reported to [Medicaid.DSS.State.Appeals@dhhs.nc.gov](mailto:Medicaid.DSS.State.Appeals@dhhs.nc.gov)