

## Mi Via Fair Hearing Tip Sheet

This document is intended to help Mi Via participants and stakeholders understand the HSD Fair Hearings process. Please refer to the Mi Via regulations (8.314.6 NMAC) and the Recipient Fair Hearings regulations (8.352.2 NMAC) for the legal details.

1. Prior to requesting a fair hearing, a participant may work with his/her consultant to ask for a reconsideration of the denied request or may submit a revision to the Mi Via Third Party Assessor (TPA), Molina. Asking for a reconsideration or revision may resolve a participant's concern. Requesting a reconsideration or revision does not take away a participant's right to a HSD Fair Hearing. A reconsideration must be requested by the consultant within 30 calendar days after the date of the decision letter. The participant is responsible for asking their consultant to submit the request for reconsideration to Molina.
2. A participant may ask for a fair hearing through HSD and at the same time submit a request for a reconsideration or revision to Molina. A participant can still file for a fair hearing, per the notice in the Molina denial letter, if the reconsideration or revision does not resolve the issue.
3. A participant or the participant's authorized representative is entitled to a fair hearing through the HSD fair hearing process every time a requested good or service is denied [see regulation 8.352.2.7J NMAC at <http://www.nmcpr.state.nm.us/nmac/parts/title08/08.352.0002.htm>].
4. Molina notifies participants of their fair hearing rights through the denial letter that is mailed to the participant.
5. Other reasons for Mi Via fair hearings may include: denial of medical eligibility or reduction of the level of care by Molina (letter is sent by Molina); or a denial of financial eligibility for Medicaid (letter is sent by HSD/ Income Support Division {ISD}).
6. As stated in the Recipient Fair Hearing regulations and the Molina denial letter a fair hearing must be requested within **90 calendar days** from the date on the notice of action letter. For example, this is 90 calendar days from the date on the Molina/ISD denial letter.
7. Participants may often experience a faster resolution by communicating through their consultant to help understand the reason(s) for the denial(s). The participant may request their consultant to contact Molina on their behalf, or the participant may contact Molina directly at 1-800-916-3250.
8. The HSD or DOH Mi Via program manager may need to contact the participant to clarify the issue/denial that is being appealed through the HSD Fair Hearings Bureau.

9. Pre-hearing conference: At the hearing officer's request, a pre-hearing conference may be scheduled prior to the hearing to clarify the issues and to examine the evidence introduced by both parties. The pre-hearing conference will not delay or replace the hearing itself. Pre-hearing conferences may include the recipient and/or representative, HSD staff, DOH Staff and Molina or ACS staff. The purpose of the conference is to informally discuss the issues, the policy that the actions are based on, sharing of evidence, and examination of pertinent correspondence.
10. A recipient, consultant or participant representative may request and be approved for one postponement of the scheduled fair hearing as long as it does not interfere with the decision time frames. [See regulations 8.352.2.13B NMAC at [http://www.hsd.state.nm.us/mad/pdf\\_files/provmanl/prov83522.pdf](http://www.hsd.state.nm.us/mad/pdf_files/provmanl/prov83522.pdf)]
11. Continuation of benefits means that services previously approved will continue until there is a fair hearing decision. Continuation of benefits requests are made through the HSD Fair Hearings Bureau and must be requested by the participant within 13 calendar days from the date on the notice of action letter, for example; the notice of action is the denial letter from Molina or HSD/ISD.
12. It is important to note that a participant who receives continued benefits may be required to pay for any services or goods received under the continuation budget if the decision is in favor of the Department (8.352.2.16 (B) NMAC). In addition, while there is a continuation budget in place, no revisions may be made to the participant's budget.
13. Participants can ask anyone they wish to attend a fair hearing with them and/or testify on their behalf including an advocate or an attorney. Documentation of legal guardianship or Power of Attorney (POA) must be sent to the HSD/Fair Hearings Bureau before the fair hearing if the recipient will not appear for the fair hearing.
14. Other attendees at the fair hearing will include representatives from HSD and/or DOH, ACS, Molina, and possibly attorneys. Depending on the issue on appeal, the consultant and/or a representative from ACS may be asked by the state to attend as well.
15. The participant and the HSD Fair Hearings Bureau will receive a copy of the Summary of Evidence (SOE) that has been prepared, as appropriate, by HSD, DOH, Molina and/or ACS prior to the fair hearing.
16. The participant may send any documents to the Fair Hearings Bureau to be included as evidence in the fair hearing record. The participant should send the same documents to HSD and Molina as well, because sometimes the Fair Hearings Bureau doesn't have time to forward them. Participants are encouraged to send documentation as soon as possible before the fair hearing.

17. All fair hearings are conducted by telephone, unless the participant has asked for and received an exception from the Fair Hearings Bureau to hold the meeting in person. To request an in-person fair hearing, the participant must contact the Fair hearings Bureau @ 1-800-432-6217, option 6.
18. The Fair Hearings Bureau may not be able to schedule a fair hearing for several weeks, but must give at least a 10-day advance notice of the fair hearing date/time.
19. When the participant feels that his/her issue has been resolved, the participant should withdraw the fair hearing request at any time before the actual hearing is held. Only the participant (or authorized representative) can withdraw the fair hearing request. A telephone request to withdraw can be made to the HSD Fair Hearings Bureau, but a written request will also need to be submitted via U. S. Mail to Fair Hearings Bureau, P. O. Box 2348, Santa Fe, NM 87504-2348 or fax to 1-505-476-6215.
20. Once the fair hearing is completed, the Administrative Law Judge (ALJ) writes a report and makes a recommendation for a decision. The report and recommended decision is forwarded to the Medicaid Director, who may agree with the ALJ's recommendations or may reach a different decision. **The Director's final decision will be issued to the participant within 90 days from the date of the fair hearing request (unless rescheduled, postponed or an extension has been granted).**
21. Once the Medicaid Director has issued a final decision the recipient or authorized representative has the right to file an appeal within 30 days of the date on the HSD/Medical Assistance Division final decision letter in the 1<sup>st</sup> Judicial District Courts in Santa Fe or the State District Court in the county where the person lives.