

This amendment to 8.100.970 NMAC, Section 1, 3 & 9 effective 7/1/2024.

8.100.970.1 ISSUING AGENCY: [~~New Mexico Human Services Department~~] New Mexico Health Care Authority.

[8.100.970.1 NMAC - Rp, 8.100.970.1 NMAC, 11/27/2013; A, 7/1/2024]

8.100.970.3 STATUTORY AUTHORITY:

A. Section 27 NMSA 1978 (1992 Repl.) provides for the department to "...adopt, amend and repeal bylaws, rules and regulations..." It also provides for administration of public assistance programs.

B. The income support division (ISD) of the [~~human services department (HSD)~~] Health Care Authority (HCA) was created by the HSD secretary under authority granted by Paragraph (3) of Subsection B of Section 9-8-6 NMSA 1978.

C. The New Mexico health insurance exchange (NMHIX) was established by Section 59A-23F-1 of NMSA 1978 *et al.* Pursuant to 45 CFR 155.505(c) and 155.510(a), NMHIX has designated to the [~~New Mexico human services department~~] New Mexico health care authority the authority to conduct fair hearings of NMHIX eligibility appeals pursuant to 45 CFR 155 Subpart F.

[8.100.970.3 NMAC - Rp, 8.100.970.3 NMAC, 11/27/2013, A/E, 11/1/2021; A, 4/1/2022; A, 7/1/2024]

8.100.970.9 THE HEARING PROCESS:

A. Initiation of the hearing process:

(1) A request for a fair hearing can be made by the claimant or an authorized representative orally or in writing.

(2) If a claimant requests a fair hearing orally, the department shall take such actions as are necessary to initiate the fair hearing process.

(3) The fair hearings bureau shall promptly send written acknowledgement to the claimant and the authorized representative upon its receipt of a written or oral hearing request.

B. Time limits:

(1) A household or its authorized representative shall request a fair hearing no later than close of business on the 90th day following the date of the notice of adverse action. If the 90th day falls on a weekend, holiday or other day the department is closed, a request received the next business day will be considered timely.

(2) The department shall assure that the fair hearing is conducted, a fair hearing decision is reached and the claimant and the authorized representative are notified of the decision within the specified program time limit set forth below, except in instances where the time limit may be extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(a) **SNAP program:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 60 days from the date the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(b) **Cash assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(c) **LIHEAP:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 60 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC.

(d) **Medical assistance programs:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date that the department receives the hearing request unless extended pursuant to Subsection B of 8.100.970.10 NMAC or Subsection G of 8.100.970.12 NMAC. Fair hearing decisions regarding the termination, modification, reduction or suspension of services is governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq.

(e) **NMHIX matters:** The final fair hearing decision shall be issued to the claimant and the authorized representative within 90 days from the date of the appeal request. Fair hearing decisions regarding adverse actions by NMHIX are governed by all applicable federal and state laws and regulations, including 45 CFR 155 Subpart F. In the case of an appeal request submitted under 45 CFR 155.540 that the

department determines meets the criteria for an expedited appeal, the department must issue the fair hearing decision notice as expeditiously as reasonably possible.

C. Jurisdiction of the fair hearings bureau:

(1) An applicant for, or recipient of, a department administered public assistance program may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if:

- (a) an application for benefits or services is denied in whole or in part, or not processed timely;
- (b) assistance or services are reduced, modified, terminated, suspended or not provided, or the form of payment is changed;
- (c) a good cause request for not participating in the work program or CSED is denied in whole or in part;
- (d) the department refuses or fails to approve a work program participation plan, or the supportive services related to it, that have been developed by a participant; or
- (e) the claimant is aggrieved by any other action affecting benefit level or participation in an assistance program administered by HSD.

(2) An applicant for, or enrollee in, health insurance coverage or insurance affordability programs through the New Mexico health insurance exchange may request a fair hearing, and the department's fair hearings bureau shall have jurisdiction over the matter, if the applicant or enrollee is appealing:

- (a) An eligibility determination made in accordance with 45 CFR Subpart D, including:
 - (i) an initial determination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with the standards in 45 CFR section 155.305(a) through (h); and
 - (ii) a redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with 45 CFR section 155.330 and 155.335;
 - (iii) a determination of eligibility for an enrollment period, made in accordance with 45 CFR section 155.305(b); and
 - (b) A failure by NMHIX to provide timely notice of an eligibility determination in accordance with 45 CFR section 155.310(g), 45 CFR section 155.330(e)(1)(ii), 45 CFR section 155.335(h)(1)(ii), or 45 CFR section 155.610(i).

(3) Fair hearing requests submitted to the local county office shall be immediately forwarded to the fair hearings bureau for scheduling. The fair hearings bureau shall promptly inform the applicable local county office upon its receipt of a written or oral fair hearing request submitted directly to the fair hearings bureau to ensure timely scheduling of an ARC.

D. Denial or dismissal of request for hearing: The fair hearings bureau shall deny or dismiss, as applicable, a request for a fair hearing when:

(1) the request is not received by the close of business on the 90th day following the date of the notice of adverse action; in instances where the fair hearings bureau schedules a hearing prior to becoming aware of the lateness of the fair hearing request, the fair hearings bureau shall, upon learning of the late request, promptly dismiss the matter and provide notice thereof to all parties;

(2) the request for a fair hearing is withdrawn or canceled, either orally or in writing, by the claimant or claimant's authorized representative; if withdrawn orally, the claimant and the authorized representative shall be provided written verification of the withdrawal and given 10 calendar days from the date of the notification to request reinstatement of the hearing;

~~[(3) the sole issue presented concerns a federal or state law requiring an adjustment of assistance for all or certain classes of clients, including but not necessarily limited to a reduction, suspension or cancellation of benefits, unless the reason for the hearing request involves alleged error in the computation of benefits (e.g. mass changes);]~~

~~[(4) (3) the claimant fails to appear, without good cause, at a scheduled fair hearing;~~
~~[(5) (4) the same issue has already been appealed and a hearing decision made;~~
~~[(6) (5) there is no adverse action or delay of benefits or services for which a fair hearing may be requested; or~~

~~[(7) (6) the issue is one that the fair hearings bureau does not have jurisdiction as provided by federal or state laws and regulations;~~

~~[(8)]~~ (7) requests for fair hearings for medical assistance cases involving the termination, modification, reduction or suspension of services are governed by all applicable federal and state laws and regulations, including 8.352 NMAC, et seq;

~~[(9)]~~ (8) in matters involving NMHIX, an appeal will be dismissed if the appellant:

- (a) withdraws the appeal request in writing or orally;
- (b) fails to appear at a scheduled hearing without good cause;
- (c) fails to submit a valid appeal request as specified in section 155.520(a)(4); or
- (d) dies while the appeal is pending, except if the executor, administrator, or other

duly authorized representative of the estate requests to continue the appeal.

E. Good cause for failing to appear:

(1) If the claimant or the claimant's authorized representative fails to appear for a fair hearing at the scheduled time and place, the claimant's appeal will be considered abandoned and the fair hearings bureau shall dismiss the matter, unless the claimant or authorized representative presents good cause. A claimant or authorized representative may present good cause for failing to appear to the scheduled fair hearing at any time no later than close of business on the 10th calendar day immediately following the scheduled hearing date. If the 10th calendar day falls on a weekend, holiday or other day that the department is closed, a request received the next business day will be considered timely. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the hearing or, where appropriate, reinstate a matter previously dismissed.

(2) If the department fails to appear due to circumstances beyond its control, the department may present good cause within 10 calendar days after the scheduled hearing. If good cause is submitted timely and permitted, the fair hearings bureau shall reschedule the fair hearing.

(3) Good cause includes, but is not limited to, a death in the family, disabling personal illness, or other significant emergencies. At the discretion of the hearing officer, other exceptional circumstances may be considered good cause.

[8.100.970.9 NMAC - Rp, 8.100.970.9 NMAC, 11/27/2013; A/E, 11/1/2021; A, 4/1/2022; A, 7/1/2024]