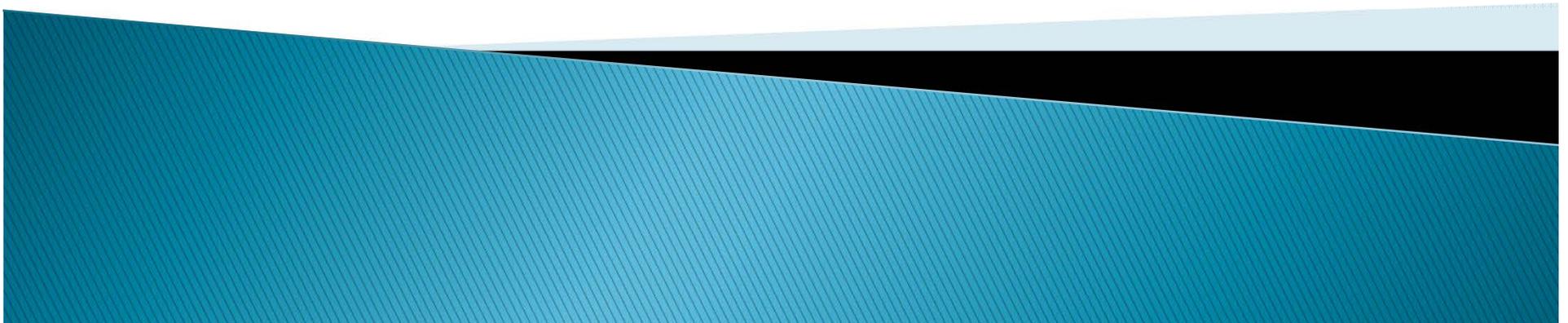


**DEPARTMENT OF HUMAN SERVICES**

# **STATE FAIR HEARINGS**

**November 5, 2014**

Human Services Judges  
Douglass Alvarado & Raymond Wood



# SUBJECT MATTER JURISDICTION

- ▶ Minnesota Statute §256.045 is the statutory authority for fair hearings and gives:
  - The DHS commissioner the authority to conduct evidentiary hearings and issue binding decisions
  - Individuals the right to a hearing when they disagree with a ruling of a prepaid health plan or if the health plans fails to act in a timely manner



# How to File an Appeal

- ▶ State Fair Hearing Requests must be in writing and may be submitted by mail, fax, online or in person
  - ▶ State Fair Hearing Request forms are found at county offices or on the DHS public website:
    - Click on A-Z topics
    - Click on Appeals
    - Click on "Instructions for Requesting an Appeal"
- <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-0033-ENG>



# State Fair Hearing Timelines

- ▶ Individual must generally request hearing in writing within 30 days of receiving notice of health plan decision/failure to act or within 90 days for good cause. Filing a managed care plan appeal generally does not toll this requirement
- ▶ Individuals also have the right to *request* an expedited fair hearing when the issue requires an immediate resolution



# Hearing Representatives

- ▶ Appellant may be represented by an attorney or another individual
- ▶ Providers have a right to request a fair hearing on an enrollee's behalf with the written consent of the enrollee
- ▶ The appeal may be dismissed if there is no indication the enrollee consented to the appeal request



# Pre-hearing Process

- Hearing notice sent to parties by Appeals Office, along with *info sheet* about fair hearings
- Appellant has right to review their case file prior to the hearing & the right to a free copy of all documents in the case file involved in a fair hearing appeal
- Agency Appeal Summary mailed/delivered at least three working days before the hearing



# State Fair Hearing Appeal Summary

- ▶ Summary must be adequate to inform appellant of evidence and legal basis for action
- ▶ Summary should contain a statement of the issue(s); the health plan's position; a factual summary; & the statutes, rules or DHS policies relied upon by the health plan in making its determination
- ▶ Health plan contact person & phone number for State Fair Hearing



# Hearing Exhibits

- ▶ Notice of Action
- ▶ Documentation relied upon in making determination (i.e. PCA Assessment, LTCC, prior authorization request with medical records, medical records which support the conclusions drawn in placing recipient on MRRP, etc.)
- ▶ Results of health plan appeal, if any, including peer reviewer recommendations
- ▶ Standards/policies used in making medical necessity determinations



# Pre-hearing Business

- ▶ Parties can ask HSJ to issue subpoenas
  - ▶ Requester must show testimony is relevant
  - ▶ Parties must serve subpoenas
- ▶ *Ex parte* contacts are improper
- ▶ Continuances allowed for good cause, but must contact the other party before requesting
- ▶ Pre-hearing conference, if needed



# Who? What? Where? & How?

- ▶ HSJ is an unbiased decision-maker who had no role in health plan's decision
- ▶ Hearing is recorded and testimony is under oath
- ▶ Interpreters are provided, if needed
- ▶ HSJ does not independently investigate
- ▶ Hearings may be in person, by telephone or video conference



# What to Expect at the Hearing

- ▶ HSJ convenes hearing by confirming the issue(s)
- ▶ All parties, representatives and witnesses are identified on the record
- ▶ HSJ describes process and administers oaths
- ▶ Hearings and pre-hearing conferences are recorded



- ▶ Order of proof: health plan usually first
- ▶ Opening and closing statements (optional)
- ▶ Right to cross-examine witnesses
- ▶ The burden of proof is usually on the proponent of the action under review, usually “preponderance of the evidence”

Hearing process found in Minnesota Statutes, sections 256.045 and 256.0451



# Evidentiary Standard

- ▶ Rules are relaxed and allow hearsay
- ▶ Statutory evidentiary standard states:
  - The HSJ shall accept all evidence, except evidence privileged by law, that is commonly accepted by reasonable people in the conduct of their affairs as having probative value on the issues to be addressed at the hearing.

*Minn. Stat. § § 256.045, subd. 4(b); and 256.0451, subd. 19*



# HSJ Powers & Responsibilities

- ▶ In cases involving medical issues HSJ may require, if necessary, an additional assessment be obtained at agency expense and made part of the hearing record.
- ▶ HSJ must ensure for all cases that the record is sufficiently complete to make a fair and accurate decision.



# Dismissal Orders

- ▶ A Dismissal Order is issued by the HSJ if the Appellant fails to appear without good cause at the hearing, if the Appellant advises the HSJ that the matter has been resolved or abandoned, or if the Commissioner of Human Services does not have jurisdiction over the matter
- ▶ A Dismissal Order may be vacated within 10 working days after dismissal upon showing of good cause for the failure to appear



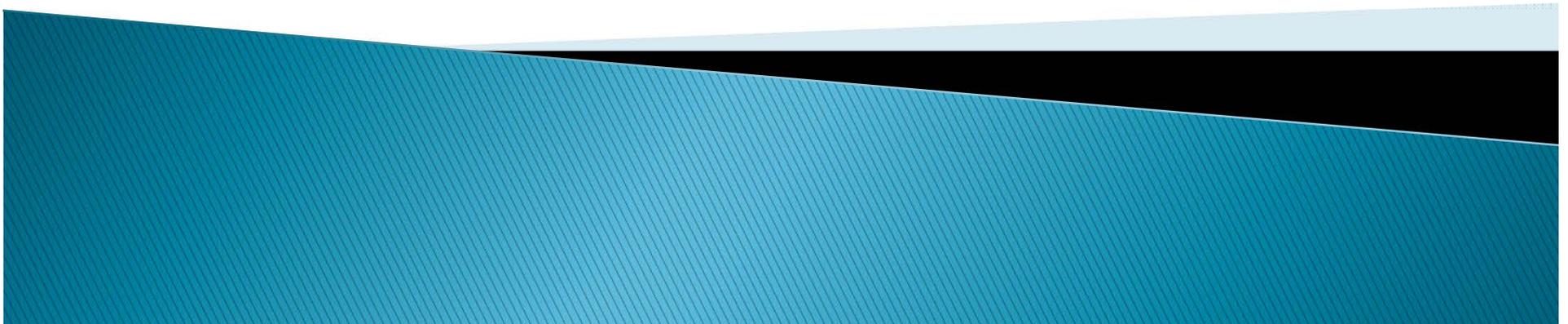
# Post Hearing Process

- ▶ A Decision based on the record is due within 90 days of the appeal filing in most cases except in expedited appeals
- ▶ HSJ's recommended decision sets out issues, findings of fact, applicable law, analysis of law to the facts and the outcome/order
- ▶ Co-Chief HSJs make the final determination for the Commissioner of Human Services



# Decision Database

<http://appeals.dhs.state.mn.us>



# Reconsideration/Appeal of Decision

- ▶ Reconsideration request or appeal to district court must be within 30 days of final decision
- ▶ Reconsideration must be in writing to DHS appeals office
  - ▶ Burden on party seeking reconsideration
  - ▶ May include legal arguments and proposed additional evidence
- ▶ Opposing party has 10 days to respond to reconsideration request



# Challenges

- ▶ Allowing parties to define the scope of their controversy while focusing on issues we can decide
- ▶ Putting enough time and analysis into each appeal while also trying to meet the timelines in a high-volume process
- ▶ Providing a comfortable forum for mainly *pro se* appellants while maintaining proper decorum



**THANK YOU!!**

