

the requirement to establish procedures for submission of a fair hearing request described in § 435.907(a)(1), (2) and (5) of this chapter (relating to submissions via Internet Web site, telephone and other electronic means) is effective no later than the date described in § 435.1200(i) of this chapter; and

(ii) Include in a hearing request submitted under paragraph (a)(1)(i) of this section, a request for an expedited fair hearing.

(2) [Reserved]

(b) The agency may not limit or interfere with the applicant's or beneficiary's freedom to make a request for a hearing.

(c) The agency may assist the applicant or beneficiary in submitting and processing his request.

(d) The agency must allow the applicant or beneficiary a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearings.

[44 FR 17932, Mar. 29, 1979, as amended at 81 FR 86448, Nov. 30, 2016]

#### § 431.222 Group hearings.

The agency—

(a) May respond to a series of individual requests for hearing by conducting a single group hearing;

(b) May consolidate hearings only in cases in which the sole issue involved is one of Federal or State law or policy;

(c) Must follow the policies of this subpart and its own policies governing hearings in all group hearings; and

(d) Must permit each person to present his own case or be represented by his authorized representative.

#### § 431.223 Denial or dismissal of request for a hearing.

The agency may deny or dismiss a request for a hearing if—

(a) The applicant or beneficiary withdraws the request. The agency must accept withdrawal of a fair hearing request via any of the modalities available per § 431.221(a)(1)(i). For telephonic hearing withdrawals, the agency must record the individual's statement and telephonic signature. For telephonic, online and other electronic withdrawals, the agency must send the affected individual written confirmation,

via regular mail or electronic notification in accordance with the individual's election under § 435.918(a) of this chapter.

(b) The applicant or beneficiary fails to appear at a scheduled hearing without good cause.

[44 FR 17932, Mar. 29, 1979, as amended at 81 FR 86449, Nov. 30, 2016]

#### § 431.224 Expedited appeals.

(a) *General rule.* (1) The agency must establish and maintain an expedited fair hearing process for individuals to request an expedited fair hearing, if the agency determines that the time otherwise permitted for a hearing under § 431.244(f)(1) could jeopardize the individual's life, health or ability to attain, maintain, or regain maximum function.

(2) The agency must take final administrative action within the period of time permitted under § 431.244(f)(3) if the agency determines that the individual meets the criteria for an expedited fair hearing in paragraph (a)(1) of this section.

(b) *Notice.* The agency must notify the individual whether the request is granted or denied as expeditiously as possible. Such notice must be provided orally or through electronic means in accordance with § 435.918 of this chapter, if consistent with the individual's election under such section; if oral notice is provided, the agency must follow up with written notice, which may be through electronic means if consistent with the individual's election under § 435.918.

[81 FR 86449, Nov. 30, 2016]

### PROCEDURES

#### § 431.230 Maintaining services.

(a) If the agency sends the 10-day or 5-day notice as required under § 431.211 or § 431.214 of this subpart, and the beneficiary requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless—

(1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and

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(2) The agency promptly informs the beneficiary in writing that services are to be terminated or reduced pending the hearing decision.

(b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or beneficiary to recoup the cost of any services furnished the beneficiary, to the extent they were furnished solely by reason of this section.

[44 FR 17932, Mar. 29, 1979, as amended at 45 FR 24882, Apr. 11, 1980; 78 FR 42302, July 15, 2013]

### § 431.231 Reinstating services.

(a) The agency may reinstate services if a beneficiary requests a hearing not more than 10 days after the date of action.

(b) The reinstated services must continue until a hearing decision unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.

(c) The agency must reinstate and continue services until a decision is rendered after a hearing if—

(1) Action is taken without the advance notice required under § 431.211 or § 431.214 of this subpart;

(2) The beneficiary requests a hearing within 10 days from the date that the individual receives the notice of action. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the beneficiary shows that he or she did not receive the notice within the 5-day period; and

(3) The agency determines that the action resulted from other than the application of Federal or State law or policy.

(d) If a beneficiary's whereabouts are unknown, as indicated by the return of unforwardable agency mail directed to him, any discontinued services must be reinstated if his whereabouts become known during the time he is eligible for services.

[44 FR 17932, Mar. 29, 1979, as amended at 78 FR 42302, July 15, 2013]

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### § 431.232 Adverse decision of local evidentiary hearing.

If the decision of a local evidentiary hearing is adverse to the applicant or beneficiary, the agency must—

(a) Inform the applicant or beneficiary of the decision;

(b) Inform the applicant or beneficiary in writing that he or she has a right to appeal the decision to the State agency within 10 days after the individual receives the notice of the adverse decision. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period; and

(c) Inform the applicant or beneficiary of his right to request that his appeal be a *de novo* hearing; and

(d) Discontinue services after the adverse decision.

[44 FR 17932, Mar. 29, 1979, as amended at 81 FR 86449, Nov. 30, 2016]

### § 431.233 State agency hearing after adverse decision of local evidentiary hearing.

(a) Unless the applicant or beneficiary specifically requests a *de novo* hearing, the State agency hearing may consist of a review by the agency hearing officer of the record of the local evidentiary hearing to determine whether the decision of the local hearing officer was supported by substantial evidence in the record.

(b) A person who participates in the local decision being appealed may not participate in the State agency hearing decision.

### § 431.240 Conducting the hearing.

(a) All hearings must be conducted—

(1) At a reasonable time, date, and place;

(2) Only after adequate written notice of the hearing; and

(3) By one or more impartial officials or other individuals who have not been directly involved in the initial determination of the action in question.

(b) If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing officer considers it