## Department of Health and Human Services

# Frequently Asked Questions

1. **Q. I have changed my mind and no longer want a hearing. What should I do?**

   **A.** Call the Administrative Appeals Unit (AAU) as soon as you decide that you no longer want a hearing. The phone number is (603) 271-4292, or toll-free (800) 852-3345, extension 4292.

2. **Q. I can't make it to the scheduled hearing, but I still want a hearing. What should I do?**

   **A.** Call the Administrative Appeals Unit (AAU) as soon as you know that you cannot attend the hearing. The AAU will explain the process to continue (reschedule) your hearing.

3. **Q. What happens if I do not attend a scheduled hearing?**

   **A.** If you do not attend the scheduled hearing, your appeal will be dismissed automatically. Several people must prepare for the hearing and if a party does not attend, resources and time that could be spent on other cases are wasted. Therefore, if you want to withdraw your appeal, ***please*** notify the Administrative Appeals Unit prior to the hearing. (*See answer to Question #1*)

4. **Q. Do I need an attorney for the hearing?**

   **A.** You do not need an attorney, however, you may want one to protect your interests. You do not have the right to appointed counsel in this matter, and must pay for your own attorney. If you want an attorney, but cannot afford one, try contacting the organizations listed on the back of this document. Some provide legal services for free or at reduced costs. The laws are the same whether you have an attorney or not.

   Also, you or your authorized representative may examine the case file prior to or during the hearing, including any and all documents or records to be introduced by the other party at the hearing. (Note: Prior arrangements must be made in order to examine the case file, and the material to be examined will not include any confidential material, or other material protected from disclosure by law.)

5. **Q. I received a Notice of Prehearing Conference. What is a prehearing conference?**

   **A.** Some cases are complex and it is helpful to have a prehearing conference to clearly identify the issues being appealed. No evidence or testimony is taken at a prehearing conference, so witnesses need not attend. Your attendance, however, is required and failure to attend may result in your appeal being dismissed. When you attend the prehearing conference, you should be prepared to discuss the number of witnesses you plan to call, the amount of time it will take you to present your case, whether there is any possibility of settling the case without a hearing, and when you and your witnesses will be available for a hearing.

6. **Q. The Notice of Hearing mentions "mandatory prehearing disclosure requirements." What are those?**

   **A.** The law requires certain documents to be provided to the other party **and** to the Administrative Appeals Unit at least 5 days before the hearing. They are:

   1. If you plan to call any witnesses, you must provide a list of witnesses with a brief summary of what they will say;
   2. If you have any exhibits (documents such as medical records, written opinions, letters or other evidence) that you want the presiding officer to consider, you must provide a list of the exhibits and provide a copy of each exhibit;
   3. A list of issues to be addressed, if different than those stated on the Notice of Hearing; and
   4. Any stipulations regarding the facts in this case.

   The addresses for the Administrative Appeals Unit and the other party are on the Notice of Hearing. If you have further questions about the disclosure requirements, call the Administrative Appeals Unit.

7. **Q. Can I provide additional exhibits (documents) at the hearing?**

   **A.** No. Exhibits must be submitted at least five days before the hearing. (*See Question #6*)

8. **Q. Can I submit additional evidence after the hearing?**

   **A.** In general, no. Exhibits must be submitted at least five days before the hearing. If a document is not available until after the hearing, the presiding officer may allow it to be submitted after the hearing.

9. **Q. What time should I arrive for the hearing?**

   **A.** You should arrive at least 15 minutes before the start of the hearing. This will allow you a few minutes to get settled, and discuss any last minute issues with the other parties. If the hearing is being held in the hearing room in the Administrative Appeals Unit in Concord, you were provided with driving directions to that office with the Notice of Hearing.

10. **Q. What is meant by the burden of proof?**

    **A.** Burden of proof is the duty that is placed on one of the parties to initially produce evidence and testimony, and to persuade the presiding officer to find in their favor.

11. **Q. Who has the burden of proof at a hearing?**

    **A.** The general rule is that the party who appealed has the burden of proof. Each case is different, however, and you will be notified at the time of the hearing which party has the burden of proof.

12. **Q. What opportunity will I have to present my case at the hearing?**

    **A.** Once the hearing begins, the presiding officer may ask for opening statements. You are not required to make an opening statement. If you do, it should be brief, no more than a minute or two. The opening statement is your opportunity to provide a brief overview of your position in the matter being addressed at the hearing. Next, the parties will take turns presenting evidence and testimony. Usually, the party with the burden of proof goes first. Whether you go first or not, the basic process will be the same. When it is your turn, you may call your witnesses one at a time. The presiding officer will swear them in,

and you may ask them questions. When you are finished questioning each witness, the other parties will have a chance to question or cross-examine your witness. If you have no witnesses, you will be sworn in and may explain to the presiding officer your position in this case. If you do this, other parties may question you when you are finished making your statement. All parties will be given the same opportunity to call witnesses, make statements, and cross-examine the other parties' witnesses. The presiding officer may ask questions of any witness or party at any time during the hearing. When all testimony has been given, each party may make a closing argument. A closing argument should be brief (no more than 3 to 5 minutes) and should highlight and summarize the evidence that supports your position. You are not required to give a closing argument.

**13. Q. Are there any additional rules to follow during the hearing?**

**A.** Yes. Be courteous to all individuals, even if you disagree with them. You should not interrupt others when they are talking. The only time you are allowed to interrupt is to make an objection. If you object to any testimony or evidence, you must state the reason for your objection. The presiding officer may refuse to accept the evidence or testimony if it repeats something already presented, or is not related to the issue.

**14. Q. When will a decision be made in my case?**

**A.** The presiding officer will issue a written decision after the hearing concludes and the record closes. Generally, the decisions are written and issued in the same order in which the hearings were held. The time it takes to get a written decision is dependent on the number and complexity of cases ahead of yours, and generally ranges from about one to six months.

**15. Q. Who can I contact if I have other questions?**

**A.** If you have questions about the hearing process, you may contact the Administrative Appeals Unit (AAU) Legal Assistant at the address or phone numbers below. The AAU will not give legal advice. If you have legal questions, you should contact an attorney of your choice.

**16. Q. Am I allowed to contact the presiding officer about questions or concerns that I have?**

**A.** No. Any communication with the presiding officer that does not include all parties is prohibited by law. Do not call or send email to the presiding officer. Also, any document sent to the presiding officer also must be sent to the other party using the same delivery method. Communication between the parties, without the presiding officer's involvement, does not violate any law and is encouraged.

**17. Q. Does this document contain all of the rules, regulations and laws that I need to know for the hearing?**

**A.** No. The purpose of this document is to present some of the frequently asked questions and answers in general terms. Department of Health and Human Services Rules, Chapter He-C 200, *Rules of Practice and Procedure*, Part 203, *Hearings* govern the hearing process. These rules are on the Internet at http://www.gencourt.state.nh.us/rules/state_agencies/he-c200.html. Most public libraries provide Internet access. If you need a copy of the rules, and do not have internet access, please contact the Administrative Appeals Unit at the address below.

**Administrative Appeals Unit**
**Hugh Gallen State Office Complex**
**Main Building**
**105 Pleasant Street**
**Concord, NH 03301-3852**

Voice: (603) 271-4292 or (800) 852-3345 ext. 4292
Fax: (603) 271-8422
TDD Access: (800) 735-2964

## The following organizations may be able to assist you, or provide a referral for legal counsel:

**NH Legal Assistance**
1850 Elm Street, Suite 7
Manchester, NH 03104
(603) 668-2900 or
(800) 562-3174
e-mail: vbrooks@nhla.org

**NH Legal Assistance**
154 High Street, P.O. Box 778
Portsmouth, NH 03802-0778
(603) 431-7411 or
(800) 334-3135

**NH Legal Assistance**
24 Opera House Square, Suite 206
Claremont, NH 03743-2603
(603) 542-8795 or
(800) 562-3994
e-mail: kleahy@nhla.org

**NH Legal Assistance**
1131 Main Street
Berlin, NH 03570
(603) 752-1102;
(603) 752-1104 or
(800) 698-8969

**Disabilities Rights Center, Inc.**
64 North Main Street, Suite 2
Concord, NH 03301-4913
(603) 228-0432 or
(800) 834-1721 (TTY or voice)
e-mail: advocacy@drcnh.org

**NH Bar Association**
Lawyer Referral Service
2 Pillsbury Street, Suite 300
Concord, NH 03301
(603) 229-0002
e-mail: lrsreferral@nhbar.org

**Legal Advice and Referral Center**
48 South Main Street
Concord, NH 03301
(603) 224-3333 or
(800) 639-5290
e-mail: clane@larc.mv.com

**Civil Practice Clinic**
Franklin Pierce Law Center
2 White Street
Concord, NH 03301
(603) 225-3350

**Senior Citizen Law Project Advice Line** (phone only)
(603) 624-6000 in Manchester
(888) 353-9944 for rest of NH

**NH Legal Assistance**
21 East Pearl Street, Suite 2
Nashua, NH 03060-3407
(603) 598-3800
(800) 517-0577

**NH Legal Assistance**
117 N. State Street
Concord, NH 03301
(603) 223-9750
(800) 921-1115