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Recipient Rights Appeals

POLICY

It is the policy of the Detroit Wayne Mental Health Authority (DWMHA), to ensure that an appeal process is available regarding the findings, remedial action, or timeliness of a Recipient Rights complaint investigation, pursuant to Chapter 7A of the Michigan Mental Health Code.

PURPOSE

The purpose of this policy is to establish policy direction for handling appeals of Recipient Rights summary reports to assure all recipients and those acting on their behalf are afforded due process including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity.

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWMHA Board, DWMHA Staff, Contractual Staff, Access Center, MCPN Staff, Network Providers, Crisis services vendor
2. This policy serves the following populations: Adults, Children, I/DD, SMI/SEI, SED, Autism
3. This policy impacts the following contracts/service lines: MI-HEALTH LINK, Medicaid, Autism, Grants, General Fund

KEYWORDS

1. Appeals Committee
2. Appellant
3. Complainant
4. Legal Guardian
5. Respondent
6. Staff Facilitator

STANDARDS

1. The DWMHA Board of Directors shall appoint an appeals committee consisting of 7 individuals, none of whom shall be employed by the MDHHS or a community mental health services program, to hear appeals

of recipient rights matters. The appeals committee shall include at least 3 members of the recipient rights advisory committee, 2 board members, and 2 primary consumers. A member of the appeals committee may represent more than 1 of these categories.

2. The DWMHA Board of Directors has designated the Recipient Rights Advisory Committee as the appeals committee.
3. The governing body of a licensed hospital shall designate the appeals committee of the local community mental health services program to hear an appeal of a decision on a recipient rights matter brought by or on behalf of a recipient of that community mental health services program.
4. A member of an appeals committee who has a personal or professional relationship with an individual involved in an appeal shall abstain from participating in that appeal as a member of the committee.
5. The DWMHA Office of Recipient Rights shall assure that training is provided to the Appeals Committee as required by Section 755(2)(a) of the Michigan Mental Health Code (Code) or (MHC).
6. Every complainant, recipient, if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the Summary Report, issued by DWMHA, of the right to appeal to the Appeals Committee. Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 784(2), the time frame for submission of the appeal, information on advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the ORR in the absence of assistance from an advocacy organization. The Summary Report shall also inform the complainant of the option of mediation under MHC section 788. All appeals are to be sent to the following address:
Detroit Wayne Mental Health Authority
Office of Recipient Rights
Attn: Rights Appeals Committee
707 W. Milwaukee Street
Detroit, MI 48202-2943
7. Not later than 45 days after receipt of the Summary Report under section 782 of the Code, the appellant may file a written appeal with the Appeals Committee.
8. If the Summary Report contains a plan of action, the Office of Recipient Rights is provided written notice and evidence of the completion of the plan. If the Summary Report contains a plan of action, and the completed action is different than that proposed, the DWMHA President/CEO shall assure that the complainant, recipient, if different than the complainant, his/her guardian, if any, and the rights office are provided written notice including specific information as to the action that was taken and the date that it occurred. The complainant, recipient, if different than the complainant, and his/her legal guardian, if any, shall be afforded 45 days from receipt of the notice to appeal to the Appeals Committee on the grounds that inadequate action was taken to remedy a rights violation.
9. If the plan is not completed by the date/time period indicated in the Summary Report, the DWMHA President/CEO shall assure that the complainant, recipient if different than the complainant, his/her legal guardian, if any, and the rights office are provided a written status report by the date that the action or plan of action was to have been completed. The written report shall include specific information as to the status of the plan of action, justification for the delay in completion and the expected date of completion. The complainant, recipient if different than the complainant and his/her legal guardian, if any, shall be afforded 45 days from receipt of the status report to appeal to the Appeals Committee on the ground that inadequate action was taken to remedy a rights violation.
10. Grounds for appeal to the Appeals Committee shall be as follows:
 - a. The investigative findings of the office are not consistent with the facts or with law, rules, policies, or

- guidelines;
- b. The action taken or plan of action proposed by the facility director does not provide an adequate remedy; or,
 - c. An investigation was not initiated or completed on a timely basis.
11. Within five business days of receipt of the appeal, the appeal shall be reviewed to determine if it meets the criteria stated above. This review may be conducted by the full committee, by a subcommittee, an individual member of the committee, or DWMHA staff designated by the full committee to fulfill this responsibility. The Committee shall maintain a log of all appeals received and the disposition of each.
 12. Within five business days of receipt of the appeal, written notice that the appeal has been accepted shall be provided to the appellant and a copy of the appeal shall be provided to the respondent's director. The appellant shall also be informed within the same time frame when the appeal has not been accepted because it did not meet the criteria.
 13. The staff facilitator shall assure the complaint case file involved in the appeal is provided to the Appeals Committee for their review.
 14. Within 30 days after receipt of an accepted written appeal, the Appeals Committee shall meet in a non-public session and review the facts as stated in all complaint investigation documents. Any member of the Appeals Committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal as a member of the Committee. The Committee shall not consider additional allegations that were not part of the original complaint at issue on appeal, but shall inform appellant of his/her right to file a recipient rights complaint for any additional allegations.
 15. At the appeal meeting, the Appeals Committee shall do one of the following:
 - a. Uphold the investigative findings of the ORR and the action taken or plan of action proposed by the DWMHA or contract service provider director.
 - b. Return the investigation to the DWMHA ORR and direct that it be reopened or reinvestigated.
 - c. Uphold the investigative findings of the rights office but direct that the DWMHA or contract service provider director take additional or different action to remedy the violation.
 - d. If the Committee confirms that the investigation was not initiated or completed in a timely manner, recommend appropriate supervisory action with the investigating Recipient Rights Investigator.
 - e. If the responsible mental health authority is the DWMHA or a licensed hospital, recommend that the DWMHA's Board or the governing board of the licensed hospital request an external investigation by the Michigan Department of Health and Human Services (MDHHS) – Office of Recipient Rights.
 16. The Appeals Committee shall document its decision and justification in writing within ten working days following the decision and shall provide copies of such to the appellant, recipient, if different than appellant, the recipient's legal guardian, if any, and the respondent director. Documentation shall include justification for the decision made by the Committee.
 17. If the Appeals Committee directs that the DWMHA ORR reopen or reinvestigate the complaint, the DWMHA ORR shall submit another investigative report within 45 days of receipt of the written decision of the Committee to the respondent director in compliance with Section 778(5) of the Michigan Mental Health Code. The 45-day time frame may be extended at the discretion of the Appeals Committee upon a showing of good cause by the DWMHA ORR. At no time shall the time frame exceed 90 days. Within ten business days of receipt of the investigative report, the DWMHA President/CEO shall issue another Summary Report in compliance with Section 782 of the Code. The Summary Report shall be submitted to

the appellant, recipient, if different than the appellant, the recipient's legal guardian, if any, the rights office and the Appeals Committee.

- a. If the investigative findings of the DWMHA ORR remain the same as those appealed, the appellant may file an appeal to the MDHHS Appeals Division. The Summary Report shall contain information regarding the appellant's right to further appeal, the address where the appeal should be sent, the time frame for the appeal and the grounds for appeal. The Report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the rights office in the absence of assistance from an advocacy organization.
 - b. If the investigative findings result in the substantiation of a previously unsubstantiated rights violation, but the appellant disagrees with the adequacy of the action or Plan of Action proposed by the respondent director, appellant may file an appeal on such grounds to the Appeals Committee. The Summary Report shall inform the appellant of this right as well as further information as Stated in subsection M.1., above.
18. If the Appeals Committee upholds the findings of the DWMHA ORR and directs that the respondent director take additional or different action, that direction shall be based on the fact that appropriate remedial action has not been taken in compliance with Section 722(2) and 780 of the Michigan Mental Health Code.
- a. The Appeals Committee shall base its determination upon any or all of the following:
 1. Disciplinary action was not taken with an employee for substantiated abuse or neglect when it was possible to do so;
 2. Action taken or proposed did not correct or remedy the rights violation; and/or,
 3. Action taken or proposed did not/will not prevent a future recurrence of the violation.
 - b. Written notice of this direction for additional or different action to be taken by the respondent director shall also be provided to the DWMHA ORR.
 - c. Within 30 days of receipt of the determination from the Appeals Committee, the respondent director shall provide written notice to the Appeals Committee that the action has been taken or justification as to why it was not taken. The written notice shall also be sent to the appellant, recipient, if different than appellant, the recipient's legal guardian, if any, and the DWMHA ORR.
 - d. If the action taken by the respondent director is determined by the Appeals Committee and/or the appellant to still be inadequate to remedy the violation, the appellant shall be informed by the Appeals Committee of his/her right to file a Recipient Rights complaint against the respondent director for violation of section 754(3)(c) of the Michigan Mental Health Code.
19. Within 45 days after receiving written notice of the decision of the Appeals Committee or the Summary Report, the appellant may file a written appeal with the MDHHS Appeals Division. The written appeal shall be mailed to:
- Level 2 ORR Appeal
DHHS-Appeals
P.O. Box 30807
Lansing, Michigan 48909
FAX: 517.241.7973
20. An appeal to MDHHS Appeals Division may be taken only on the grounds that the investigative findings of the rights office were inconsistent with facts, law, rules, policies, or guidelines and only after a decision on an appeal has been made by the Appeals Committee.

21. Upon receipt of written notice by MDHHS of the appeal's filing, staff facilitator shall ensure that MDHHS has access to all necessary documentation and other evidence cited in the complaint and appeal.
22. By MDHHS policy, within 30 days after receiving the appeal, MDHHS shall review the appeal and do one of the following:
 - a. Affirm the decision of the Appeals Committee; or,
 - b. Return the matter to the director of the Office with instruction for additional investigation or consideration.
23. MDHHS will provide copies of its action to the appellant, recipient, if different than appellant, the recipient's legal guardian, if any, and the DWMHA's ORR. If MDHHS upholds the findings of the rights office, notice shall be provided to the appellant of his/her legal right to seek redress through the circuit court.
24. If MDHHS instructs that additional investigation be conducted, the DWMHA's ORR shall assure that such investigation is completed in a fair and impartial manner within 45 days of receipt of the written notice from MDHHS. The 45-day time frame may be extended, at MDHHS's discretion, upon a showing of good cause by the DWMHA ORR. At no time shall the time frame exceed 90 days. In cases of re-investigation, the DWMHA ORR shall ensure the submission of the investigative report to the respondent director.
25. Within ten business days of the receipt of the Report of Investigative Findings, the DWMHA President/ CEO shall issue a Summary Report in compliance with Section 782 of the Michigan Mental Health Code to MDHHS, the appellant, recipient, if different than appellant, and the recipient's legal representative, if any.
 - a. If the findings of the additional investigation remain the same as those appealed, MDHHS shall inform the appellant, recipient, if different than the appellant, and the recipient's legal guardian, if any, in writing of the right to seek redress through the circuit court.
 - b. If the additional investigation results in the substantiation of previously unsubstantiated violation, but the appellant, recipient, if different than the appellant, and/or the recipient's legal guardian, if any, disagrees with the adequacy of the action taken or Plan of Action proposed to remedy the violation, MDHHS shall inform the individual(s) of the right to appeal this to the Appeals Committee.

QUALITY ASSURANCE/IMPROVEMENT

DWMHA shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of MCPNs, their subcontractors, and direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWMHA staff, MCPNs, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

- A. Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1722; MCL 330.1754; MCL

RELATED POLICIES

1. Recipient Rights Complaint Resolution
2. Disclosure of Confidential or Privileged Information

RELATED DEPARTMENTS

1. Administration
2. Clinical Practice Improvement
3. Compliance
4. Customer Service
5. Integrated Health Care
6. Managed Care Operations
7. Quality Improvement
8. Recipient Rights

CLINICAL POLICY

NO

INTERNAL/EXTERNAL POLICY

EXTERNAL

Attachments:

No Attachments

Approval Signatures

Approver	Date
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