

Dauphin County

COVID-19 Rent and Utility Assistance Program

APPEAL AND FAIR HEARING REGULATIONS

GENERAL PROVISIONS

§1. Policy.

(a) *Right to appeal and have a fair hearing.* The policy with regard to the right to appeal and have a fair hearing will be as follows:

(1) The freedom of the applicant or recipient to request a hearing is a fundamental right and is not to be limited or interfered with in any way.

(2) These regulations, in accordance with law, afford every person applying for or receiving a money payment the right to appeal an action and to have a hearing if dissatisfied with a decision refusing or terminating assistance in whole or in part.

(3) As used in these regulations, the term “County” includes agencies which administer or provide social services under contractual arrangements with the County.

(4) The term “assistance” as used in these regulations means a money payment on behalf of the recipient.

(5) The term “Appellant” as used in these regulations means the applicant or recipient who has requested the hearing and signed the ERAP Grievance and Appeal Form.

(6) The term “hearing request” as used in these regulations means a written expression by the Appellant or the person acting for the Appellant, such as a legal representative, relative or friend, to the effect that the Appellant wants an opportunity to present a case to a higher authority.

(7) The term “Program” as used in these regulations means the Dauphin County COVID-19 Emergency Rental and Utility Assistance Program (ERAP).

(b) *Right of appeal.* Individuals who have submitted an application for assistance to the County in person, online, or at an access site have the opportunity for a hearing to appeal from the following:

(1) A denial in whole or in part to receive program funds.

(2) A termination of assistance services.

(c) Any applicant who asserts that denial or termination is based on discrimination because of race, color, religious creed, ancestry, national origin, sex, age, gender, disability, lifestyle, or sexual orientation must submit their appeal to the Pennsylvania Human Relations Commission. Dauphin County has no authority to consider appeals based on discrimination.

(d) *No right of appeal.* An appeal will be summarily dismissed by Dauphin County under the following circumstances:

- (1) When the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients unless there is an error in the mathematical computation of the grant.
- (2) The program has exhausted all available federal and state funding.
- (3) The completed ERAP Grievance and Appeal Form is not submitted with the appeal.
- (4) The appeal does not contain the contact information of the Appellant, or the appeal is filed by an unauthorized third party. (note: the landlord is considered an unauthorized third party if his or her tenant is the original applicant, and vice versa).
- (5) Appeal is not submitted in a timely manner.

(e) *Objectives of appeals and fair hearings.* The objectives of appeals and fair hearing will be as follows:

- (1) To afford applicants and recipients an opportunity for an impartial, objective review of decisions and actions.
- (2) To settle the issue or issues raised by the Appellant in requesting a hearing and to produce a clear and definitive decision setting forth the findings of the County.
- (3) To contribute to uniformity in the application of program regulations.
- (4) To reveal aspects of program regulations that are deficient, inequitable, or constitute a misconstruction of law.

§ 2. Requirements.

(a) *Rights of the Appellant.* An Appellant has the right to attend the hearing, and hearings will be held virtually/online whenever possible. An Appellant may self-represent or be represented by an attorney or other person. If the Appellant is represented by another person, the representative's name and contact information must be submitted on the ERAP Grievance and Appeal Form. The hearing examiner may limit the number of persons in attendance at the hearing if space limitations exist. The Appellant or representative, if any, have the following rights:

- (1) To present evidence, to bring witnesses or documents, and to confront and cross-examine witnesses the County, administering agency or social service provider will produce to support its decision or action.
- (2) To request a subpoena from the hearing officer for the production of evidence or witnesses that are essential in obtaining necessary facts.
- (3) To examine prior to the hearing, as well as during the hearing, documents which the County, administering agency or social service provider will introduce as evidence in the hearing as well as the contents of the case files pursuant to 55 Pa. Code § 105.5 or appropriate

confidentiality regulations for the program.

(i) If the Appellant requests material from the case file, the hearing officer will determine prior to the date of the hearing, whether the material is relevant and whether it tends to support the position of the Appellant.

(ii) The hearing officer will refuse access to irrelevant material, but will allow access with appropriate safeguards to relevant, confidential information which supports the position of the Appellant. If the County, agency, or provider wishes to protect the confidentiality of such relevant information, in spite of the decision of the hearing officer, it must request a protective order from the County Solicitor. The case record material will be made available on as early a date as possible prior to the hearing so that the Appellant or representative shall have ample opportunity to review the evidence of the County or that of the administering agency or social service provider and prepare their case.

§ 3. Time limitations on right to appeal.

(a) An applicant or recipient must exercise the right of appeal *within the following time limits*. Appeals which do not meet the following time limitations will be dismissed without a hearing:

(1) Thirty (30) days from the date of written notice of a decision or action by the County denying or terminating services.

(2) Sixty (60) days from the date of a decision or action by the County when they did not send written notice because the notice was not required or sixty (60) days from their failure to act.

(3) When the County fails to send written notice, which was required of the action and of the right of appeal or because of administrative error or failure to take corrective action that should have been taken, the Appellant shall have the right of appeal and shall exercise that right in writing after sixty (60) days, but not longer than six (6) months, only if Appellant signs an affidavit stating the following:

(i) The client did not know of his right of appeal or believed the problem was being resolved administratively; and

(ii) The client actually believes the County erred in its actions; and

(iii) The appeal is being made in good faith. Appeals which do not meet the time limitations and requirements set forth in this paragraph will be dismissed without a hearing.

(b) *Final administrative action*. Final administrative action must be initiated within thirty (30) days from the date of an appeal from a County decision affecting assistance.

(1) Final administrative action will include a hearing and subsequent decision by the hearing officer, and where the appeal of the Appellant is sustained, immediate implementation of the hearing decision by the County.

(2) If the Appellant has not received final administrative action within the specified time limits,

the county will proceed in accordance with § 8(d).

§ 4. Procedures.

(a) *Requesting a hearing.* The following procedures govern requesting a hearing:

(1) *Aid to clients making appeals.* The County will provide whatever help the applicant/recipient needs in requesting a hearing. This may include the following:

- (i) Clearly explaining the basis for questioned decisions or actions.
- (ii) Explaining the rights and fair hearing proceedings of the applicant/recipient.
- (iii) Providing the necessary forms and explaining to the applicant/recipient how to file the appeal and, if necessary, how to fill out the forms.
- (iv) Advising the applicant/recipient that he or she may be represented by an attorney, relative, friend or other spokesman and explaining that he or she may contact the local bar association to locate the legal services available in the county.

(2) *Method of appeal.* Procedures relating to the method of appeal will be as follows:

(i) A hearing request must be made to the County which notified the applicant/recipient of its decision or action.

(ii) A request for a hearing must be made using the ERAP Grievance and Appeal Form and must specify the action appealed. Appellants may submit the form typed or handwritten. forms may be submitted by regular mail or email to the following address:

Rebecca A. McCullough, Esq., ERAP Hearing Officer
Dauphin County Administration Building
2 S Second Street, 4th floor
Harrisburg, PA 17101
Email: rmccullough@dauphincounty.gov

(iii) Every appeal must bear the signature of the applicant/recipient. The appeal form may be electronically transmitted and electronically signed, in whole or in part, pursuant to the Pennsylvania Electronic Transactions Act, 73 P.S. § 2260.101 *et. seq.* and The Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. § 7001, *et. seq.* The effectiveness of such documents and signatures shall have the same force and legal effect as manually signed originals and shall be binding on the parties.

(b) *County hearing officer responsibility upon receipt of a hearing request.* The County hearing officer upon receipt of a hearing request shall:

(1) Date stamp the appeal document upon receipt and review the complaint of the Appellant to assure that the decision in question is appealable in accordance with program regulations and

policies and to determine what additional step, if any, should be taken to resolve the issue without a hearing.

(2) The County hearing officer may offer the Appellant the opportunity for an agency conference to resolve, if possible, the appeal. The Appellant shall be advised that the agency conference is optional and that it shall in no way delay or replace the fair hearing process. An agency conference may result in resolution of the dispute. If not, a fair hearing must still be held.

(c) *Appeal received from a proposed action.* Procedures for an appeal received from a proposed action will conform with the following:

(1) When an applicant/recipient responds to a written notice by requesting a hearing within the specified time period, the County hearing officer shall date stamp the form upon receipt and review the complaint. In cases in which a hearing is requested within the specified time period, assistance may be continued pending the hearing decision unless the applicant/recipient waives continuation of benefits, or at the discretion of the County.

(d) *County hearing officer responsibility after initial review.* If the issue of appeal is not resolved to the satisfaction of the Appellant after agency conference, if any, or if the Appellant wants to proceed with the hearing, the County hearing officer will do the following:

(1) Make available without charge to the Appellant or representative on as early a date as possible prior to the hearing the following:

(i) Information contained in the case record upon which the decision or action is based and which the County will introduce as evidence at the hearing as well as other case record materials which are relevant to the issues raised by the appeal.

(ii) The names of the county staff members and, if appropriate, the names of staff members of administering or provider agencies who will be present at the hearing. Staff members who are directly involved with making the decision or initiating the action must be present.

(2) *Communication with the hearing officer.* Procedures relating to communication with the hearing officer will be as follows:

(i) Until the time of the fair hearing, only the written notice of the County to the applicant or recipient or any other written statement used by the Appellant to request a hearing will be considered by the hearing officer in preparing for the hearing. Where there is no notice of the action of the County, the County, upon request of the hearing officer, will prepare a written explanation of its decision for the hearing officer with a copy sent to the Appellant or representative.

(3) After the written notice or other statement is submitted to the County, no further communication with the hearing officer prior to the hearing by the Appellant or the County, administering agency or provider agency regarding the appeal or the basis for the action of the agency will be permitted except as provided in § 4(b)(2), or to request continuances, or to withdraw the action or the appeal, or to request a subpoena of evidence or witnesses.

§ 5. Interim assistance.

When final administrative action has not yet been rendered within the applicable time limit, the County may authorize assistance to the Appellant during the appeal process at its discretion. The Appellant is not automatically entitled to this service.

§ 6. Scheduling the hearing. Hearings will be scheduled in accordance with the following:

(a) Hearings will be scheduled to be held as soon as possible, allowing at least ten (10) days' notice to be given to the Appellant or representative or a lesser time if agreed to by the Appellant or representative.

(b) The Appellant who wishes to postpone the hearing shall contact the hearing officer and provide a reason for the request. The hearing officer may approve the request for postponement or continuation of the hearing. The hearing will be rescheduled as soon as possible.

(c) In cases where the Appellant is responsible for delaying the hearing process, the time limit for final administrative action is extended by the length of the delay.

(d) *Hearing withdrawn.* Hearing requests will be withdrawn only in accordance with the following: a request for a hearing can only be dismissed without a hearing when it has been withdrawn by the Appellant or authorized representative in writing. Under no circumstances may the County attempt to convince the Appellant to withdraw the appeal. Hearings may be automatically withdrawn if the issue is resolved via an optional agency conference.

(e) *Hearing abandoned.* Appeals will be considered abandoned in accordance with the following: if the Appellant or representative fails to appear at the scheduled hearing without good cause as determined by the hearing officer, the appeal will be considered to be abandoned and will be dismissed.

§ 7. Conducting the hearing.

(a) *Responsibilities of hearing officer.* The hearing will be held before a hearing officer. The hearing officer will be a qualified County official who has not been involved in any way with the decision or action in question. The responsibilities of the hearing officer in conducting the hearing are as follows:

(1) To conduct the hearing in an orderly but informal manner.

(2) To obtain from the Appellant and County staff members relevant testimony pertaining to the issues in question and to limit the testimony to that which has bearing on the issues involved.

(3) To provide the Appellant and the County representatives with the opportunity to present their case in an orderly manner, to present witnesses, to cross-examine witnesses and to advance pertinent facts or arguments.

(4) To assure that documents and records presented or referred to at the hearing are made part

of the hearing transcript. Persons at the hearing have the right to examine documents and records used as evidence.

(5) To render a decision based upon the facts and evidence as applied to the Program requirements.

(b) *Hearing proceedings.* Hearing proceedings will conform with the following order:

(1) The hearing officer will open with a statement of the purpose of the hearing, the procedure it will follow, who the deciding authority is and the way the decision will be transmitted to the Appellant.

(2) The hearing officer will ask the Appellant to state the issue or issues so that they are identified at the commencement of the hearing.

(3) The County will present its case, the facts and events leading to the decision which will be the basis for the decision or action, and the pertinent regulations and/or Program requirements involved.

(4) After a witness testifies, the Appellant or his representative may cross-examine the witness.

(5) The Appellant will present his case.

(6) After a witness testifies, the County or its representative may cross-examine that witness.

(7) The hearing officer may question any witness or party at any time.

(8) Before terminating the hearing, the hearing officer will ask the Appellant or representative whether he or she requires any further opportunity to speak or whether he or she has presented their case fully.

(9) The hearing officer may continue the hearing or adjourn it to another date. If the Appellant has requested a continuance or is in some other manner responsible for a delay, the time for final administrative action will be extended by the length of the delay.

(c) *Agency staff responsibility at the hearings.* The County and other agencies as appropriate will prepare for the hearing so that evidence considered in making the decision or taking the action which is at issue and evidence that supports that decision or action will be introduced at the hearing in an orderly and concise manner. Relevant information, which is presented at a hearing will include, but not be limited to, the following:

(1) Names, relationships, and ages of the persons affected, and the type of assistance involved.

(2) The decision or action which prompted the request for the hearing.

(3) Description of the relevant facts and events leading to the decision or action plus evidence to support the decision or action, including identification of the pertinent regulations or Program requirements applied in making the decision.

(4) Detailed computation of the grant, allowances, and income, before and after implementation

of the agency decision or action.

(d) The County or other appropriate agency may be assigned legal representation at a hearing. When an attorney is assigned, the County will make available the evidence it possesses regarding the decision and situation of the Appellant plus additional information the attorney may request to prepare the case. The attorney will then be responsible for seeing that relevant testimony, evidence and the like is introduced at the hearing.

(e) Since the hearing decision will be based solely on the information presented at the hearing, failure to introduce relevant evidence may result in an adverse decision if the evidence presented is inadequate to support the decision.

(f) At the time of the hearing, the County will be responsible for seeing that their case record contains current information on the issue or issues at question.

§ 8. Hearing Decisions. Hearing decisions will conform with the following:

(a) *Hearing authority.*

(1) The hearing authority will be a representative of the Dauphin County Human Services Department.

(2) The designated hearing officer will have the delegated authority from the County to make the decision on the appeal. Decisions will, therefore, be rendered in the name of the County and will be binding on the County. Administering or provider agencies involved shall be similarly bound by the decision of the designated hearing officer, subject to their right to appeal from that decision to a Court of competent jurisdiction. Provisions of the decision will be promptly carried out.

(3) The function of the hearing officer in rendering a hearing decision will be as follows:

(i) To determine the facts.

(ii) To determine the appropriate regulations and/or Program requirements that apply.

(iii) To determine the action that should be taken in relation to the established facts and correct application of regulations and Program requirements.

(4) The hearing officer may not render a decision on the validity of a departmental regulation nor may she invalidate or modify a departmental regulation. The hearing officer must, when necessary, interpret regulations when regulations are ambiguous. Hearing decisions receiving final administrative action are restricted to the case at issue and do not create a precedent or apply to an entire class unless the hearing involves an entire class.

(b) *Basis for hearing decision.* Hearing decisions will be based on the following:

(1) The hearing officer will restrict her decision to the hearing record, which will consist of testimony and exhibits introduced into the hearing and the notice of action taken by the County

and the appeal of the Appellant. The hearing officer will make adjudication in accordance with regulations established by the County.

(2) Briefs and exhibits will be due at the time of the hearing. If either the County or the Appellant wishes to present additional exhibits after the conclusion of the hearing, the hearing officer may allow the record to be kept open for no longer than five (5) working days. Copies of exhibits introduced into the record, after the conclusion of the hearing, will be given to the hearing officer, the appellee, the Appellant or representative. Briefs may be accepted no later than five (5) working days, unless the Appellant provides the hearing officer with an affidavit that the Appellant has requested information from a third party which cannot be provided within five (5) working days. If the Appellant or representative is waiting for information from a third party, a delay beyond five (5) days will extend the time for final administrative action by the length of the delay.

(c) *Notice of decision.* Notices of hearing decisions will conform with the following:

(1) The notice of decision will specify the reasons for the decision and identify the supporting evidence. The notice of decision will also specify the eligibility of the Appellant and, if relevant, the amount of grant services for which the Appellant is eligible. In addition, it will inform the Appellant or provider of the right to appeal the decision to the County Human Services Director if dissatisfied with it.

(2) If an underpayment in the cash grant is involved, a corrective payment will be authorized retroactively to the date the incorrect action or inaction was taken or was not taken. When the hearing decision sustains a proposed adverse action of the County and assistance has been continued pending the hearing, overpayment will occur for assistance received immediately following the expiration of the advance notice period.

(3) When the proposed action of the County to reduce, suspend or terminate a grant is sustained, the action will be taken effective the first payment date, issuance date and the like whose deadline can be met following the decision.

(4) At the same time the written notice of decision is sent to the Appellant, copies will be sent to the County and the representative of the Appellant, if any. The hearing officer must sign the copies of the hearing decision letter.

(d) *Review by the County Dauphin County Human Services Director.* Review by the Dauphin County Human Services Director may be made under the following circumstances:

(1) The County Dauphin County Human Services Director will affirm, amend, reverse, or remand a hearing examiner's decisions. Reversal by the Dauphin County Human Services Director will be confined to matters of law and established Departmental policy; no findings of fact made by the hearing examiner will be subject to reversal. The Dauphin County Human Services Director may, however, remand the case to the hearing examiner for further findings of fact. If the decision of the hearing examiner is reversed, the reasons for the reversal will be provided to the Appellant in writing.

(2) Either party to a proceeding has ten (10) days from the date of the decision to request reconsideration of that decision by the Dauphin County Human Services Director. The request

must be in writing and must set forth in detail the basis upon which the request is made. The request should be addressed to the Dauphin County Human Services Director, who will, within ten (10) working days from the date the request is received, respond in writing to the request. The Dauphin County Human Services Director may affirm, amend, or reverse the decision, or remand the case to the hearing officer for further findings of fact. Actions taken by the Dauphin County Human Services Director will be confined to matters of law and established departmental policy; no findings of fact made by the hearing examiner will be subject to reversal. The Dauphin County Human Services Director may, however, remand the case for further findings of fact.

(e) *Records of hearing decisions.* The County will keep records of hearing adjudications which will contain the month and year of the decision, with a code for identification of the case, a statement of the issue, and excerpts of the decision setting forth the facts established at the hearing.

(f) *Appeal to local court system.* If an applicant wishes to further appeal a decision made by the Dauphin County Human Services Director, the appeal must be made to the local court system with appropriate jurisdiction (2 Pa.C.S. § 752). Appellant must file such appeal with the Dauphin County Court of Common Pleas.

§ 9. Disqualification hearings.

The County shall be responsible for investigating individuals alleged to have committed an *intentional program violation* (such as making false or misleading statements) as defined under 7 CFR 273.16(c) (relating to disqualification for intentional program violation). The County reserves the right to disqualify an individual from receiving benefits if the individual has been found to make false or misleading statements or other related program violations. The County will provide the individual with a description of the disqualification penalties and a statement of which penalty applies. Investigations will be acted upon by a disqualification hearing, or referral to appropriate law enforcement or court of appropriate jurisdiction.

(a) *Finding of an intentional program violation.*

(1) If the hearing officer finds that the individual committed an intentional program violation, the County will notify the individual before disqualification. The notice will include:

(i) The period of disqualification.

(ii) The date disqualification will take effect.

(iii) The benefit amount the budget group/household will receive during the disqualification period.

(iv) The statement that, if the individual is not eligible for benefits in the program in which the intentional program violation occurred, the County will impose the disqualification effective on the date of the administrative disqualification hearing final order.

(v) The County will notify the remaining budget group/ household, if any, of the benefit/allotment they will receive during the disqualification period.

(2) The County will send a demand letter for payment of the claim. The letter will include:

- (i) The amount owed.
- (ii) The reason for the claim.
- (iii) The offset that reduces the claim.
- (iv) The payment options.

(b) Finding that no intentional program violation occurred.

(1) If the hearing officer determines that the individual owes the claim amount but that the individual did not commit an intentional program violation, the hearing officer will order the individual to repay the claim amount.

(c) Waiver of administrative disqualification hearing.

(1) The individual may waive the administrative disqualification hearing in writing to the County.

(d) Imposing the disqualification.

(1) An individual found to have committed an intentional program violation or who waived an administrative disqualification hearing is ineligible for program benefits.

(2) The County will disqualify only the individual found to have committed an intentional program violation or who signed the waiver of an administrative disqualification hearing, and not the entire household.

(3) The individual may appeal the disqualification decision in writing to the Dauphin County Human Services Director within ten (10) days of the decision.