

## Recommendation 10

# Improve Fair Hearing and Appeal Processing

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HR1's changes will affect the eligibility of hundreds of thousands of Pennsylvanians. Appeals and fair hearings will be more important than ever to protect against wrongful denials. The Department of Human Services (DHS) has a duty to ensure accessible and effective appeal and fair hearing processes throughout the inevitable surge in appeals HR1 will bring. During the public health emergency unwinding in 2023, a surge in appeal filings led to a large backlog of Medicaid appeals, at one point reaching more than 1,100 appeals that BHA had not processed within the required 90-day timeframe, which marked one of the largest backlogs in the country at the time. DHS' Bureau of Hearings and Appeals (BHA) should take action now to improve appeal processing, prevent appeal backlogs, and protect the due process rights of appellants.

### **1. Hire administrative law judges and administrative staff to ensure both efficient processing of appeals and the accessibility of in-person hearings**

Hiring more staff now will allow BHA to more efficiently process the inevitable surge of appeals HR1 will bring and avoid a backlog.

BHA should prioritize hiring of staff that will both aid in the timely and efficient processing of a large volume of appeals, and ensure the accessibility of in-person hearings for appellants across the commonwealth. Currently, BHA has just six offices available for in-person hearings— in Erie, Harrisburg, Philadelphia, Pittsburgh, Reading, and Wilkes-Barre. People who live in the northern part of the state within the more than 300 miles between Wilkes Barre and Erie, or who live in the southern part of the state in the more than 200 miles between Harrisburg and Pittsburgh, must travel hours to reach a hearing office for an in-person hearing. We urge DHS to expand accessibility to in-person hearings by opening new offices with new staff, and at the very least preserve the accessibility to in-person hearings provided by the six offices that currently exist by ensuring each has enough staff to provide consistent access to in-person hearings.

### **2. Improve electronic appeal processing systems**

About 1.5 years ago, BHA began using the Enterprise Case Management (ECM) system to process appeals. Since then, advocates have seen issues with late mailing of hearing notices, unclear or misleading hearing notices, and the attaching of exhibits to appeals. Updating and improving ECM now to address these concerns will allow BHA to more efficiently process the inevitable influx of appeals HR1 will bring.

### 3. Improve BHA communication tools and hearing technology

DHS has no online appeal filing system or online mode of communication with appellants and provides appellants with no way to reach BHA besides phone and fax. Phone calls to BHA often go unanswered and BHA frequently limits the number of pages or types of documents that they will receive by fax. In addition, the speaker phones and hearing recording/transcription equipment used during hearings are often faulty, resulting in dropped calls and incomplete or inaccurate hearing transcripts. Phone interpreters often cannot hear what is being said in a hearing room, causing lengthy delays for LEP appellants; it can take hours to complete an in-person hearing with an interpreter attempting to interpret through a BHA phone. Hearings with phone interpreters are often cancelled before they are finished and rescheduled with an in-person interpreter for another date, sometimes weeks later. Videoconferencing is used sparingly and some BHA offices have refused to permit appellants and their representatives to use this tool at all.

Updating and improving BHA communication tools now will allow BHA to more efficiently process the inevitable surge of appeals HR1 will bring. We recommend taking the following steps at a minimum:

- Create an online appeal processing application, where appellants and representatives can file appeal documents, submit requests for continuances, and receive hearing decisions.
- Provide appellants with email addresses to communicate with BHA staff, submit continuance requests, appeal withdrawals, exhibits and briefs.
- Update BHA phone systems and increase staffing so that phone calls are consistently answered.
- Update fax machine capacity so that each BHA office can receive by fax any number or type of document submitted by an appellant.
- Improve BHA's speaker phone and hearing recording equipment so that phone interpreters and phone testimony can be clearly heard and hearings can be properly recorded and transcribed. Until phone interpretation is improved, schedule in-person interpreters for all in-person hearings with LEP appellants.
- Make video-conferencing a standard option for hearings and witness testimony that is available to all parties and their representatives.

### 4. Train administrative law judges on HR1 rule changes while also retraining on due process and evidentiary rules

We expect all Administrative Law Judges (ALJs) will be trained on HR1's rule changes. While this HR1 training is happening, we urge DHS to also train, and regularly retrain, all ALJs on the following at a minimum:

- Benefit notice requirements and the legal effects of improper notice.
- Agency obligations to provide documents and witness information to appellants before the hearing.

- Conducting de.novo review and issuing decisions that specify the eligibility of the appellant without deference to the agency’s decision.
- Evidentiary burdens.
- Hearsay, its exceptions, and the use of hearsay evidence to support a finding.

This retraining is critical because misunderstandings of these core principles have significant consequences for both appellants and DHS. When fundamental due process and evidentiary rules are misunderstood or misapplied by ALJs, this leads to hearing decisions that unlawfully deny appeals and/or to BHA orders that have no meaningful effect for appellants. Such hearing decisions and orders not only cause appellants to go without the benefits they are eligible to receive, it also causes significant new work for DHS. Appellants who are wrongfully denied by BHA very often return to DHS searching for a new path to remedy the wrongful denial: They submit new applications at the CAO, new requests for services at their managed care plans, new appeals to BHA, requests for reconsideration to the Secretary’s Office, and occasionally Commonwealth Court appeals that the Office of General Counsel must handle. Ensuring that ALJs understand fundamental tenets of constitutional due process and basic evidentiary principles will allow BHA to more accurately and efficiently process appeals the first time around, thus reducing the number of appellants who must repeatedly return to DHS to seek other avenues of relief.

## **5. Automate interim assistance approvals**

Appellants are eligible for Interim Assistance when their Medicaid and TANF appeals go without final administrative action for 90 days and when their SNAP appeals go without final administrative action for 60 days. DHS regulation at 55 Pa. Code § 275.4(d) requires DHS to authorize Interim Assistance on its own, without any request from the appellant. Despite this obligation, advocates regularly see cases where Interim Assistance is not authorized unless the appellant requests it. Interim Assistance is a procedural safeguard that protects appellants against the harmful effects of BHA delays. Automatically approving Interim Assistance as soon as it becomes due is more important now than ever before given the inevitable substantial increase in appeals, and the resultant increased risk of BHA delays, following HR1’s implementation.

## **6. Create a BHA stakeholder working group**

Stakeholders and advocates are offered regular meetings with other DHS offices, but the Office of Administration does not currently offer such meetings. A working group, meeting at least quarterly, would give BHA/Office of Administration and stakeholders a way to address issues before they become major problems, share information about appeal processing changes and developments, and work together to develop solutions to appeal processing challenges.