

Eligibility State Fair Hearing Process

The **Eligibility State Fair Hearing (SFH)** process is for people who are in the **eligibility process (application or renewal process)** for receiving KanCare.

The **KanCare Appeals and State Fair Hearing** process is for KanCare members who are currently **receiving services**. If you currently have services, please refer to the **KanCare Appeals and State Fair Hearing** information packet. Both types of hearings will be processed through the Office of Administrative Hearings.

What is a State Fair Hearing?

The state fair hearing is done through the Office of Administrative Hearings (OAH) with the State of Kansas. It is an opportunity for the applicant/member to speak about his/her issue. The member and the Medicaid state agency meet before a Presiding Officer that is an administrative law judge, who is an impartial individual. He or she will enter an initial order based upon what is presented by the agency and by you at the hearing.

It is usually done on the phone as a conference call, but a member can request to have the hearing in person. There is no expense for a state fair hearing, either on the phone or in person.

A “**notice of action**” or “**notice of adverse action or determination**” letter is mailed to tell a KanCare member or applicant that there has been a change in the KanCare services (sometimes this means services have been denied or not renewed for various reasons). The letter should tell the member why services were denied and there is an option to file a state fair hearing. The Eligibility SFH must be filed within 30 calendar days from the date on the letter (plus 3 calendar days if the letter was mailed).

- The Eligibility SFH is usually
 - Due to a denial of a new application
 - Due to a denial of a renewal application or renewal process.
 - A state fair hearing can also be filed if the application process takes longer than the normal 45 days required by Centers for Medicare and Medicaid Services (CMS).

✓ Basics

- **DO NOT WAIT. Turn in the state fair hearing right away.** You can always withdraw the request if you decide not to go forward with the state fair hearing. They do not make exceptions for missed deadlines.

- **Where to file:**

Mail to:

Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612-1327
Or Fax: 785-296-4848

- **The form at the end of this packet** is a “Request for REQUEST FOR MEDICAID ADMINISTRATIVE HEARING – Member/Consumer Appeals”. You can use this form to turn in your hearing request or send in a letter. Use the address above.

What happens to my services while I am filing a state fair hearing?

- **Non-HCBS Services**

- An Applicant/Member must submit request for (1) a state fair hearing (to OAH) **and** request (2) continuation of “non-HCBS” services (to MCO) within 10 calendar days of the effective date on the “notice of action” letter to ensure continuation of the disputed, non-HCBS waiver services. **Please keep in mind that you *may* have to pay for those services if you lose the state fair hearing.**
- **NEW** – *If the state fair hearing officer reverses a decision to deny authorization of services, and the Member received the disputed services while the fair hearing was pending, the Contractor must pay for those services.*

- **Home and Community Based Services (HCBS):**

- An Applicant/Member must submit request for (1) a state fair hearing (to OAH) **and** request (2) continuation of HCBS services (to MCO) within 10 calendar days of the effective date on the “notice of action” letter to ensure continuation of the disputed, HCBS waiver services. You will **not** have to pay for this care if the appeal decision is not in your favor unless fraud is present.

Note: There can be no *continuation of services* for services not already being received.



KanCare Ombudsman Office
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TTY: 771
Email: KanCare.Ombudsman@ks.gov
Website: www.kancare.ks.gov/kancare-ombudsman-office

Q. My application was denied and I think an error was made. How do I get this fixed?

A. In many cases if you contact us (KanCare Clearinghouse, 1-800-792-4884) and let us know that you feel an error was made, we can review the processing of your application. If any errors are found, they will be corrected. You can also file for a hearing. Hearing requests must be made in writing and sent to the address listed above (Where to file).

Note: Keep in mind you only have 30 calendar days from the date on the notice letter to file for a state fair hearing, so if the Clearinghouse offers to review you need to watch the dates; or you can also file for a hearing at the same time and withdraw if you are approved before the hearing date.

- Notice of withdrawal of appeal form (<https://oah.ks.gov/Files/withdraw.html>)

Taken from ApplyForKanCare.ks.gov website

(https://cssp.kees.ks.gov/apspsp/spp.portal?nfpb=true&st=&windowLabel=informationLinks_1_1&urlType=action&wlpinformationLinks_1_1_page=frequentlyAskedQuestions&wlpinformationLinks_1_1_javax.portlet.action=content#wlp_informationLinks_1_1)

✓ **What should my request/documentation include for the Eligibility Application and Renewal state fair hearing?**

- Full name, address, telephone number, a copy of the notice from which you are appealing (if you received one). If at any time during the appeal process your address changes, it is your responsibility to provide that address change to the Presiding Officer. There is also a form you can use if you prefer. It can be found at <https://oah.ks.gov/Files/MedicaidConsumerRequestForAdminHearing.pdf>. Either a letter or the form will work.
- In the **Eligibility State Fair Hearing process**, the information you provide needs to show that the state or a state worker did not follow the rules in processing the application or renewal, rather than show reasons why a person needs KanCare.
 - Example 1: Renewal was turned in on time with all information filled out and KanCare/Medicaid was still dropped with no other reasons given.
 - Example 2: My application was denied because I was lacking necessary information, but I have the fax receipt showing that this information was both sent and received on a specific date and was on time.

✓ **Other State Fair Hearing Information**

- You may have an attorney represent you at the hearing. The attorney will be at your expense. If you hire an attorney, he or she must be licensed in the State of Kansas and enter their appearance on your behalf prior to the hearing. If you choose Kansas Legal Services or Disability Rights Center of Kansas, they do not charge a fee. The Ombudsman's office

recommends members consider having a lawyer assist with preparing for the state fair hearing and come to the state fair hearing with them.

- ***Deadlines for this information will come by letter from the Office of Administrative Hearing. Be sure to read every letter from them thoroughly.***
 - The ***most frequent mistake*** made by individuals during the process of preparing is failing to read the notices and documents issued as part of the hearing process. Read everything you receive ***very carefully***.
 - Most state fair hearings are done by phone on conference call. If you prefer to meet in person, you can request it.
- ✓ ***See also the Medicaid Hearing resources at:***
- Important Forms – Medicaid Hearings – scroll to the bottom of the page (<https://www.oah.ks.gov/Home/Forms>)
 - Frequently Asked Questions (<https://www.oah.ks.gov/Home/FAQs#other>)
 - Resources - (<https://www.oah.ks.gov/Home/Resources>)

Legal Services

✓ **The Disability Rights Center of Kansas**

The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency empowered by federal law to advocate for the civil and legal rights of Kansans with disabilities. DRC is the Official Protection and Advocacy System for Kansas and is a part of the national network of federally mandated and funded protection and advocacy systems.

Contact Information

214 SW 6th St., Suite 100
Topeka, KS 66603
Voice: (785) 273-9661
Toll Free Voice: (877) 776-1541

✓ **Kansas Legal Services**

Kansas Legal Services is a statewide non-profit organization dedicated to helping low-income Kansans meet their basic needs through the provision of essential legal, mediation and employment training services. Kansas Legal Services can assist individuals with cases involving health issues, housing, employment, juvenile issues (delinquent, termination of parental rights), income maintenance, Indian laws, family issues, individual rights and consumer issues.

Legal Assistance Toll Free Central Intake Line

Phone: (800) 723-6953
Main Office: (785) 233-2068 (voice)



Kansas – Office of Administrative Hearings/ Other Hearings; Frequently Asked Questions (FAQs)

Q. What is an administrative hearing?

A. An administrative hearing is very similar to a trial in court with witnesses, exhibits, and rules of evidence. The hearing is your chance to tell your side to an impartial Presiding Officer. The hearing is recorded. The recording will become part of the official record of your case.

Q. How do I request an administrative hearing?

A. Send your written request for a hearing to the address indicated on the notice you received. It must be received within the time period stated on the notice.

Q. What should my request include?

A. Be sure to include your full name, address, telephone number, a copy of the notice from which you are appealing, the agency name and a description of the action you are appealing. If at any time during the appeal process your address changes, it is your responsibility to provide that address change to the Presiding Officer.

Q. When will the hearing be held and how will I be notified of the hearing date?

A. Notice of the date, time, and place of the hearing will be sent to you at least 10 days before the hearing.

Q. Where will the hearing be held?

A. Hearings are usually conducted by telephone. You can request the hearing to be conducted in Topeka. Appear on time to your hearing with your witnesses (if any) and documents. If you don't show up your case will be dismissed in favor of the state.

Q. May I review the information relied upon by the agency in making the decision or taking the final action?

A. You may request to review such information prior to the hearing date.

Q. What will I need to bring to the hearing?

A. You may bring any other information you think will help to prove that the agency's decision or final action was incorrect. Please review your Notice of Hearing for any deadlines imposed on providing copies of documents you intend to offer at the hearing.



Q. May I bring an attorney to the hearing?

A. Yes. You may have an attorney represent you at the hearing. The attorney will be at your expense. If you hire an attorney, he or she must be licensed in the State of Kansas and enter their appearance on your behalf prior to the hearing.

Q. May I bring a witness to the hearing?

A. Yes. You may bring any person with you to the hearing that has information about your case. You should notify the Presiding Officer in advance, in the event arrangements need to be made to assist in providing their testimony.

Q. Can witnesses be subpoenaed?

A. Yes. The Presiding Officer can issue a subpoena that requires the subpoenaed person to attend the hearing. If you want a subpoena issued, you must make a written request to the Presiding Officer of the witness's name and address prior to the hearing. You are responsible for serving the subpoena and complying with all witness fees and expenses.

Q. Who conducts the fair hearing?

A. A Presiding Officer from the Office of Administrative Hearings conducts the hearing.

Q. Does the Presiding Officer represent me or the agency?

A. Neither. The Presiding Officer is an administrative law judge, who is an impartial individual. He or she will enter an initial order based upon what is presented by the agency and by you at the hearing.

Q. If I am dissatisfied with the initial order of the Presiding Officer, what is the next step?

A. You may request a review in writing. The Initial Order will indicate the agency head to whom a request for review should be addressed. Observe any deadline mentioned in your order. Further appeal rights will be outlined in the initial order. The agency head will issue a final order indicating their decision.

Q. If I am dissatisfied with the final order issued by the Agency Head, what is the next step?

A. You may file a petition for judicial review pursuant to K.S.A. 77-601 *et. seq.*

Q. What is the most frequent mistake made by individuals during the administrative hearing process?

A. Failing to read the notices and documents issued as part of the hearing process. Read everything you receive **very carefully**.



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REQUEST FOR MEDICAID ADMINISTRATIVE HEARING – MEMBER/CONSUMER APPEALS

Date: _____

Name: _____

Address: _____

Representative (if applicable): _____

Representative's Address: _____

If you are a provider representing a member, please use this request form for consumers/members. Please also include your authorized representative form when submitting this form to the Office of Administrative Hearings.

I request an administrative hearing to review the decision or action taken by:

State Agency (DCF, KDADS, or KDHE): _____

List MCO _____

Local Agency Office (if applicable): _____

Type of Program: _____

Date of Action Being Appealed: _____

I am requesting consideration of this matter because:

(Explain why decision or final action is not satisfactory in your circumstances)

(continue on attached page if necessary) _____

Please attach a copy of the notice from which you are appealing.

I understand that this is a hearing before an impartial Presiding Officer of the Office of Administrative Hearings.

Signature: (Person Requesting Administrative Hearing)

Office of Administrative Hearings



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RULES AND REGULATIONS RELATING TO MEDICAID FAIR HEARINGS

1. K.S.A. 75-7403, as amended, provides authority to the Secretary of Health and Environment for "implementation and administration of the powers, duties and functions prescribed for or transferred to the department as provided by law", including the authority to "enter into contracts as may be necessary to perform the powers, duties and functions of the department". Today, the Secretary of KDHE administers Medicaid by delegating various functions of that program to the Department for Children and Families (DCF) and to the Department for Aging and Disability Services (KDADS), each of which must provide for fair hearings in accord with the Kansas Administrative Procedure Act (KAPA) found at K.S.A. 77-501 *et seq.*
2. Eligibility and Renewal fair hearings of these agencies shall be conducted by a Presiding Officer from the Office of Administrative Hearings (OAH). *See*, K.S.A. 75-37,121. However, in cases where a Medicaid service provider disputes agency action regarding the provider's Medicaid reimbursement, the provider must first satisfy all applicable appeal processes before requesting a fair hearing that goes before OAH.
3. A dissatisfied individual or entity must request an administrative hearing. The request for an administrative hearing must be submitted as specified in the notice of agency action that is being challenged, and/or the request may be sent directly **in writing, signed by the requesting party**, to the **Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, Kansas 66612**. This form may be used but it is not a requirement.
4. A request for administrative hearing must be received by the agency **within 30 days** (33 days if mailed) from the date of the order or notice of action taken by the agency. The individual or entity requesting the administrative hearing shall then be called an appellant and the State agency whose decision is appealed shall be called the respondent.
5. Written notice of the time and place of the hearing or prehearing shall be given by the Office of Administrative Hearings to the appellant and to the respondent at least ten days prior to the hearing.
6. The appellant may have a representative of his/her own choice at the hearing, along with the ability to have witnesses and produce documentary evidence relating to his/her appeal. Failure to participate in the scheduled hearing or any other matter scheduled regarding your appeal may result in your appeal being dismissed.
7. A recording shall be made of the hearing, and this recording shall be reduced to a transcript if requested for good cause shown by any of the parties to the hearing. If such a request is made, it will be the requesting party's responsibility to pay for the transcript.
8. A copy of the initial order of the Presiding Officer shall be mailed to the appellant and the respondent. In keeping with K.S.A. 77-531, whenever there is a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.
9. If an individual is in need of any special accommodation in order to be involved in their hearing, they should notify the Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612.
10. The Office of Administrative Hearings does not accept any filings by e-mail.

Office of Administrative Hearings