**Section 106.75 Petition for release from or modification of services charges**

a) *Any person who has been issued a* form DMHDD-612, *Notice of Determination*, of sums due as service charges may petition the Department for a review of such determination. The petition must be in writing and filed with the Department, 401 Stratton Building, Springfield, Illinois 62765 *within 90 calendar days from the date of the* *form DMHDD-612*, *Notice of Determination*. [405 ILCS 5/5-111]

b) On the basis of the grievances presented in the petition, the Department shall review the record and shall make corrections for errors prior to a formal hearing. If such corrections do not resolve the issue raised, the Department shall provide for a hearing to be held on the services charges for the period covered by the petition. Pre-hearing conferences may be arranged by the Department prior to scheduling of formal hearing to develop factors not included in the Department's master file record, which could result in resolution of the issues raised.

c) A notice stating the date, time, and place of the hearing shall be sent by certified mail to the address given on the petition of the person entering the petition not less than 10 calendar days in advance of the date of such hearing. Hearings will be scheduled at a time and place to be determined by the Department. The place selected will be an appropriate location, with a view to geographic grouping of the cases to be heard, to keep travel at a minimum for all parties.

d) The person petitioning the Department shall appear personally and may bring such witnesses as may be deemed necessary and may be represented by a person of his or her own choice.

e) A hearing officer duly authorized by the Secretary of the Department shall conduct the hearing as follows:

1) The hearing is officially opened when the purpose of same has been stated and governing authorities have been cited.

2) Presentation of the hearing's examiner credentials. Leave to substitute a copy for incorporation in the record shall be sought, in order to retain the original in the Department's master file.

3) Swearing in of those who are to testify as witnesses, petitioner and others appearing on his or her behalf, the Department's representative or representatives, etc. Identification for the record by name and title. The hearing officer shall have the authority to subpoena witnesses and to compel the production of books and records (see 20 ILCS 1705/17).

4) The petitioner is given preference as to the order of appearances by agreement as to the format of the hearing, as a result of a preliminary conference between both parties. If agreeable, the Department's case is the first to be recited into the record for the purpose of developing a basis for the hearing. All documents, in support of such testimony, are numbered and offered into evidence as the Department's exhibits. Leave to substitute copies of such documents is sought so the originals may be retained in the Department's master file.

5) Upon completion of the Department's case, cross examination of the Department may be held if desired, either by the petitioner, or his or her attorney, if so represented.

6) The petitioner then states, either directly, or upon examination by the counsel, the reason for requesting a modification or release from charges, and submits documents to substantiate allegations made by him or her, or as a rebuttal of the Department's allegations. These exhibits are numbered and identified for record purposes as petitioner's exhibits. The presiding hearing's examiner has complete authority for determining what testimony or evidence is relevant and admissible into the record, either by the Department or the petitioner.

7) After all direct testimony has been completed, and all evidence by both the Department and the petitioner is in, cross-examination may again be held, if so desired.

8) When there is no further testimony or evidence to be offered by either party, the hearing is to be considered adjourned with the explanation that no decision will be rendered on the testimony and evidence submitted, inasmuch as the complete record will be reviewed and a full report, with recommendations will be submitted to the Secretary of the Department who will ultimately review the findings and recommendations and render a final decision as to whether the determination is subject to change, and so notify the petitioner.

9) If the findings of the hearing indicate that an error has been made in the original determination, or new or additional information indicates supplemental allowances are in order, an independent redetermination shall be made by the hearings examiner responsible for preparation of the report to conform.

10) Within 30 days, but no later than 60 days subsequent to the hearing, a copy of the Department's letter of decision, bearing the Secretary's signature, noted as to the date of the signature, along with a copy of the findings and recommendations shall be issued to the petitioner.

f) The common law rules of evidence shall not be enforced in the conduct of the hearing (see 5 ILCS 100/10-40). The hearing officer may ask and receive answers to such questions as are pertinent and proper for a fair determination of the case. Exhibits may be received as part of the evidence and shall be numbered in order according to whether they are the Department's or the petitioner's exhibits.

g) The hearing officer shall make a recommendation on the basis of statutory guidelines (see 405 ILCS 5 and 20 ILCS 1705), rules of the Department (59 Ill. Adm. Code) and the testimony and evidence presented. The Secretary shall review the record and the recommendation of the hearing officer shall become final only upon receiving the Secretary's signature indicating his or her assent thereto.

h) The Department is not authorized or empowered by the Mental Health and Developmental Disabilities Code [405 ILCS 5] to hold a subsequent hearing based on the same set of facts existing at the time the Departments final order was entered.

i) The Department shall keep a certified true copy of the record of the hearing and shall furnish such record to any court reviewing its decision or to the Board of Reimbursement Appeals (see 735 ILCS 5/3-101). The record shall be forwarded to a petitioner or to a person authorized by the petitioner to examine the record subject to costs as outlined in Section 5-111 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-111].

j) *Any person aggrieved by the decision of the Department upon such hearing may, within 30 days thereafter, file a petition with the Department for review of such decision* by the Board of Reimbursement Appeals. *Upon receiving a petition for review by the Board of Reimbursement Appeals* (the Board)*, the Department shall notify the Board, which shall render its decision* on the petition *within 30 days after it is filed and certify its decision to the Department. Concurrence of the majority of the Board is necessary in any such decision. The Board of Reimbursement Appeals may approve action taken by the Department or may remand the case to the* Secretary *with recommendation for redetermination of charges*. [405 ILCS 5/5-111 and 5-113]

k) *Any person affected by such a final administrative decision of the Department or the Board of Reimbursement Appeals may have such decision reviewed only under and in accordance with the Administrative Review Law* [735 ILCS 5/Art. III]. [405 ILCS 5/6-101]

(Source: Added at 8 Ill. Reg. 22555, effective November 7, 1984)