

## PATHWAYS CMH

<b>POLICY TITLE:</b> Recipient Rights Complaint Appeals	<b>CATEGORY:</b> Recipient Rights	
<b>EFFECTIVE DATE:</b> July 6, 2005	<b>BOARD APPROVAL DATE:</b> October 2, 2013	
<b>REVIEWED DATE:</b> April 1, 2017	<b>REVISION(S) TO POLICY STATEMENT:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>OTHER REVISION(S):</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>RESPONSIBLE PARTY:</b> Recipient Rights Supervisor or Designee	<b>CEO APPROVAL:</b> Mary J. Swift, CEO	

**APPLIES TO:**

Pathways CMH and the Pathways Recipient Rights Appeals Committee

**POLICY:**

It is the policy of the Pathways Board to have the Recipient Rights Advisory Committee serve as the Recipient Rights Appeals Committee.

**PURPOSE:**

Chapter 7A of the Michigan Mental Health Code, P.A. 258 of 1974, as amended, establishes the right of public mental health service recipients, or someone acting on their behalf, to file complaints alleging a violation of rights guaranteed by Chapter 7 of the Code. Chapter 7A also assures that an appeal can be taken regarding the findings, remedial action, or timeliness of the complaint investigation. The purpose of this procedure is to establish the process for handling these appeals to assure all recipients and those acting on their behalf due process including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity.

**DEFINITIONS:**

Appeals Committee

A committee designated by the Pathways Board under Section 774 of the Mental Health Code to hear recipient rights complaint appeals brought by, or on behalf of, a recipient of Pathways.

Appellant

The recipient, complainant, parent, or legal guardian who appeals a recipient rights finding or respondent's action to an appeals committee.

Complainant

An individual who files a recipient rights complaint.

DHHS

Department of Health and Human Services

Legal Guardian

A judicially appointed guardian.

Respondent

The service provider that had responsibility, at the time of an alleged rights violation, for the services with respect to which a rights complaint has been filed.

**REFERENCES:**

Act 258 of the Public Acts of 1974, as amended (Mental Health Code), Sections 772, 774, 776, 778, 780, 782, 784, 786; MDHHS/CMHSP Managed Health Supports and Services Contract, FY16 6.3.2 and Attachment C6.3.2.4, Amendment 2

**HISTORY:**

Dates Reviewed: June 2008, June 2011; July 11, 2014; May 5, 2015; April 1, 2016; April 1, 2017

Dates Revised: August 2011; July 11, 2013; April 29, 2014

Dates Approved: July 6, 2005; October 2, 2013

## PROCEDURES

### A. Training for Appeals Committee

The Office of Recipient Rights shall ensure that initial and ongoing training and education is provided to the Appeals Committee.

### B. Notification of Appeal Rights

1. Every complainant, recipient if different than the complainant, recipient's legal guardian, and parent of a minor recipient shall be informed in the Summary Report issued by the Chief Executive Officer of the right to appeal to the Pathways Appeals Committee. Notice shall include information on the grounds for appeal, the time frame for submission of the appeal, advocacy organizations that may assist with filing the written appeal, an offer to refer to advocacy organizations and an offer of assistance by the Office of Recipient Rights in the absence of assistance from an advocacy organization.
2. 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 correction, and the completed action is different than the proposed, the Chief Executive officer shall assure that the Office of Recipient Rights, the complainant, recipient if different than the complainant, his/her legal guardian, if any, shall be 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 calendar days after receipt of the notice to appeal to the Recipient Rights Appeals Committee on the grounds of inadequate action taken to remedy a rights violation.
3. The Summary Report shall contain information about the option for mediation.

### C. Requesting an Appeal

Not later than 45 calendar days after receipt of the Summary Report or the written notice of the completion of the plan of action, the appellant may file a written appeal with the Appeals Committee with jurisdiction over the Office of Recipient Rights that issued the Summary Report. The request for an appeal should include the grounds for the appeal.

### D. Grounds for Appeal to the Pathways Appeals Committee shall be as follows:

1. The investigative findings of the Office of Recipient Rights are not consistent with the facts or with law, rules, policies, or guidelines;
2. The action taken, or plan of action proposed by the respondent, does not provide an adequate remedy;
3. An investigation was not initiated or completed on a timely basis.

### E. Reviewing Request for Appeal/Notification of Appellant

1. Within 5 business days of receipt of the appeal, a member of the Appeals Committee shall review the appeal to determine if it meets the criteria stated above. This review may be conducted by the Chair, Vice-Chair, or other available Committee member. This individual shall provide written notice to the appellant within five business days that the appeal has been accepted or not accepted. If the appeal has been accepted, the Appeals Committee shall provide a copy of the appeal to the respondent, the Chief Executive Officer, and the Office of Recipient Rights.
2. The Chief Executive Officer and the Office of Recipient Rights may provide copies of the appeal to staff as they deem appropriate.

## F. Conducting an Appeal Meeting

1. Within 30 calendar days after receipt of an accepted appeal, the Appeals Committee shall meet in closed session and review the facts as stated in all complaint investigation documents.
2. The Office of Recipient Rights shall ensure that:
  - a. Copies of complaint investigation documents are provided to the Appeals Committee;
  - b. A date and time is scheduled for the appeal meeting;
  - c. A room is scheduled for the appeal meeting;
  - d. All appropriate individuals are notified of the appeal meeting;
  - e. A written record of the appeal is made including:
    - 1) the appeal and any supporting documentation;
    - 2) complaint investigation documents utilized by the Appeals Committee;
    - 3) any other documentation utilized by the Appeals Committee;
    - 4) notification sent to the appellant;
  - f. Maintain a log of all appeals received and the disposition of each.
3. Clerical support staff shall:
  - a) Prepare the Committee's written response to the appeal and have it reviewed by the Committee members. The response shall include:
    - 1) the members and other individuals present;
    - 2) the Committee's decision;
    - 3) the rationale for the decision;
4. Any member of the Appeals Committee who has a personal or professional relationship with an individual involved in the appeal, who has been contacted personally with information about the appeal, or who has any conflict of interest shall abstain from participating in that appeal.
5. The Committee shall not consider additional allegations that were not part of the original complaint at issue on appeal but shall inform the appellant of his/her right to file a new complaint with the Office of Recipient Rights.
6. The Committee may, at its discretion, request additional supporting documentation from any party involved in the appeal. If the documentation is not provided to the Committee in a timely manner, the appeal will proceed and the decision will be made without the documentation.
7. The Committee may, at its discretion, request technical assistance only.
8. At the appeal meeting, the Appeals Committee shall do one of the following:
  - a. Uphold the investigative findings of the Office of Recipient Rights and the action taken or plan of action proposed by the respondent;
  - b. Return the investigation to the Office of Recipient Rights and direct that it be reopened or reinvestigated with specific information about what needs to be reopened or reinvestigated and the reason;
  - c. Uphold the investigative findings of the Office of Recipient Rights but direct that the respondent 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 that the Pathways Chief Executive Officer take appropriate supervisory action with the investigating rights staff or take other appropriate action;
  - e. Recommend that the Pathways Board request an external investigation by the Department of Health and Human Services-Office of Recipient Rights.
9. The Appeals Committee shall document its decision in writing within 10 business days following the decision and shall provide copies to the respondent, appellant, recipient if different than the appellant, recipient's legal guardian, parent of a minor recipient, the Chief

Executive Officer of Pathways, and the Office of Recipient Rights. Documentation shall include justification for the decision made by the Committee.

10. Copies of the Appeals Committee decision shall include a statement of appellant's right to appeal to MDHHS, the time frame for appeal (45 days from receipt of decision) and grounds for appeal (investigative findings of the Rights Office are inconsistent with facts, rules, policies or guidelines).

#### G. Reopening or Reinvestigating a Complaint

1. If the Appeals Committee directs that the Office of Recipient Rights reopen or reinvestigate the complaint, the Office shall submit another Investigative Report in compliance with Section 778(5) of the Mental Health Code within 45 calendar days of receipt of the written decision of the Committee. The 45 day time frame may be extended at the discretion of the Appeals Committee upon a showing of good cause by the Office. At no time shall the time frame exceed 90 calendar days.
2. Within 10 business days of receipt of the Investigative Report, the Chief Executive Officer shall issue another Summary Report in compliance with Section 782 of the Mental Health Code. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, recipient's legal guardian, parent of a minor recipient, the Office of Recipient Rights, and the Appeals Committee. The Summary Report shall contain information regarding the appellant's right to further appeal, the time frame for the appeal, and the grounds for appeal (see II. D. of this policy). The Summary Report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the Office of Recipient Rights in the absence of assistance from an advocacy organization.
3. If the investigative findings result in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action taken or the plan of action proposed by the respondent, the appellant may file an appeal to the Pathways Appeals Committee with jurisdiction over the Office of Recipient Rights that issued the Summary Report.

#### H. Taking Additional or Different Action

1. If the Appeals Committee upholds the findings of the Office and directs that the respondent 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 780 of the Mental Health Code. The Appeals Committee shall base its determination upon any or all of the following:
  - a. Action taken or proposed did not correct or remedy the rights violation;
  - b. Action taken or proposed was/will not be taken in a timely manner;
  - c. Action taken or proposed did not/will not prevent a future recurrence of the violation.
2. Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the Pathways Chief Executive Officer if different than the respondent, and the Office of Recipient Rights.
3. Within 30 calendar days of receipt of the determination from the Appeals Committee, the respondent 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 the appellant, recipient's legal guardian, parent of a minor recipient, the Chief Executive Officer if different than the respondent, and the Office of Recipient Rights.
4. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to 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 Chief Executive Officer for a violation of Section 755(3)(b) of the Mental Health Code.

I. Appeal to the Department of Health and Human Services

1. An appeal to the Department of Health and Human Services (DHHS) may be taken only upon the ground that the investigative findings of the Office of Recipient Rights were inconsistent with the facts, or with law, rules, policies, or guidelines and only after a decision on an appeal has been made by the Pathways Appeals to uphold the findings of an investigation, or upon reinvestigation, the findings of the office remain unsubstantiated.
2. Within 45 calendar days after receiving written notice of the decision of the Appeals Committee, the appellant may file a written appeal with DHHS. The written appeal shall be mailed to:

MDHHS-APPEALS  
Level 2 Appeal  
Lewis Cass Building, 1<sup>st</sup> floor  
320 S. Walnut Street,  
P.O. Box 30807,  
Lansing, MI 48909  
FAX: (517) 241-7973

3. Upon receipt of the appeal, DHHS shall give written notice of the receipt to the respondent, Pathways Office of Recipient Rights, and the Chief Executive Officer. The respondent, Office of Recipient Rights, and Chief Executive Officer shall ensure that DHHS has access to all necessary documentation and other evidence cited in the complaint and local appeal.
4. DHHS shall review the record generated by the local appeal. It shall not consider additional evidence or information that was not available during the local appeal.
5. Within 30 calendar days after receiving the appeal, DHHS shall review the appeal and do one of the following:
  - a. Uphold the findings of the Office of Recipient Rights;
  - b. Affirm the decision of the Pathways Appeal Committee;
  - c. Return the matter to the Chief Executive Officer of Pathways with instruction for additional investigation or consideration.
6. DHHS shall provide copies of its action to the respondent, the appellant, recipient if different than the appellant, recipient's legal guardian, parent of a minor recipient, the Pathways Board, and the Pathways Office of Recipient Rights. If DHHS upholds the findings of the Office of Recipient Rights, notice shall be provided to the appellant of his/her legal right to seek redress through the circuit court.
7. If DHHS instructs that additional investigation be conducted, the Chief Executive Officer shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of receipt of the written notice from DHHS. The 45 day time frame may be extended at the Department's discretion upon a showing of good cause by the Chief Executive Officer. At no time shall the time frame exceed 90 calendar days.
8. Within 10 business days of the receipt of the Investigative Report, the Chief Executive Officer shall issue a Summary Report in compliance with Section 782 of the Mental Health Code to the Department, appellant, recipient if different than the appellant, parent of a minor recipient.
9. If the findings of the additional investigation remain the same as those appealed, the Department shall inform the appellant, recipient if different than the appellant, recipient's legal guardian, parent of a minor recipient in writing of the right to seek redress through the circuit court. Copies of this notice will be provided the Deputy Director of the MDHHS Mental Health/Substance Abuse Services (if the investigation was conducted by the staff of

the MDHHS-OOR) or the director of the DHHS Quality Management and Service Innovation (if the investigation was completed by a CMHSP).

10. If the additional investigation results in the substantiation of a previously unsubstantiated violation but the appellant, recipient if different than the appellant, recipient's legal guardian, or parent of a minor recipient disagrees with the adequacy of the action taken or plan of action proposed to remedy the violation, the Department shall inform the individual(s) of the right to appeal this to the Pathways Appeals Committee.