

HIAWATHA BEHAVIORAL HEALTH BOARD

Administrative Policy

Chapter: Recipient Rights
Section: Complaint and Appeal Process (6.17)
Approved: 8/16/10
Rescinds: 6.17 Dated 5/17/04
Review Committee: Recipient Rights Advisory Committee
Review Date: 7/30/10

I. Purpose

To establish procedures concerning the investigation of alleged or suspected violations of rights guaranteed by Chapters 7 and 7a of the Michigan Mental Health Code.

II. Policy

It is the policy of the Hiawatha Behavioral Health Authority to provide a mechanism for prompt reporting, review, intervention, investigation, and resolution of all apparent or suspected rights violations which include mediation and/or an appeals process.

III. Definitions

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

Mediation: A private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authoritative decision-making power.

Preponderance of Evidence: A standard of proof which is met when, based upon all available evidence, it is more likely that something is true than untrue; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts); more than 50 percent.

Reasonable Cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

Respondent: The service provider that had responsibility for the services rendered to the recipient at the time of an alleged rights violation.

Rights Complaint: A written or oral statement filed by a recipient, or other individual on behalf of a recipient, with the Office of Recipient Rights, alleging a violation of the Mental Health Code, Administrative Rules, or other associated Hiawatha Behavioral Health Policy and Guidelines pertinent to recipient rights which contains the following:

1. A statement of the allegations that give rise to the dispute;
2. A statement of the right or rights that may have been violated;
3. The outcome that the complainant is seeking as a resolution to the complaint.

IV. Procedure

A. A recipient, or another individual on behalf of a recipient, may file a rights complaint with the Office of Recipient Rights alleging a violation of his/her rights. The Office of Recipient Rights shall assure that recipients and others have ready access to complaint forms.

B. The Hiawatha Behavioral Health Board Office of Recipient Rights shall ensure that:

1. Action is taken to protect the recipient during the investigation.
2. The Office of Recipient Rights has unimpeded access to all of the following:
 - a. All program and services;
 - b. All employees, volunteers and recipients;
 - c. All evidence that the Office of Recipient Rights determines is necessary to conduct a thorough investigation.
3. All employees, volunteers, and recipients who may have knowledge pertinent to the investigation, shall cooperate with the Office of Recipient Rights investigation.
4. All employees, volunteers, recipients and others who file a complaint and/or cooperate in an investigation are protected from discrimination, harassment, or retaliation in accordance with applicable laws and/or agency policies and procedures.

REPORTING SUSPECTED OR APPARENT RIGHTS VIOLATIONS:

1. All employees and volunteers who witness, discover, or have reasonable cause to suspect recipient rights violations shall report verbally or in writing, to a designated rights advisor or officer within 24 hours of the incident or discovery.
2. Appropriate administrative action shall be taken for failure to report suspected rights violations.

FILING RIGHTS COMPLAINTS:

The Hiawatha Behavioral Health Office of Recipient Rights shall:

1. Date, number, and record each rights complaint as it is received and send acknowledgment along with a copy of the complaint to the complainant (if known) within 5 business days of receipt of the complaint.
2. Within 5 business days after the office receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted.
3. Advise the recipient or other individual that there are advocacy organizations/service agencies that are available to assist in the preparation of written rights complaints, however in the absence of an advocacy organization, the Hiawatha Office of Recipient Rights shall assist the recipient or other individual with the preparation of a written recipient rights complaint. The written complaint shall contain a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
4. Inform the complainant of the option of mediation.
5. Inform Hiawatha Behavioral Health Chief Executive Officer of all complaint investigations.

INVESTIGATION:

The Hiawatha Behavioral Health Office of Recipient Rights shall:

1. Initiate an investigation of apparent or suspected rights violations in a timely manner, subject to delays involving pending action by external agencies including law enforcement, protective services, or licensing bureaus. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or the death of a recipient that involves an apparent or suspected rights violation.
2. Conduct investigations in a manner that does not violate employee rights.
3. Complete the investigation not later than 90 days after receiving the rights complaint.
4. As circumstances permit, perform face to face interviews and obtain written statements from the following:
 - a. Complainant
 - b. Recipient
 - c. Witness(es)
 - d. Individuals that may provide pertinent information.
 - e. Employee, volunteer or individual that has been accused or suspected of violating a right.
5. Maintain accurate records of investigative activities of the Office of Recipient Rights.
6. Store all investigative documents and evidence in a secure manner in a locked area in the Office of Recipient Rights. All investigative records shall be kept separate from clinical or personnel records and within the limitations of

confidentiality and privileged communications as stated in sections 330.1748 and 330.1750 of the MI Mental Health Code.

7. Determine whether a right was violated by using the preponderance of evidence as the standard of proof.

8. If a rights complaint has been filed against the Chief Executive Officer, the rights investigation shall be conducted by the Office of Recipient Rights of another community mental health services program or by the state Office of Recipient Rights, to be determined by the Hiawatha Behavioral Health Mental Health Governing Board.

STATUS REPORT:

The Hiawatha Behavioral Health Office of Recipient Rights shall:

1. Provide a written status report every 30 days during the course of the investigation. The report shall be submitted to the complainant, the respondent and the responsible mental health agency.
2. Include all of the following in the status report:
 - a. Statement of the allegations;
 - b. Statement of the issues involved;
 - c. Citations to relevant provisions of the Mental Health Code, Administrative rules, and Hiawatha Behavioral Health Policies and Procedures;
 - d. Investigative progress to date;
 - e. Expected date for completion of the investigation/report.

INVESTIGATIVE REPORT:

1. The Hiawatha Behavioral Health Office of Recipient Rights shall:
 - a. Submit a written Investigative Report to the respondent and Hiawatha Behavioral Health. Issuance of the written Investigative Report may be delayed pending completion of investigations that involve external agencies, including law enforcement, protective services, or licensing bureaus.
 - b. Included in the Investigative Report shall be:
 1. Statement of the allegations;
 2. Statement of the issues involved;
 3. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines, policies and procedures;
 4. Investigative findings
 5. Conclusions;
 6. Recommendations, if any.
2. The Office of Recipient Rights may reopen or reinvestigate a complaint if there is new evidence that was not presented at the time of the original investigation.

REMEDIAL ACTION:

If it has been determined through investigation that a right has been violated the respondent shall:

1. Take appropriate remedial action that meets all of the following requirements:
 - a. Corrects or provides remedy for the rights violation;
 - b. Is implemented in a timely manner;
 - c. Attempts to prevent a reoccurrence of the rights violation;
2. Provide the Office of Recipient Rights and the Chief Executive Officer with written documentation of the remedial action for its record.
3. The Hiawatha Behavioral Health and respondents shall:
 - a. Ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

SUMMARY REPORT:

The Hiawatha Behavioral Health Chief Executive Officer shall:

1. Submit a written summary report to the complainant and recipient, if different than the complainant within 10 business days after receiving the Office of Recipient Rights final investigative report. Include all of the following in the summary report:
 - a. Statement of the allegations;
 - b. Statement of the issues involved;
 - c. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines and Hiawatha Behavioral Health Policies and Procedures;
 - d. Summary of investigative findings;
 - e. Conclusions of the Office of Recipient Rights;
 - f. Recommendations made by the Office of Recipient Rights;
 - g. Action taken, or proposed plan of action, by the respondent;
 - h. Statement regarding the complainant's right to appeal and the grounds for an appeal;
 - i. Statement regarding the complainant's option activate the mediation process.
2. Provide information in the Summary Report in a manner within the limitations of confidentiality and privileged communications as stated in sections 330.1748 and 330.1750 of the Mental Health Code and shall not violate the rights of any employee.(Bullard-Plawecki Employee Right to Know Act 397 of 1978)
3. Advise the complainant that there are advocacy organizations available to assist in preparing the written appeal and in the absence of an advocacy organization, assist the complainant in meeting the procedural requirements of a written appeal.
4. Inform the complainant of the option of mediation.

J. APPEAL OF THE SUMMARY REPORT:

1. Not later than 45 days after receipt of the summary report, the complainant may file a written appeal with the Appeals Committee.

2. An appeal shall be based on any of the grounds as stated below:

- a. The decision of the Hiawatha Behavioral Health Office of Recipient Rights is not consistent with the facts or with law, rules, policies, or guidelines;
- b. The action or proposed plan of action does not provide an adequate remedy;
- c. An investigation was not initiated or completed on a timely basis.

3. The Appeals Committee shall:

- a. Review the appeal within 5 business days after receipt of the written appeal to determine whether it meets the criteria set forth above. Any 1 member is authorized to conduct the initial review and determine if it meets the criteria. If that member rejects the appeal, 3 additional members will review the appeal and make a final determination.
- b. Within 5 business days notify the appellant in writing if the appeal is denied due to the criteria not being met.
- c. Within 5 business days if the appeal is accepted; provide written notice to the appellant and Hiawatha Behavioral Health Chief Executive Officer or his designee.
- d. Within 30 days after the receipt of a written appeal, meet and review the facts as stated in all complaint investigation documents and do one (1) of the following:
 1. Uphold the investigative findings of the Office of Recipient Rights and the action or proposed plan of action by the respondent;
 2. Return the investigation to the Office of Recipient Rights and request that it be reopened or reinvestigated;
 3. Uphold the investigative findings of the Office of Recipient Rights but recommend that the respondent take additional or different action to remedy the violation;
 4. Recommend that the Hiawatha Behavioral Health Governing Board request an external investigation by the Department of Community Health Office of Recipient Rights.
 5. Document its decision in writing. Within 10 business days after reaching its decision, provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if appropriate, and the Hiawatha Behavioral Health Office of Recipient Rights. Copies shall include a statement regarding the appellant's right to appeal to the Department of Community Health Administrative Law Tribunal and notice shall

include the basis for which the appeal is being made which is specific to:

- A. The record established in the previous appeal and;
 - B. The allegations that the investigative findings of the Hiawatha Behavioral Health Office of Recipient rights was not consistent with the facts or with the law, rules, guidelines, or policies.
6. The Hiawatha Behavioral Health's designated appeals committee shall hear appeals of decisions on recipient rights investigations brought by or on behalf of all contract recipient's under the authority of the Hiawatha Behavioral Health Board.

K. APPEALS COMMITTEE:

1. The Hiawatha Behavioral Health Recipient Rights Advisory Committee shall serve as the Recipient Rights Appeals Committee.
2. The Appeals Committee shall:
 - a. Appoint one member to serve as chairperson;
 - b. Receive training regarding the Rights of Persons Served;
 - c. Ensure that a member who has a personal or professional relationship with an individual involved in an appeal abstains from participation in that appeal as a member of the Appeals Committee;
 - d. Conduct appeals proceedings within the constraints of confidentiality and privileged communications in 330.1748 and 330.1750 of the Mental Health Code.
 - e. Appeal Committee meetings are not subject to the Open Meetings Act;
 - f. Complete written reports within the constraints of confidentiality and privileged communications as stated in Sections 330.1748 and 330.1750 of the Mental Health Code and in a manner that does not violate the rights of any employee.

L. APPEAL OF AN APPEALS COMMITTEE DECISION:

1. Within 45 days after receiving written notice of the decision of the Appeals Committee, the appellant may file a written appeal with the Department of Community Health Administrative Law Tribunal. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the Hiawatha Behavioral Health Office of Recipient Rights are not consistent with the facts or with the law, rules, guidelines, or policies.
2. The Department shall give written notice of receipt of the appeal to the appellant, respondent, local Office of Recipient Rights. Hiawatha Behavioral Health shall ensure that the Tribunal has access to all evidence and necessary documents contained in the investigative file.
3. The Tribunal shall review the record based on the basis of the appeal and shall

not consider additional evidence or information that was not available during the local appeal process, although the Department may return the matter to Hiawatha Behavioral Health requesting additional investigation.

4. Within 30 days after receiving the appeal, the Tribunal shall review the appeal and do one of the following:

- a. Affirm the decision of the local appeals committee;
- b. Return the matter to Hiawatha Behavioral Health with instruction for additional investigation and consideration.

5. The DCH Administrative Law Tribunal shall provide copies of its action to the respondent, appellant, the recipient if different than the appellant, the recipient's guardian when appropriate, and the Hiawatha Behavioral Health Office of Recipient Rights.

M. APPEAL TO CIRCUIT COURT:

A person aggrieved by a decision of the DCH Administrative Law Tribunal may appeal to the circuit court, requesting an order reversing the decision. The appeal shall be based upon the whole record, and the circuit court shall consider whether the decision is authorized by law and supported by competent evidence.

V. Application

All programs Operated By or Under Contract with Hiawatha Behavioral Health Authority

VI. Cross Reference and Legal Authority

A. Act 258 of the Public Acts of 1974, as amended, Mental Health Code Sections 330.100a, 330.1146, 330.1722, 330.1755, 330.1774, 330.1776, 330.1778, 330.1780, 330.1782, 330.1784, 330.1786, 330.1788.

B. HBHA Policy and Procedure - Abuse and Neglect 6.8

C. Public Act 397 - 423.506 - Bullard-Plawecki Employee Right To Know Act